

CONCERNING

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

AND

CONCERNING

a determination of the [Area] Standards Committee

BETWEEN

RV

Applicant

AND

JH

Respondent

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

DECISION

Introduction

[1] Mr RV has applied for a review of a decision by the [Area] Standards Committee that further action in respect of his complaint concerning Mr JH's advice to Baycorp regarding a debt claimed by Mr RV was not necessary or appropriate.

Background

[2] Mr RV contends he is owed a debt of \$68,000 (the debt). Around September 2017 he sought assistance from Baycorp in recovering the debt.

[3] Baycorp instructed Mr JH to assess the prospects of recovering the debt through Court proceedings.

[4] Mr JH's advice to Baycorp was that recovery was likely to be substantially less than Mr RV believed he was owed.

[5] Some months passed before Ms C at Baycorp advised Mr RV that Baycorp could either “file a claim for the accrued \$14,000 to date”,¹ but that payment could not be guaranteed, or it could close the file without further cost to Mr RV, and refund the filing fee he had paid.

[6] Mr RV objected to the delays and expressed his belief to Ms C that Baycorp had “been negligent and aiding and abetting criminal/s that owe [him] money”.²

[7] Ms C’s response referred to the advice Mr JH had provided to Baycorp, and on which it relied. Mr JH’s advice was to the effect that the contract on which Mr RV sought to rely in recovering the debt would support a claim for part but not all of the debt. Ms C requested Mr RV’s further instructions. Although he responded asking that Baycorp continue, he did not withdraw his complaint. In the circumstances Baycorp did not consider it could act effectively as his agent. Ms C advised Mr RV accordingly and closed his file.

[8] Mr RV then asked Ms C who the lawyer was at Baycorp that had been dealing with his matter. Ms C’s reply was that Baycorp’s “in-house Solicitor is JH”.

Complaint

[9] Mr RV laid a complaint about Mr JH’s conduct to the New Zealand Law Society Lawyers Complaints Service (Complaints Service), which was directed to the Early Resolution Service (ERS). Mr RV acknowledged he had not dealt directly with Mr JH, referring to him as Baycorp’s in-house lawyer, and expressed the view that Mr JH had been negligent and incompetent. He referred to delays on Mr JH’s part which he contends had prejudiced his prospects of recovering the debt.

[10] The ERS advised Mr JH that it had received Mr RV’s complaint, indicated it may be determined on the basis that no further action would be taken, and Mr JH did not exercise his right to respond.

[11] In considering the complaint the Committee formed the view that Mr JH was acting on instructions from Baycorp, not from Mr RV. As such, Mr JH owed only limited obligations to Mr RV, none of which he had failed to fulfil. The Committee decided that further action on the complaint was not necessary or appropriate pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act).

¹ Email from Baycorp to RC (1 March 2017).

² Email from RC to Baycorp (1 March 2017).

Application for review

[12] In his application for review Mr RV refers to Mr JH as Baycorp's in-house lawyer, objects to him having failed to take action promptly to recover the whole of the debt and seeks "full financial compensation allowable", referring to the \$68,000 he believes he is owed.

[13] Mr JH responded to this Office clarifying he is not Baycorp's in-house lawyer, but is independent counsel acting on instructions from Baycorp.³ Mr JH says he advised Baycorp based on documents provided to him, including the contract on which Mr RV's claim relied. Mr JH's assessment of that contract was that it would not support the claim Mr RV wanted Baycorp to make for the whole of the purchase price, but would support a claim for part of that amount. Mr JH says Baycorp instructed him on Mr RV's matter on two separate occasions. Mr JH says he provided Baycorp with advice in a timely manner on both occasions. Mr JH contends there is no legal or contractual basis on which this Office could order him to pay compensation to Mr RV.

Review hearing

[14] Mr RV attended an applicant-only review hearing by telephone on 31 August 2017. Mr JH was not required to attend, and did not exercise his right to do so.

Nature and scope of review

[15] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:⁴

... the power of review conferred upon Review Officers is not appropriately equated with a general appeal. The obligations and powers of the Review Officer as described in the Act create a very particular statutory process.

The Review Officer has broad powers to conduct his or her own investigations including the power to exercise for that purpose all the powers of a Standards Committee or an investigator and seek and receive evidence. These powers extend to "any review" ...

... the power of review is much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her. Nevertheless, as the Guidelines properly recognise, where the review is of the exercise of a discretion, it is appropriate for the Review

³ That is relevant only to the extent that in-house lawyers are subject to particular rules that do not apply to other lawyers, and are not relevant to the present matter.

⁴ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]-[41].

Officer to exercise some particular caution before substituting his or her own judgment without good reason.

[16] More recently, the High Court has described a review by this Office in the following way:⁵

A review by the LCRO is neither a judicial review nor an appeal. Those seeking a review of a Committee determination are entitled to a review based on the LCRO's own opinion rather than on deference to the view of the Committee. A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee's determination.

Discussion

What obligations did Mr JH owe to Mr RV?

[17] As a lawyer, Mr JH's duties were owed first to the Court, then to his client, Baycorp. Any obligations or duties he owed to Mr RV are subject to those Mr JH owed to his client and the Court.

[18] Mr RV complains from the perspective of a consumer of legal services. While it is understandable he might feel that way, he was not a consumer of legal services from Mr JH. Mr RV was a customer of Baycorp. Baycorp instructed Mr JH. Mr JH acted for Baycorp.

[19] Mr RV was not Mr JH's client, and they had no dealings with one another directly.

[20] For the purposes of rules that regulate the conduct of lawyers,⁶ Mr RV was a third party to whom Mr JH owed limited obligations. Rule 12 obliged Mr JH to conduct his professional dealings with Mr RV with integrity, respect and courtesy.

[21] In the circumstances it is something of a stretch to say that Mr JH had any professional dealings with Mr RV. However, if that were wrong, and Mr JH somehow did have professional dealings with Mr RV, there is no evidence of any lack of integrity, respect or courtesy towards Mr RV. The fact that a different debt collection agency may be willing to take risks Baycorp was unwilling to take is not evidence of any professional standards failing on Mr JH's part.

[22] In the circumstances, no professional standards issue arises.

⁵ *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

⁶ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

[23] As there is no other basis on which further action on Mr RV's complaint is necessary or appropriate, it follows that the Committee's decision is confirmed.

Decision

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

DATED this 31st day of August 2017

D Thresher
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:

Mr RV as the Applicant
Mr JH as the Respondent
[Area] Standards Committee
The New Zealand Law Society