NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2020] NZLCDT 9

LCDT 022/19

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**CANTERBURY WESTLAND STANDARDS COMMITTEE 2** Applicant
AND	**SEAN MARTIN GEORGE WOODWARD** Practitioner

CHAIR

Judge DF Clarkson

MEMBERS

Mr S Hunter

Ms G Phipps

Dr D Tulloch

Ms P Walker

DATE OF HEARING 4 December 2019

HELD AT Wellington Tribunals Unit

DATE OF DECISION 4 March 2020

COUNSEL

Mr H van Schreven for the Standards Committee

Mr T Mackenzie for the Practitioner

REASONS FOR DECISION OF THE TRIBUNAL AS TO PENALTY

Introduction

[1] Mr Woodward admitted six charges of misconduct arising from his practice as a lawyer and in the course of his provision of regulated services. A seventh charge was withdrawn by leave.

[2] Following the penalty hearing on 4 December 2019, the Tribunal suspended the practitioner for nine months, and made directions concerning an undertaking which he was to file with the New Zealand Law Society ("NZLS"). The Tribunal reserved its reasons for the decision. This judgment formulates those reasons.

Background

[3] As set out in the submissions for the Standards Committee there are two themes of importance underlying these charges. The charges emerge from a series of transactions (complicated, and regarded by at least two of the clients affected as involving considerable skill on the practitioner's part) but which had a "*common theme of involvement of the Practitioner having an interest with multiple clients for whom the Practitioner acted*".[1]

[4] The second theme pointed out by the Standards Committee was "… *the Practitioner's casual attitude at times to trust account regulations and, in particular, the cross-over of personal interests and the use of the trust account for personal expenses*".

[5] Each charge represents a transaction in which one or more of the above failings was evident. It is clear that despite blatant conflicts of interest, as acknowledged by the practitioner, either no or inadequate steps were taken to ensure that all of the clients were aware with whom they were dealing, in particular the involvement of the practitioner. Nor were they offered the opportunity of taking

[1] Submissions of Standards Committee on Penalty.

completely independent advice, and had not given informed consent for the practitioner to act in those circumstances.

[6] It is not necessary to set out the nature of each of the transactions, it is accepted by counsel for the practitioner that "… *the transgressions are numerous*".[2]

Gravity of the Conduct

[7] The starting point for assessing penalty must always be the gravity of the misconduct. In this case there are six admitted charges of misconduct.

[8] In addition to the serious conflicts of interest which arose in the transactions there was also a blurring of company entities and attribution of payments from the trust account which were not properly supported by documentation. There were Authority and Instruction forms signed and witnessed incorrectly, because they were signed when the practitioner was not present and therefore not properly witnessed.

[9] The practitioner was also using his own funds to prepare one property for sale. When his client failed to do what was needed to ensure a sale, Mr Woodward went well beyond his role in seeking to take over the running of this transaction. However he did so, it would seem, with good intentions.

[10] As submitted by counsel for the Standards Committee "*notwithstanding the close personal relationship relied on by the Practitioner in terms of dealings with both Messrs S and Z, the fact that there were moneys over which the Practitioner had a personal interest via his parents' Trust, heightened the potential for conflict, and ought to have resulted in even greater disclosure and recognition of conflict issues*".

[11] It was accepted that there was no "*blatant dishonest element in the transactions*". However it is clear there were personal interests and potential profits that the practitioner himself and/or his client (Mr S) could make.

[12] We accept the further submission by Mr van Schreven that "*the use of the trust account for personal transactions carries great risk and potential misuse. That*

[2] Submissions of counsel for Mr Woodward.

no loss in fact occurred was more down to good luck than good management". Also, the trust account was overdrawn at least at one point.

[13] It was common ground between counsel that only a suspension of Mr Woodward from practice as a lawyer could reflect the seriousness of the cumulative effect of the offending. The submissions in the main were directed to the proper length of time for such a suspension.

[14] The Standards Committee suggested 12 to 18 months suspension would be a proper response to such serious and numerous breaches of the Rules of both Client Conduct and the Trust Account Regulations.

[15] Counsel for Mr Woodward advocated for a significantly lesser period, relying on a number of mitigating features and upon the self-imposed suspension which had already occurred because of the actions the practitioner took immediately that the events which led to these charges were exposed.

