

ANY CLIENT NAME ON THE TRIBUNAL FILE IS PERMANENTLY SUPPRESSED, AS
RECORDED IN PARAGRAPH [24] OF DECISION ON LIABILITY [2022] NZLCDT 40
(DATED 9 NOVEMBER 2022), PURSUANT TO S 240 OF THE LAWYERS AND
CONVEYANCERS ACT 2006.

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2022] NZLCDT 54
LCDT 020/21

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**WAIKATO BAY OF PLENTY
STANDARDS COMMITTEE 2**
Applicant

AND

WAYNE JOHN REVELL
Respondent

DEPUTY CHAIR

Dr J G Adams

MEMBERS OF TRIBUNAL

Mr S Hunter KC
Ms K King
Ms M Noble
Prof D Scott

HEARING 16 December 2022

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 23 December 2022

COUNSEL

Mr M Mortimer-Wang for the Standards Committee
Mr W Revell the Respondent Practitioner

DECISION OF THE TRIBUNAL RE PENALTY

[1] When we made the order on 16 December 2022 striking Mr Revell off the roll of barristers and solicitors, we were conscious of the sorrow it would cause him. He has prized his status as a member of the legal profession, but he acknowledges that he has let himself and the profession down. This decision gives our reasons for making the order.

[2] It is not the purpose of “penalty” orders to punish the practitioner. The orders we make at a penalty hearing should be the least restrictive that satisfy the circumstances. If we find Mr Revell could be a fit and proper person to practise at a foreseeable time in the future, we should consider a period of suspension rather than strike-off. In our deliberations, we considered a long period of suspension as an option. We contemplated whether conditions of practice might allay our concerns.

[3] Our reasons can be gathered under the headings: nature and gravity of the charges, contrition, and insight.

Nature and gravity of the charges

[4] The length of time during which Mr Revell failed to pay tax is shocking. Although he still tries to blame his former law partner, he ignored multiple prompts, over years, from the Inland Revenue Department (IRD). He determinedly turned his face away from the looming issue. This was, at best, wilful blindness. But even that does not explain how he managed to convince himself, if he did, that he had no tax obligation from other, non-partnership, income.

[5] The charge relating to tax reveals the extraordinary extent of Mr Revell’s self-deception in selfishly avoiding his civic duty. The public reputation of the legal profession will have been severely diminished by knowledge of this conduct. A strong response is required as a deterrent to others and as a step to restoring public confidence in the probity of lawyers.

[6] The charge of misusing trust money occurred in stressed circumstances. At the time his former law partner was being sentenced, Mr Revell's fears for his own looming criminal fate overwhelmed him. Over a period of three days, he indulged himself with alcohol and gambling, funding part of the expense by drawing money from his trust account to cover shortfalls in his general account. In short, we found he deliberately stole money that belonged to clients. We did not accept that he simply made errors in cell phone transactions.

[7] The charges are grave. They imply a gross lack of ethical behaviour. The trust account matters involved dishonesty and failure to protect the property of clients towards whom he had a fiduciary duty.

Contrition

[8] Mr Revell appeared in person. He filed submissions late in the day before the 16 December hearing. We accept that he is sorry to be in his current predicament, but this is not the same thing as being contrite with the benefit of insight into what he did wrong.

[9] Mr Revell submitted three references. None made any reference to his trust account dealings. One said he "has a high standard of professionalism". We cannot adopt the view of that practitioner who also said "I can say with every confidence that [he] will not in any way in the future bring any disrepute to himself or to the legal profession and will be a legal practitioner with a high ethical standard". We do not understand the basis upon which that practitioner made such a bold prediction.

[10] A second referee had a long-standing relationship with Mr Revell. He described Mr Revell's lack of response to the tax issue as "simplistic" and "ostrich-like". We concur in those views. We cannot agree, though, with the closing remarks that suggest Mr Revell holds "equitable views", or that "on a personal level I have never had any reason to doubt [his] honesty or to question his integrity in any of the professional dealings that we have shared over the years". That referee suggested he had had a wake-up call which in many ways could be described as a life-changing event for [him]". For reasons set out below, we have not found it possible to share that view.

