

**CONCERNING**

An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

a determination of the Auckland Standards Committee 2.

**BETWEEN**

**LA**  
of Auckland

**AND**

**VY**  
of Auckland

**The names and indentifying details of the parties in this decision have been changed.**

**DECISION**

**Introduction**

[1] The Standards Committee declined to uphold complaints made by LA against VY (the Practitioner). LA sought a review of that decision. I heard from LA at an Applicant-only hearing in Auckland, and thereafter, sought some further information from the Practitioner. The Applicant was invited to comment on the Practitioner's information.

[2] I have now considered all of the information relating to the complaint, and those matters arising in the course of the review.

**Background**

[3] Prior to the death of Mrs D, the Practitioner had sold Mrs D's house pursuant to his powers under the Protection of Personal and Property Rights Act, thereafter reporting back to the Public Trust on his handling of the sale and the

assets. The Practitioner was also the executor in Mrs D's estate after her death. The Applicant was her only beneficiary.

[4] The Applicant considered that the Practitioner had sold Mrs D's property below the proper valuation, and that he had also improperly disposed of certain chattels from the house. He also questioned the Practitioner's accounting of the sale proceeds.

[5] The Practitioner had informed the Standards Committee that Mrs D was not living in the house that it was sold pursuant to a court order. The order specifically applied to all property belonging to Mrs D, and showed that her house was to be sold for a sum not less than the market value of the property. The house was placed with ADW for marketing, and was sold to the highest of two tenderers. The Practitioner acknowledged that the sale price was below the rateable value. He described the house as being full of rubbish, with an iron roof that was lifting, holes in the walls, fences falling over and lawns that had not been mowed, with an interior covered in black mould from floor to ceiling.

[6] At my request the Practitioner forwarded a copy of all of the accounts relating to work he had done for Mrs D, in relation to the house sale and the estate.

[7] I have considered all of the information provided by both the Applicant and the Practitioner in relation to the sale process. Having examined the accounts I can find no irregularity of any kind. I can find no basis for any professional conduct issues arising in relation to the role of the Practitioner in the sale. The Applicant had no legal interest in the house prior to the death of Mrs D and the Practitioner has fully accounted for the proceeds. The Practitioner had no obligation to account for these proceeds to the Applicant.

[8] Although the Applicant takes a different view of the condition of the house, there is no evidence to refute the Practitioner's description of the condition it was in. The property was sold at public tender which is an appropriate way to test the market value of a property. The rateable value is by no means an assurance of any particular value for the property, and in this case it appears that the condition of the house was material in the price that it was able to attract.

[9] The Practitioner had described the chattels as being in a derelict condition, although the Applicant's view is somewhat different. The only independent evidence was provided by the Practitioner who stated that and the chattels could

not even attract the attention of a second hand dealer. There is no evidence that refutes the Practitioner's description. I also note that the Practitioner was happy to allow the Applicant to take such items as he wished. No professional issues arise in relation to that matter.

[10] The Practitioner required the Applicant to sign a deed of indemnity so that he could get paid prior to the expiry of twelve months following the estate. This is an entirely proper procedure, and I can find no objection to the Practitioner having required the Applicant to sign this document.

[11] The only matter of some concern was that the Practitioner had arranged for the Applicant to sign a document in the nature of a settlement agreement wherein the Applicant was required to agree (among other things) to make no further complaints against the Practitioner in exchange for receiving his inheritance. The Practitioner was asked to explain this, for the reason that it would be wholly inappropriate for a lawyer to fulfil his professional obligations on a condition that the other party did not complain about him.

[12] The Practitioner responded, stating that the Applicant was not compelled to sign the settlement document. The Practitioner added the Applicant had received independent advice from Ms L (a lawyer) and also, he understood, from a barrister.

[13] I carefully examined the document, which contained a number of settlement terms. It was in fact drafted by the barrister, and although the Practitioner stated that the Applicant was not compelled to sign it, I note that the document itself opens with the barrister writing, "*I have put together your requirements with the terms that I had proposed, and the combined result is...settlement terms.*" This suggests that the settlement document was a combination of terms proposed by the Practitioner and the Applicant's barrister.

[14] The document includes the details of monetary payments to be made to the Applicant, including money anticipated to be received from WINZ, and the Applicant receiving all of the files of the deceased and other documents.

[15] The last part states (at number four), "*this is a full and final settlement of all claims*", required the Applicant to make no more complaints of any kind to any authority concerning the Practitioner, that there was to be no litigation against the Practitioner, and that production of this settlement document was to be a complete defence to any matters outlined above.

[16] I have some concerns about any lawyer requiring a document of this kind to be signed in exchange for receiving a lawful inheritance. In this case it is concerning that three lawyers have been involved in creating a document of this kind.

[17] It appears from the evidence that the Applicant was perceived by the Practitioner to be a vexatious complainant, and I have gleaned from the documentation, and particularly the letters sent by the Applicant, that there are numerous complaints that the Applicant has made which are generally unsupported, and unsupportable, on the basis of evidence. Whether these complaints have resulted from a lack of knowledge on the Applicant's part or for other reasons is not clear, but it appears that the Practitioner has been the recipient of very numerous complaints, and has endeavoured to address at least some of the many issues raised by the Applicant. It may be understandable that a lawyer might turn his or her mind to how to deal with the ongoing nature of complaints which were perceived to have no proper foundation.

[18] I must express my misgivings about the steps taken in this case in relation to the settlement document. However, a document of this kind will not of itself create a barrier to the New Zealand Law Society considering a complaint against the Practitioner, nor this office reviewing its decision.

[19] I gave some consideration to whether this particular matter should be referred back to the Standards Committee to conduct an own-motion investigation. In this I have considered all of the circumstances, including the fact that the Applicant was represented by a solicitor and a barrister in relation to the settlement document. In this case it is clear that the Practitioner has spent a considerable amount of time dealing with numerous complaints from the Applicant who continued to challenge the Practitioner's professional services, including those given to Mrs D prior to her death, and which did not concern the Applicant. None of the responses sent to him by the Practitioner have satisfied the Applicant.

[20] Having carefully reflected on these issues in all of the circumstances, I have decided in this instance that it is appropriate to exercise my discretion to take no further action, and uphold the Standards Committee decision, and instead to issue a caution to the Practitioner and other lawyers involved in the matter.

[21] I reiterate that it is entirely inappropriate for any lawyer to impose on a third party an agreement to make no further a complaint in exchange for what is otherwise a legal entitlement. That is so even if public policy prevents the document being enforced against the party agreeing to it.

[22] There is nothing to indicate that the Practitioner had failed in his professional obligation to Mrs D whilst she was still alive. Except as noted, I have seen no professional failing on the part of the Practitioner in relation to his administration of the estate.

[23] The matters raised by the Applicant have been independently reviewed, and Applicant must accept the outcome that there are no disciplinary concerns that require any further action.

### **Decision**

Pursuant to section 211(1)(a) of the Lawyers and Conveyancers Act 2006 the Standards Committee decision is confirmed.

**DATED** this 30<sup>th</sup> day of April 2012

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Hanneke Bouchier  
**Legal Complaints Review Officer**

In accordance with s.213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

LA as the Applicant  
VY as the Respondent  
The Standards Committee  
The New Zealand Law Society