[16] We accept the Standards Committee's submission that this is a particularly serious case of misconduct when viewed overall and would not view the period suggested by them (12 to 18 months) as out of line, were the matter simply to be adjudged on seriousness alone. However, there are a number of mitigating features to which we will now refer which, in our view bear on the period of suspension quite significantly.

Mitigating Features

[17] A number of factors are raised by Mr Woodward in mitigation. The first and most significant, in our view, is the responsible approach that he has taken to the disciplinary proceedings. Within just over a week after being requested to provide information from files, in respect of which the complaints from Mr Woodward's former firm had arisen, Mr Woodward provided the Standards Committee with a complete description of each transaction and two large folders of documents which were paginated, tabbed and linked to his report. As pointed out by his counsel, the practitioner was the best person placed to "*unravel and identify the facts and breaches*".

[18] As soon as the charges were laid, Mr Woodward immediately accepted that he was guilty of unsatisfactory conduct, which he submits was reasonable given a comparison to other cases dealt with by the Standards Committee in relation to some of the transgressions. Following the withdrawing of the seventh charge, he agreed promptly to accept the six charges of misconduct and provided a full affidavit to the Tribunal including medical information, correspondence from two of the main client's concerned, and an affidavit from his wife about his mental state.

[19] We note in his affidavit that he unreservedly accepts his errors in relation to the shortcuts taken by him and the unacceptable conflict of interest which was not properly handled. He has shown remorse, insight into the gravity of his offending and professional reflection on the circumstances that caused him to offend as he did.

[20] The next matter in mitigation which is raised is the depression and stress under which Mr Woodward was operating, and the difficult circumstances, as experienced by him, in the operation of the partnership he had joined.

[21] Mr Woodward is a 48-year old practitioner who has worked both overseas and in a number of large firms in New Zealand. He has considerable experience in insolvency, finance and operates a commercial practice.

[22] There were, apparently, considerable stressors about the nature of his work, his personality-fit and the level of outstanding fees carried by the practitioner. He was required to report on a monthly basis to his partners. He also had what he describes as a "strained" relationship with the trust supervising partner. Mr Woodward acknowledged that his style was to focus "… *on the transactions at hand, not the trust account and paperwork*".[3] He accepts that as a partner he was responsible and ought to have done better.

[23] It was Mr Woodward's view that he was simply not a good fit for the firm that he had joined, and he felt unsupported. He says that from 2009 his mental health was clearly deteriorating, and he was prescribed antidepressants. He said that improved the situation somewhat, but did not change his approach to work or

[3] Paragraph [21], practitioner's first affidavit.

improve his relationship with his partners. He accepts that his unwellness over a period of eight years "… *was a major contributor to the dysfunction in the firm* …".

[24] Recognising that the purpose of a penalty is to protect the public the Tribunal carefully considered whether the factors that had led to the offending had been satisfactorily identified and addressed.

[25] Mr Woodward says that he suffered a "major depressive episode" similar to that which he had suffered in 2009, when he "froze" at work. He says this was brought on by his partners instigating a fraud protocol around the transactions which are the subject of these charges (despite there being no dishonesty involved). He left the firm that day and has not practised since 22 August 2017.

[26] Over the two years which led up to the hearing before the Tribunal Mr Woodward's focus has been on improving his mental health. He began seeing a psychiatrist and then a psychologist, initially weekly but more recently monthly and has remained on medication. He has taken a larger role in the parenting of his children and he and his wife support themselves on her salary alone.

[27] Furthermore, he stopped drinking and gambling. Mr Woodward states that he was free of alcohol completely for some 18 months and now has a very restricted alcohol input. All of these steps demonstrate a proactive attitude on Mr Woodward's part to ensure he dealt with the underlying causes of his poor functioning, and that provides reassurance to the Tribunal as to his future prospects and the safety of the public if he resumes practice.

[28] Recognising that it would take the Standards Committee considerable time to work through the complicated transactions with which he had been involved, Mr Woodward invited the Standards Committee to simply make a finding that the matter be referred directly to the Tribunal. That takes us to the next mitigating feature which is that of delay. The delay on the part of the Standards Committee does require some comment.

[29] As indicated, this investigation began in September 2017 and after a request in late November 2017 for the files and details of the transactions, Mr Woodward provided the Standards Committee with a very full account and all of the material, in

an organised form on 7 December 2017. Despite that it was not until 14 August 2018 that the Standards Committee even provided the practitioner with a notice of hearing.