[11] The third referee referred warmly to his work at Citizens Advice Bureau. We accept he has willingly given free service in this regard. We also accept that Mr Revell

has not had complaints made against him from his own clients. For present purposes we disregard a complaint related to work undertaken by his former law partner. We give him credit for pro bono work and Citizens Advice Bureau service.

Insight

[12] We looked for material to give us enough confidence in Mr Revell's future professionalism that we might preserve the possibility of his return to practice in perhaps three years' time. Regrettably, we found many signs that he remains self-deceiving, minimising his culpability, and lacking in ethical rigour. We have unanimously come to the view that his defects of character are ingrained and that there is real risk that he could err again, even if not in exactly the same ways.

[13] In oral submissions, Mr Revell still appeared to excuse himself, and treat his former law partner as responsible, for the tax issues. We do not accept that at all.

[14] When addressing the irregular trust account withdrawals, he attempted to fudge his responsibility. In written submissions, he suggested "I was not my normal self" and "My self-deception that I was being entirely honest led me to think I did not need to check more closely what I was doing". The plain facts are that he was choosing to indulge himself at a time of stress, and to deceive himself about the improper nature of his actions. In the trust account irregularities at that time, he was entirely dishonest. We are troubled that he has not fronted up to these issues. Absent insight, there is little prospect that similar behaviours will be avoided in future.

[15] The Law Society reviewed his trust account for the period 1 June 2022 to 30 August. They observed he had breached his undertaking to inform them if his balance exceeded \$1,000 on any day. Mr Revell responded by email on 24 November, suggesting the Law Society misread the undertaking. We are unimpressed with his quibble which, in our view, is plainly wrong. The purpose and letter of the undertaking seems clear to us. This is recent behaviour that reinforces our concerns that Mr Revell will continue to suggest he is excused compliance of straightforward obligations.

[16] The manner in which Mr Revell suggests he could practise safely in future reflects, in part, a lack of acceptance of his wrong-doing. Avoiding use of his cell phone for trust account transactions may be sensible but it was his dishonesty, not his use of the cell phone, that got him in trouble. Suggesting his wife double-check his

transactions is another reflection of his proposition that the transactions were merely careless whereas we found them deliberate. His offers to do better in trust account records merely brings his proposed behaviour in line with everyone else's minimum. We have to weigh whether he is likely to be able to honour his promise. He offers that he is willing to practise without a trust account.

[17] We approve that he has begun counselling.

[18] When asked about steps he might take to regularise his accounting practises once IRD cease their current close oversight, he mentioned that he had considered engaging an accountant, but he hadn't got around to doing that yet: "I've been meaning to give an accountant a call." Once again, we find that his gestures are not backed up by insight or action.

Is Mr Revell a fit and proper person to practise?

[19] Mr Revell asks us to see the tax matter as something that he has dealt with, albeit belatedly; and that the trust account issues were short-term aberrations. In other respects, he says he has been "a model practitioner". We find he has not confronted the character defects that underpin the charges. We find he is a long way from preparedness to do so.

[20] The nature and gravity of the charges make strike-off a primary option. Mr Revell has not persuaded us that he has true insight that could fuel a rehabilitative response. Public confidence requires a strong response in this case. In the end, it boils down to what promise we see in Mr Revell's future conduct. We have come up short.

Orders

[21] On 16 December, we ordered (unanimously) that Mr Revell's name be struck off the roll of barristers and solicitors pursuant to ss 242(1)(c) and 244 of the Lawyers and Conveyancers Act 2006.

[22] We record that we ordered Mr Revell to pay the Standards Committee costs. These amount to \$29,036.81.

[23] We record that we also ordered Mr Revell to reimburse the New Zealand Law Society for the Tribunal s 257 costs which are certified at \$3,743.00.

DATED at AUCKLAND this 23rd day of December 2022

Dr JG Adams
Deputy Chairperson