

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 3

BETWEEN

ED

of Auckland

Applicant

AND

VV

of Auckland

Respondent

DECISION

Background

[1] The Applicant, her mother, and the Respondent's partner, Mr VU, were Trustees of the ABQ Trust.

[2] In October 2007, the Applicant desired that the Trust enter into an agreement to purchase a property at [Auckland]. As it was necessary to have Mr VU sign the agreement, the Applicant made contact with Ms VT (now Ms VT) who was the Legal Executive who worked with Mr VU. Ms VT told the Applicant that Mr VU was on leave.

[3] The Respondent held a Power of Attorney from Mr VU pursuant to which he was able to sign any documents that required Mr VU's signature as Trustee.

[4] The Respondent says he met with the Applicant on 8 October 2007 to discuss the agreement which the Respondent wanted the Trust to enter into.

[5] The Applicant says that she has never met nor had any meetings or appointments with the Respondent at any time.

[6] On the following day a Deed was signed by the Applicant, her mother and the Respondent as attorney for Mr VU, whereby Mr VU retired as a Trustee.

The complaint and the Standards Committee's determination

[7] The complaint by the Applicant centres solely on the issue as to whether or not the Respondent met with the Applicant on 8 October 2007.

[8] The Respondent says he met with the Applicant late in the day to discuss the proposed agreement, and has produced various documents in support of this. Ms VT supports his statement in that regard.

[9] The Applicant alleges that the Respondent is untruthful. She says that she has never had any meetings or appointments with the Respondent at any time and in short, she accuses the Respondent of lying for the purpose of protecting his partner, Mr VU.

[10] Following consideration of the complaint, the Standards Committee decided that no further action would be taken in respect thereof. The Committee noted that it preferred the recollections of the Respondent and Ms VT on the basis of the documentation provided.

[11] The Committee also noted that the conduct complained of took place prior to the commencement of the Lawyers and Conveyancers Act 2006 on 1 August 2008. The conduct complained of therefore fell under the transitional provisions in section 351(1) of the Act. This means the relevant standards of conduct are those set out in sections 106 and 112 of the Law Practitioners Act 1982, being conduct such that disciplinary proceedings could have been commenced under that Act.

Review

[12] A hearing took place in Auckland on 9 June 2011, attended by the Applicant and a support person, the Respondent, and Ms VT.

[13] The Applicant was initially asked by me to explain the relevance of her complaint. The allegation of lying is a serious allegation to make and it is difficult to comprehend the reasons being advanced by her, firstly, as to why the Respondent would indulge in the alleged conduct, and secondly, as to what effect the alleged conduct has had.

[14] The Applicant explained that she took offence at the slur on her reputation by Mr VU, when he stated to the Law Society that he had retired as a Trustee of the Trust

because he was unhappy with the manner in which the Trust was being operated by the Applicant.

[15] Mr VU had referred to the fact that the Applicant had met with the Respondent on 8 October 2007 at which time the Respondent had advised her that he (Mr VU) would not go along with the agreement for sale and purchase that she had presented. Mr VU noted that as a result of that meeting the Applicant had exercised her power to terminate the appointment of a Trustee.

[16] The Applicant alleges that the statements made by the Respondent confirming these statements by Mr VU, and in particular that he had met with the Applicant on 8 October 2007, are not true and are made by the Respondent for the purpose of supporting the statements made by Mr VU. In short, the Applicant accuses the Respondent of lying. Insofar as Ms VT also supports the statements made by both the Respondent and Mr VU, the Applicant accuses her of lying also.

[17] The Respondent is a practitioner of some 40 years' experience and advises that he has never previously been the subject of any complaint concerning his professional standards. He finds this allegation most distressing.

[18] The allegation of lying made against Ms VT is also a serious allegation as it has both personal and professional consequences.

[19] It must be observed that the reasons advanced for the alleged lies are tenuous to say the least.

[20] To suggest that a practitioner of the seniority and experience that the Respondent has, would engage in a series of lies, and actions to support those lies, for the purpose of supporting a statement by his partner that has relevance limited to anyone other than the Applicant, is to stretch credibility. Looked at objectively, it is beyond belief, that a lawyer, and particularly a lawyer such as the Respondent, would jeopardise an unblemished career for a purpose which is difficult to discern.

[21] Having observed both the Respondent and Ms VT, I credit them with a degree of morality and professionalism that would not permit them to engage in the activity alleged by the Applicant.

The evidence

[22] That the Applicant has persisted with her allegations in the face of the evidence provided is surprising. In this regard the Respondent had previously provided certified copies of –

- (a) his diary showing an appointment with “[ED]” at 4.00 p.m. on 8 October 2007;
- (b) his firm’s archiving statement which includes time sheets recorded as “attendance [ED]” on 8 October 2007 by the Respondent for 42 minutes; and
- (c) an extensive file note dated 8 October 2007 in which the Respondent records the meeting with the Applicant, a discussion about the concerns held by him about the agreement, and particularly Mr VU’s position as a Trustee were the agreement to be entered into.