[30] At that point the practitioner responded by 6 September 2018 inviting them to simply determine to lay charges with the Tribunal. That indication was accepted, but it was another year until the actual charges were laid on 30 August 2019. As stated above, the practitioner, within a matter of weeks, had accepted six charges of misconduct and the matter was promptly set down for a penalty hearing which took place in December 2019.

[31] Even recognising the complexity of this matter, it does seem an extraordinary length of time for the matter to be referred to the Tribunal and charges laid and during that time of course, the practitioner has not been practising. It is not on every occasion that the Tribunal will take into account a "self-imposed" suspension in calculating the length of the suspension, however given the extreme delays in this matter we consider that it is only fair to the practitioner to do so in this instance.

[32] It was submitted by counsel for Mr Woodward that a period of nine months suspension was appropriate to reflect the seriousness of, and number of, transgressions of his client.

[33] We note that there was no loss to clients arising out of any of the practitioner's conduct and that no client has made a complaint against him. The complaint arose from the practitioner's former partners. Indeed, the two former clients most affected in relation to the series of transactions have both provided the practitioner with strongly supportive material to be provided to the Tribunal. Mr S, who described himself as a "*sophisticated investor*" has since taken independent legal advice and confirms he has suffered no loss. He also confirmed the emotional and financial stress being suffered by the practitioner at the relevant time. He referred to Mr Woodward as having paperwork which was lacking "… *but at heart he is an honest person who excels at the law*".

[34] The second client, Mr Z, who has also received independent advice and "*a full briefing on the matters before the Law Society*", speaks highly of the practitioner's

advice and negotiation skills "*in an extremely complex series of transactions*", with $20 million of assets at stake. Mr Z states "*I do not believe I would have any remaining businesses or personal assets without his assistance*".

[35] Finally, we give considerable credit to the practitioner for taking steps of his own volition to address his personal problems, as they impacted on his professional conduct. By seeking psychological support and assistance and continuing that on an ongoing basis, the practitioner has enhanced his credibility as a practitioner who does not wish to repeat these mistakes.

Aggravating Features

[36] There are no aggravating features.

Restriction on Practice

[37] It was the submission of counsel for the Standards Committee that the practitioner ought to be prohibited from practising on his own account. This was resisted by Mr Mackenzie on behalf of Mr Woodward on the basis that public protection did not require such a restriction. There was then a discussion about his ability to operate without a trust account. The Tribunal expects a form of undertaking which the practitioner indicated to the Tribunal he would be prepared to provide to the NZLS or to the Tribunal. That is, that Mr Woodward undertakes that he will not operate a trust account without approval of the Tribunal or the Practice Advisory Committee. This ensures safeguards are in place for the initial period of the practitioner's return to legal practice. As pointed out by Mr Mackenzie, Mr Woodward has practised for 20 years without disciplinary intervention. He now lives in a small city where given his particular expertise, employment by another firm is highly unlikely.

[38] In addition Mr Woodward informed the Tribunal of support networks and mentors that he is in regular contact with to ensure he is not professionally isolated.

[39] Counsel submitted that the effect of these proceedings had a significant deterrent effect, which itself provided public protection but that in addition, an

undertaking by Mr Woodward not to operate a trust account would also provide reassurance that the trust account breaches could not reoccur.

[40] In summary the Tribunal concurs with this submission and also places weight on the insight shown by the practitioner and his having addressed the risk factors of his behaviour which led to breaches of professional standards.

[41] For these reasons while mindful of the seriousness of the conduct the Tribunal is of the view that a period of nine months suspension from the date of the hearing on 19 December 2019 is commensurate with the seriousness of the offending balanced against the significant mitigating factors that apply. This view is predicated by the indication that an undertaking on the terms discussed above will be filed.

Orders

1. Mr Woodward is suspended from practice as a barrister, or solicitor, or both, for a period of nine months from 19 December 2019.

2. Mr Woodward is to pay the costs of the New Zealand Law Society in the sum of $19,753.

3. The New Zealand Law Society are to pay the s 257 costs of the Tribunal, certified in the sum of $4,186.

4. Mr Woodward is to reimburse the New Zealand Law Society in full, for the s 257 Tribunal costs.

DATED at AUCKLAND this 4th day of March 2020

Judge DF Clarkson
Chairperson