NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2021] NZLCDT 20
LCDT 002/21

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND STANDARDS COMMITTEE 1** Applicant
AND	**JAEHO CHOI** Practitioner

CHAIR
Judge D F Clarkson

MEMBERS OF TRIBUNAL
Mr G McKenzie
Ms N McMahon
Prof D Scott
Ms S Stuart

HEARING HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF HEARING 27 May 2021

DATE OF DECISION 27 May 2021

DATE OF REASONS 2 June 2021

COUNSEL
Mr J Kleinbaum for the Auckland Standards Committee
Mr H Waalkens QC and Ms S Beattie for the Practitioner

REASONS FOR ORDERS MADE ON 27 MAY 2021

Introduction

[1] This decision provides reasons for an order which was made on 27 May suspending the practitioner from practice as a lawyer from 3 June 2021 or such earlier date as he receives approval for his attorney to take over the running of his practice, until 25 November 2021, a period of a little under six months.

[2] It was accepted by Dr Choi, the practitioner, that a suspension would have to be imposed and the argument before the Tribunal was the proper length of any such suspension.

Background

[3] Dr Choi admitted one charge, pursuant to s 241(d) of the Lawyers and Conveyancers Act 2006 (the Act), that he had been convicted of an offence punishable by imprisonment and that his conviction brought the profession into disrepute, reflected upon his fitness to practice.

[4] The conviction was for obstructing the exercise of power under s 44(1) of the Overseas Investment Act 2005 (the OIA). Dr Choi pleaded guilty to that charge. It is accepted that this is a conviction which is classified as one of dishonesty in that the practitioner lied to the Overseas Investment Office (the OIO) in a letter and created a false loan document to support an untruthful version of events.

[5] The client, for whom Dr Choi had acted in a previous transaction, approached him a matter of days before the scheduled settlement of the purchase of a parcel of land which was classified as sensitive land. The client was under considerable pressure because no application had been made to the OIO for consent to the transaction and, had the client attempted to resile from the agreement, he stood to forfeit a sum of $300,000, namely his 10 percent deposit. It is clear that the client and his wife passed on the considerable anxiety and pressure associated with this

state of affairs to Dr Choi, who had no experience in this area of law, or previous dealings with the OIO.

[6] After unsuccessfully attempting to negotiate his client's exit from the agreement without or with reduced costs, the client suggested the nomination of a company owned by his own wife to ostensibly take over the purchase. The practitioner facilitated that course of action.

[7] After settlement, the OIO began an investigation into the acquisition of the land and wrote to Dr Choi with a compulsory notice under the OIA and a "please explain" letter.

[8] At that point Dr Choi openly acknowledges that he panicked and that he and his client provided false information to the OIO that the transfer to the company which had settled the purchase was an arms-length transaction funded by a $3 million loan from the client to the company.

[9] To support this falsehood, a false loan document was created. This was handwritten by the client after an exchange of emails between Dr Choi and his client, where Dr Choi used a different email account to avoid scrutiny. The document was to be handwritten to avoid date and timestamps that would be produced by an electronic document. Thus, there was a considerable degree of premeditation and some degree of sophistication, although it was conceded by the prosecution that the scheme was "relatively unsophisticated".

[10] Apart from a modest fee of approximately $3,600, Dr Choi did not receive any direct financial benefit from this deception. It was entirely to assist his client.

[11] Once confronted by the OIO, Dr Choi immediately confessed and cooperated with the investigation process.

[12] In the District Court Dr Choi pleaded guilty to the charge and was fined $60,000. He did not have the means to pay this in a lump sum and is continuing to pay it by instalments of approximately $1,000 per month. Dr Choi still owes over $50,000 of this fine.

[13] Dr Choi has also admitted the charge before the Tribunal at the earliest opportunity and fully cooperated with the disciplinary process.

Assessment of Penalty

[14] Assessment of proportionate penalty always begins with a consideration of the seriousness of the conduct concerned. In this matter it is accepted that a conviction involving dishonesty is a very serious matter. We accept the submission of Mr Kleinbaum for the Standards Committee, that the starting point in such offending is normally that of strike-off.

[15] Having regard to various other authorities in this category, the Standards Committee is not seeking strike-off but submits that a penalty of 18 to 24 months suspension would be appropriate to mark the seriousness of this conduct and the damage that a conviction of this sort inflicts on the reputation of the profession as a whole.

[16] The Tribunal has previously commented on the seriousness of this type of dishonesty, even in a one-off situation:

> Dishonesty in the use of a document on the part of a legal practitioner is a matter that the Tribunal takes very seriously. To maintain the collective reputation of their profession, legal practitioners must be as good as their word; their representations and undertakings relied upon, and able to be acted upon, with total confidence … Dishonesty on the part of a legal practitioner also breaches a fundamental obligation; that of upholding the rule of law and facilitating the administration of justice.[1]

[17] And also

> The reputation of the legal profession is a valuable commodity, and anyone putting that at risk has to be held to account. The seriousness of Ms Davidson's conduct demands suspension, at least. That is necessary to maintain the standing of the profession and the complete trust required of practitioners. We do not consider that Ms Davidson is irretrievably unfit for practice, given her reputation and record prior to this unfortunate event, which is why we propose suspension rather than striking off.[2]

[18] We then move to consider various mitigating and aggravating features, followed by a comparison with similar cases, where such exist.

