

CONCERNING

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of the Wellington Standards Committee 1

BETWEEN

FE
of North Island

Applicant

AND

VF
of North Island

Respondent

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

DECISION

Introduction

[1] The Applicant is FE (the Applicant) who sought the review of a decision made by the Standards Committee declining to uphold his complaint against VF (the Practitioner).

[2] This review has been done on “on the papers” pursuant to Section 206 of the Lawyers and Conveyancers Act 2006. This Section allows for a review to be undertaken in the absence of the parties or their representatives if it appears to the Legal Complaints Review Officer (LCRO) that the review can be adequately determined in their absence and that the parties have consented. I confirm that the parties have consented to this matter being determined on the basis of the material available. That material has included the Standards Committee file plus all information provided by the parties for the review.

Background

[3] On 14 November 2009 the Applicant received notice from the NZ Transport Agency that his licence was suspended immediately for a period of three months from the date of the notice. The Applicant is a taxi driver and was unable to work without a licence. On 24 November 2009 he consulted the Practitioner with instruction to obtain a limited licence for him. He also asked that the Practitioner obtain for him a P endorsement from the Land Transport Authority (LTA) as it had refused to renew his endorsement. The Practitioner indicated a total fee of around \$2,000.00 plus GST as costs of doing those things.

[4] The Applicant provided the Practitioner with a copy of the suspension notice which recorded that he had accumulated one hundred or more demerit points within a two year period, with an attached list of the traffic offences. It transpired that most of those traffic offences had occurred whilst the Applicant was driving his taxi.

[5] The limited licence application made by the Practitioner on the Applicant's behalf was declined by the Court. While the police originally raised no objections to his application, the LTA did object, primarily on the basis that the Applicant had stated in his affidavit that the demerit points had not occurred whilst he was driving his taxi. For the same reason the P endorsement was also not granted.

[6] The Practitioner informed the Standards Committee that the Applicant had lead him to believe that the demerit points leading to the suspension of his licence and his P endorsement were incurred predominately whilst he was driving his personal car and not his taxi. The Practitioner explained that this was an issue of central importance because if the demerit points had arisen while the Applicant was driving his taxi he could not obtain a limited licence; but if they occurred as a private individual he could.

[7] The Practitioner said that after the application was filed, the police raised the matter of demerit points at which time the Applicant swore a second affidavit stating he did not incur a large part of them as a taxi driver. The Practitioner informed the Standards Committee that the LTA had then provided evidence to the contrary, that the demerit points were incurred mainly whilst he was driving a taxi, and the Applicant was therefore barred from obtaining a limited licence.

[8] The Practitioner said this directly contradicted the affidavit sworn by the Applicant and made the entire application to the court unviable.

[9] The Practitioner further informed the Committee that he discussed the LTA letter with the Applicant at which point they withdrew the application. The Practitioner provided a file note of that conversation.

[10] The Practitioner said that the failure to obtain the limited licence meant that the Applicant was unable to drive a car for the period of the suspension (three months) but of greater concern to the Applicant was the revocation of his P endorsement. The Practitioner said that the Applicant had instructed him to challenge the LTA's suspension of the P endorsement which was done, but that the LTA rejected the submissions and upheld its decision to suspend the P endorsement.

[11] The Practitioner said that two invoices were rendered, and although there were additional attendances not initially contemplated, a discount meant that the total invoices reached the amount that had been originally indicated.

[12] The Practitioner informed the Standards Committee that it was unfortunate that neither application was successful but said that the Applicant had not provided him with an accurate picture of what had happened, and this affected both the limited licence application and the LTA's view of the Applicant in relation to the P endorsement.

[13] The Applicant has paid some part of the Practitioner's fee, but it appears that there is still some portion outstanding. It is understood that the Applicant considers that he should not have to pay the balance because from his point of view he did not get what he instructed the lawyer to obtain for him.

Standards Committee decision

[14] The Standards Committee considered all of these matters and formally decided to take no further action on the matter pursuant to Section 138 (2) of the Lawyers and Conveyancers Act for the reasons that

- The Practitioner's legal advice was appropriate in the circumstances,
- The fees were more than reasonable and at the lower end of the scale for the work done,
- The fees were below \$2,000.00.

[15] The Committee referred to regulation 29 of the Lawyers and Conveyancers Act (Lawyers: Complaints and Standards Committee's) regulations 2008, expressing the view that there were no special circumstances in this case that would justify it dealing with the complaints as to costs.

[16] Regulation 29 prohibits a Standards Committee from considering a costs related complaint if the legal fees do not exceed \$2,000.00 unless there are special circumstances that would justify further investigation.

Review Application

[17] The Applicant said that he had understood there would be mediation by phone and that this had not happened. It appears that he did not expect that the decision would be made as quickly as it was. He said he had provided all the papers to the lawyer who had contacted the LTA to pursue the case and charged him fees. He asked where was the false information that the lawyer got from the LTA.

Considerations

[18] The Standards Committee is correct to decline jurisdiction when a complaint relates to a fee that does not exceed \$2,000 *unless* special circumstances exist. This is clearly stated in Regulation 29 of the Lawyers and Conveyancers Act (Lawyers Complaints Services and Standards Committee) Regulations 2008.

[19] The question therefore is whether special circumstances exist. Whether special circumstances exist will depend on whether any part of the Practitioner's conduct raises disciplinary concerns, such that an enquiry should be undertaken. The bill did not exceed \$2,000. The review question is, in the first instance, whether the Standards Committee was correct to decline jurisdiction in this case.

[20] The essence of the complaint is that the Applicant considers he should not have to pay the Practitioner because the application was unsuccessful. I noted that in one of his letters to the Standards he wrote "*I asked for advice if I can apply for work licence successfully by studying papers as you are in legal profession*" (sic). In that same note the Applicant had stated that it was clear he had no chance of obtaining the limited licence and he expected that the Practitioner should have advised him at the very first occasion. The Applicant said that the Practitioner had told him he could get a work licence on the first day and he considered that he had wasted time and money with the Practitioner.

[21] The Applicant appears to hold the view that the information he provided to the Practitioner was sufficient information in order to assess his chances of success. This included a Notice of Suspension dated 14 November 2009, which refers simply to an accumulation of demerit points but otherwise does not provide the background circumstances in which they arose.

[22] It was the Practitioner's evidence that the Applicant had told him that the demerit points had not arisen while he was operating his taxi, but rather that had arisen in a private capacity. The Applicant has not disputed the Practitioner's evidence in this regard. He simply referred to the papers he had given to the Practitioner as if that was sufficient to have informed the Practitioner of the background.

[23] In a disciplinary forum, a lawyer can be exposed to an adverse finding if there has been some wrong doing on the lawyer's part. However, a lawyer cannot be held responsible for an adverse outcome for the client, when there has been no failing by the lawyer. In this case the information provided by the Applicant was crucial to his application. The Practitioner acted on the information given to him by the Applicant. Only subsequently did it become apparent that the Applicant's information was not correct. I see no basis why the Practitioner should have been criticised for believing the Applicant.

[24] In the circumstances there is no basis for criticising the Practitioner. In the circumstances the Standards Committee was correct to decline jurisdiction since I can see no special circumstances existing in this case that ought to have justified its further consideration of this matter. The application is declined.

Decision

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

DATED this 7th day of September 2011

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:

FE as the Applicant
VF as the Respondent
The Wellington Standards Committee 1
The New Zealand Law Society

