

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2020] NZLCDT 24

LCDT 008/20

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 2**

Applicant

AND

MARK WILLIAM MILLER

Practitioner

DEPUTY CHAIR

Judge JG Adams

MEMBERS

Mr S Hunter QC

Ms J Gray

Ms M Noble

Prof D Scott

On the papers

DATE OF DECISION 7 August 2020

COUNSEL

Mr P Collins for the Standards Committee

Mr R Walker for the Practitioner

REASONS FOR DECISION OF TRIBUNAL RE PENALTY

[1] Mr Miller made arrangements that permitted another practitioner, who had been suspended, and then struck-off, to practise. These regrettable actions blight what has otherwise been a good professional record at what, for grave health reasons, proves to be the end of Mr Miller's professional activity.

[2] The resolution of this case depends on its own facts. We have independently considered, and approve, the outcome jointly advanced by counsel. Having been satisfied that the resolution, in these circumstances, accords with proper principles, we independently impose it.

[3] The issues in this case are:

- What is the appropriate penalty?
- Should the practitioner's name be suppressed?

What is the appropriate penalty?

[4] Mr Miller pleaded guilty to three of the original four charges. The charge withdrawn was one of sharing his firm's premises with a non-lawyer. In our view, leave to withdraw that charge was proportionate and pragmatic, and in accordance with the principle of encouraging such resolution of these sorts of matters. The remaining charges provide a sufficient context of the overall offending.

[5] The charges upon which we need to consider penalty are:

Charge 1: Misconduct by permitting a suspended or struck-off lawyer to provide regulated services without consent: s 7(2) Lawyers and Conveyancers Act 2006 ("the Act").

Charge 2: Misconduct by sharing his firm's income with a non-lawyer: s 7(3) of the Act.

Charge 3: Unsatisfactory conduct by providing misleading information to clients about professional indemnity arrangements: s 12(c) of the Act.

[6] Mr Ellis approached Mr Miller in June 2018, suggesting an arrangement whereby Mr Miller would acquire Mr Ellis's practice but whereby Mr Ellis would continue to act for the clients, and Mr Miller would receive 20 per cent of the fees. In consequence, even though Mr Ellis was suspended on 26 June 2018, and later struck off on 2 November 2018, he continued to practise, providing regulated services, and was effectively held out as an integral part of the firm. The name of the firm was changed from "Ellis Law" to "High Street Consultancy." In correspondence and in business cards, Mr Ellis was described as "Consultant." Fees received by High Street Consultancy were paid into Mr Ellis's personal account. Letters of engagement for clients between July 2018 and August 2019, held out that "High Street Consultancy holds indemnity insurance..." which was untrue.

[7] Although Mr Miller had grave health problems from only a few weeks after the arrangements were made, he must take responsibility for entering into the arrangements and allowing them to continue. Mr Miller's own practice of Point Chevalier Law continued as it had before. Ordinarily, such circumstances, which enabled another practitioner to avoid significant consequences of his own penalty, would likely result in suspension or strike-off. If not, they would be serious possibilities. In this case, the circumstances of the practitioner are such that a compassionate and proportionate response can be regarded as adequate. It follows that this decision cannot be treated as any precedent that benchmarks a more tolerant approach. Our decision, in accordance with the agreed position of counsel, involves censure, fine and costs.

Should the practitioner's name be suppressed?

[8] The practitioner advances his application for name suppression upon a combination of features, notably his previous unblemished record, his health and the fact that he has ceased practice. Mr Walker notes the balance required between the public interest for open processes of justice and the private interests of the practitioner.

[9] The Tribunal expresses compassion for the practitioner and his family. His two decades of unblemished practice as a solicitor were preceded by 13 years of excellent service as a Police Officer. His health has required that he cease practice. He has not sought to renew his practising certificate and he will not practise again. He poses no ongoing risk to the public.

[10] Mr Walker submits that the practitioner was approached by Mr Ellis to enter into the arrangements that enabled Mr Ellis to continue practising. Although the practitioner soon thereafter had ill health which preoccupied him, he entered into those arrangements knowingly, without seeking wiser counsel. He is responsible for the arrangements which enabled Mr Ellis to flout the penalties properly visited on him in relation to Mr Ellis's own wrong-doing.

[11] The Tribunal follows the principle of open justice. Cases where suppression is granted are few. Those relied upon by Mr Walker, *Auckland Standards Committee 2 v Practitioner*,¹ and *Waikato Bay of Plenty Standards Committee 2 v Mr M*,² were driven by concerns to avoid aggravating the respective practitioner's mental health. In that, they are distinguished from the present case. Moreover, it appears that the arrangements with Mr Ellis were entered into before Mr Miller's health became a significant feature for him. The consequences of Mr Miller's arrangements with Mr Ellis were grave, in our view.

[12] We note that the Standards Committee submissions express compassion for the practitioner too but, following careful consideration, we align with the Standards Committee's ultimate stance that, in this case, the grounds are not made out. Accordingly, we do not suppress Mr Miller's name.

¹ *Auckland Standards Committee 2 v Practitioner* [2018] NZLCDT 19.

² *Waikato Bay of Plenty Standards Committee 2 v Mr M* [2016] NZLCDT 34.

Penalty

[13] Mr Miller is hereby censured pursuant to s 156(1)(b). Mr Miller, by entering into the arrangements with Mr Ellis, you enabled him to circumvent the just consequences of his own wrong-doing. The arrangements you made misled clients as to Mr Ellis's position. Your actions, and ongoing tolerance of the situation, were at odds with your responsibilities as a member of the profession to uphold the rule of law and to uphold the integrity of the profession. In these respects you have not only let yourself down, you have let your profession down too.

[14] In addition to the censure, we fine Mr Miller \$10,000 pursuant to s 156(1)(i).

[15] The agreed contribution to costs is reasonable in all the circumstances. Mr Miller shall pay costs to the Standards Committee of \$10,000.

[16] Mr Miller is to reimburse in full to the New Zealand Law Society the Tribunal's 257 costs, which are payable by the New Zealand Law Society and certified in the sum of \$1,409.

DATED at AUCKLAND this 7th day of August 2020

Judge JG Adams
Deputy Chair