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[1] *Standards Committee of the Otago Branch of the New Zealand Law Society v Anja Karen Evelyn Klinkert* [2014] NZLCDT 60, at [22].
[2] *Standards Committee v Helen Davidson* [2012] NZLCDT 39 at [31].

Aggravating Features

[19] The aggravating features in this matter are that on two occasions Dr Choi has had findings of unsatisfactory conduct made against him. In the first, which was in 2016, there was a finding relating to a breach of an undertaking and an improper threat.

[20] In 2018 there was again a further unsatisfactory conduct finding in respect of another breach of an undertaking.

Mitigating Features

[21] We have referred to the practitioner's early acceptance of his guilt, both in the criminal jurisdictions of the District Court and in these disciplinary proceedings. We assess his remorse and regret for his actions to be sincere.

[22] Dr Choi assured the Tribunal that he was aware of how very wrong his actions were and he was adamant there was no risk of repetition on his part.

[23] Dr Choi is a very active member of his Korean community in Auckland and we have been provided with a number of references from those who work with him in various charitable agencies, within and centred on that community. He is uniformly regarded as a person of considerable integrity, kindness, compassion with a willingness to put himself out for other people.

[24] His contribution to the community is not only by means of pro bono work, which itself speaks well of him, but also by direct personal contribution.

[25] Against this background Mr Waalkens QC submits on behalf of Dr Choi that the conduct is out of character for his client. Mr Waalkens further submits that we can be confident Dr Choi has insight into his conduct, pointing out that he had not at any stage sought name suppression. This is despite the fact that, particularly for a man of Dr Choi's culture and community involvement, the publicity surrounding the criminal process and the disciplinary process is extremely humiliating for him. He accepts that he has had a considerable fall from grace, which he feels deeply.

[26] Mr Waalkens also pointed to the impact that Dr Choi's suspension would have on the Korean community because many of them are his clients. We noted a number of the letters of support for Dr Choi referred to concerns about the legal assistance of Dr Choi being unavailable to the Korean community during any period of suspension which might be imposed upon him.

[27] One of the strongly mitigating features, and relevant to the period of time the practitioner ought to be prevented from earning his living, is the significant financial consequences which have flowed from Dr Choi's offending. He was fined the sum of $60,000 in the District Court as referred to above. In addition, he has faced significant legal costs.

[28] Furthermore, he still faces civil proceedings brought by the OIO in the High Court, which seek civil damages or a penalty claim. We are informed that the amount sought against him is between $128,000 and $145,000, together with costs of $10,000.

[29] Finally, and certainly not least importantly, we were advised that Dr Choi's son is to be admitted to the Bar on 26 November of this year. That is just under six months to the day from this hearing.

[30] Although he submitted that, particularly from a general deterrence point of view, the conduct needed to be marked with a significant period of suspension (he submitted six months), Mr Waalkens also drew our attention to the fact that should that be imposed, Dr Choi would have to forego the opportunity of moving his son's admission to the Bar. That would be a significant further penalty to both Dr Choi and his son, who is of course blameless in this matter.

Comparison with other cases

[31] Counsel for both parties responsibly put several cases before us in relation to similar offending, but it was conceded that the two decisions which are quoted from above, and in particular the *Klinkert* matter, were the closest comparators. We accept Mr Kleinbaum's submission that *Klinkert* is at a similar level of seriousness but in that case the practitioner had the advantage of coming to the Tribunal with a clean disciplinary background. That is not an advantage that Dr Choi can claim. Ms Klinkert was suspended for six months.

[32] On the other hand, (and a balancing factor), we note that the very significant financial consequences which have been suffered by Dr Choi and might be further increased in future, were not a feature of Ms Klinkert's situation.

[33] Furthermore, the considerable community contribution which has been made by this practitioner, we consider also that we ought to provide him with some "credit". In other words, although the aggravating features present in this matter were not in the *Klinkert* situation, the proportionate response required is much closer when one examines these last two features, that is, highly punitive consequences from the offending, and prior significant community contribution. In relation to this latter issue, it is noted that we reduced a period of suspension in the case of another practitioner who had significant community contribution to her credit.[3]

[34] For all of these reasons at the end of the hearing we announced we would impose a period of suspension as set out in paragraph [1] above.

[35] The orders made at the conclusion of the hearing:

1. Dr Choi is suspended from practice as a barrister or solicitor from 3 June 2021 or such earlier date as he receives approval for his attorney to take over the running of his practice, until 25 November 2021, pursuant to s 242(1)(e) and s 244 of the Act.

2. The Tribunal costs are to be paid by the New Zealand Law Society, pursuant to s 257 of the Act. The costs are certified in the sum of $1,969.00.

3. The respondent is to reimburse the New Zealand Law Society for the full Tribunal costs, pursuant to s 249 of the Act.

DATED at AUCKLAND this 2nd day of June 2021

Judge DF Clarkson
Chairperson

[3] *Waikato Bay of Plenty Standards Committee 1 v Helen Monckton* [2014] NZLCDT 51.