[23] The Applicant dismissed this evidence for various reasons, including an allegation that the diary entry was fraudulent. She observed that the copies provided were certified by Mr VU, the person about whom she had lodged a complaint, implying that the validity of the documents provided was in question because of this.

[24] At my request, the Respondent produced the originals of these documents at the hearing.

The Diary

[25] The diary showing the meeting with “[ED]” at 4.00 p.m. on 8 October 2007, is a bound diary for the year. It contained other entries for that day and other days in the year. I have no hesitation in accepting that the diary entry is genuine.

The archiving statements

[26] The Respondent advised that it is impossible to alter the archiving statements relating to any matter. The archiving statement contains an entry recorded as “attendance [ED]” for 42 minutes on 8 October 2007 by VV (the Respondent).

[27] The Applicant pointed to the fact that the entry on 9 October for Ms VT recorded only six minutes to complete the various documents necessary to effect the retirement of a Trustee, and asserted that this was insufficient time to complete the necessary work. She suggested that the file note of 8 October indicated that the file had been

returned to Ms VT on that day, and that the time recorded for the Respondent of 42 minutes in fact included Ms VT's time to complete the documentation.

[28] The Respondent had produced his handwritten time sheets for the day which recorded the time spent with the Applicant. I take it from this, that the time sheets were then manually transcribed to the computer record resulting in the archiving statement entries. What the Applicant is suggesting therefore is that the Respondent and Ms VT collaborated subsequently to produce a time sheet that inflated the time spent by the Respondent in meeting the Applicant.

[29] I do not accept that the archiving statement as produced is anything other than genuine.

The file note

[30] The file note of 8 October 2007 is an extensive memorandum recording the discussions between Ms VT and the Respondent during the course of the day and that the Applicant had agreed to meet with the Respondent at 4.00 p.m. to explain their concerns over the proposed contract. The memorandum records the exact words in the form of a quotation by the Applicant when she explained that "[VU] always signs these things and he knows that I will not let him down". It also records the reasons why the Applicant was unwilling to enter into the agreement in her own name.

[31] The memorandum then goes on to record the option put forward by the Respondent that the Applicant could exercise her power of appointment and termination of Trustees, to terminate Mr VU's appointment, thereby facilitating the signing of the agreement by the Trust.

[32] The memorandum records that the file was then returned to Ms VT to complete the appropriate documentation.

[33] In addition to this file note, there was also a separate handwritten note from the Respondent to the Applicant giving instructions as to what documentation was required.

[34] There is no doubt in my mind that the file note dated 8 October 2007 is genuine and was made at the time. It is inconceivable to me that a lawyer would go to the lengths of creating this note for the tenuous reasons advanced by the Applicant.

[35] The Applicant continued to assert that the documents provided were fraudulent, and that she had never met the Respondent. She asserts that there may have been a

meeting between the Respondent and Ms VT while she and her mother waited in reception, and that this accounted for the time recorded.

[36] I do not accept the Applicant's contentions. Nor do I accept that the Respondent was prepared to go to the lengths suggested by her to support a statement by Mr VU that he was unhappy with the way in which the Applicant was operating her trust. Whilst that statement clearly has major implications for the Applicant, it is not in itself a statement that would warrant the Respondent taking the actions alleged by the Applicant.

[37] As noted above, the Standards Committee formed the view that the allegations against the Respondent did not reach the required threshold for consideration of complaints under the Law Practitioners Act as required by section 351(1) of the Lawyers and Conveyancers Act for a complaint to be accepted.

[38] I have indicated that I do not accept the allegations made by the Applicant. On this basis, whether or not they reach the required threshold does not need to be considered.

Decision

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

Costs

[40] The Lawyers and Conveyancers Act provides an entitlement to apply for a review of a decision by a Standards Committee. While section 210(1) of the Act gives a general power to make such orders as to costs and expenses as the LCRO thinks fit, that power will only be exercised sparingly to award costs against an Applicant in favour of a practitioner.

[41] However, as noted in paragraph [13] of the LCRO Costs Guidelines, a costs order may be made where a person has acted vexatiously, frivolously, improperly, or unreasonably in bringing, continuing, or defending the review.

[42] The Respondent considers that the Applicant has so acted and has made an application for costs.

[43] At the hearing, I indicated that I would call for submissions from the parties in this regard following the issue of my decision, as the outcome of the review has a bearing on any application for costs.

[44] In this review, I have confirmed the decision of the Standards Committee to take no further action. I have also made some observations as to the merits of the review application.

[45] The parties are now invited to provide submissions on the question of costs, such submissions to be provided no later than Wednesday 29 June 2011.

DATED this 15th day of June 2011

Owen Vaughan
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:

Ms ED as the Applicant
Mr VV as the Respondent
The Auckland Standards Committee³
The New Zealand Law Society