

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2019] NZLCDT 1

LCDT 015/18

**UNDER**

The Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**GENERAL STANDARDS  
COMMITTEE 2**

Applicant

**AND**

**FREDERICK BAKER and  
YOUNG YOON**

Respondents

**CHAIR**

Judge D F Clarkson

**MEMBERS**

Mr S Hunter

Mr G McKenzie

Ms C Rowe

Ms S Stuart

**DATE OF HEARING** 19 December 2018

**HELD AT** Auckland District Court

**DATE OF DECISION** 14 January 2019

**COUNSEL**

Mr J Simpson for the Standards Committee

Mr F Baker in Person

Mr H Laubscher for Mr Y Yoon

## **DECISION OF THE TRIBUNAL ON PENALTY**

### ***Introduction***

[1] This case concerns Mr Baker and Mr Yoon who have been partners in a small legal firm. The charges, which are admitted by each of the practitioners, relate, in the case of Mr Baker, to the dishonest use of client funds. In the case of Mr Yoon, the misconduct admitted by him relates to his actions as a trust account supervisor, after he discovered Mr Baker's dishonest actions, and then provided false certificates to the New Zealand Law Society (NZLS) for a number of months.

[2] With the exception of a brief argument over the level of fine to be imposed on Mr Yoon, there was little dispute over the appropriate penalty which was sought by the Standards Committee. At the conclusion of the hearing, and after consideration by the Tribunal, the following orders were made, with the reasons for those orders to be reserved and delivered in this decision.

### ***Orders***

#### **Frederick Baker**

1. Mr Baker was struck off the roll of Barristers and Solicitors pursuant to s 242(1)(c) of the Lawyers and Conveyancers Act 2006 (the Act).
2. Practitioner to pay half the costs of the New Zealand Law Society, namely the sum of \$6,751.80, pursuant to s 249 of the Act.
3. The Tribunal costs certified in the sum of \$1,999.00 are awarded against the New Zealand Law Society, pursuant to s 257 of the Act.
4. The practitioner is to refund half the s 257 costs to the New Zealand Law Society, namely the sum of \$999.50, pursuant to s 249 of the Act.

**Young Yoon**

1. Mr Yoon is censured in the form attached at Appendix 1 to this decision, pursuant to s 156(1)(b) of the Act.
2. The practitioner is fined to the sum of \$8,000.00, pursuant to s 156(1)(i) and 242(1)(a) of the Act.
3. The practitioner is to pay half the costs of the New Zealand Law Society, namely the sum of \$6,751.80, pursuant to s 249 of the Act.
4. He is also to reimburse half the s 257 Tribunal costs of \$1,999.00 to the New Zealand Law Society, namely the sum of \$999.50, pursuant to s 249 of the Act.
5. There is an order that the practitioner engage an external consultant to conduct a monthly review of the firm's trust account for a period of 12 months (at his own expense), pursuant to ss 156(1)(j) and 156(1)(l) of the Act.

[3] For completeness, we note that we were not asked to make an order that the practitioner undertake a refresher training course for trust account supervisors, because at the hearing Mr Yoon produced his registration for such a course, to take place in April 2019. It is understood that he will attend and complete this training.

***Background***

[4] Mr Baker, who is a practitioner of 12 years' experience was the director and founder of the firm. Mr Yoon joined the firm as a newly qualified lawyer, having come to New Zealand as an international student and obtained his BCom and LLB in New Zealand.

[5] Mr Yoon was extremely grateful to Mr Baker for giving him the opportunity, not only of employment but, within a few years, of purchasing some equity in the firm and by 2013 becoming a salaried director.

[6] In August of 2013 Mr Yoon became the trust account supervisor (TAS), while Mr Baker retained responsibility for the management of the firm.

[7] It was around this time that Mr Baker struck financial difficulties in the firm and began using trust account funds to pay firm-related expenses.

[8] The specific details are well summarised in the submissions of the Standards Committee,<sup>1</sup> excerpts of which we attach as Appendix 2 to this decision.

### **Frederick Baker's Conduct**

[9] In summary, there are four areas of concern in relation to Mr Baker's conduct:

1. The use of client trust funds to pay firm debts for two periods from late August 2013 to September 2014 and then again between April and September 2017. These transactions were concealed by inaccurate or false entries on trust account ledgers and were subsequently repaid by personal advances by Mr Baker, and later by Mr Yoon.
2. The firm's interest in trust (FIT) ledger was overdrawn on a number of occasions.
3. The PW and T trust ledger – although misuse of funds is not alleged in this matter, poor record keeping combined with a personal loan from the client, on a verbal authority only, is the subject of concern.
4. **Negligence** – Charge 2 relates to the inadequacy of the trust account records. The Standards Committee makes the point that the errors in this regard make proper oversight difficult to manage and thereby increases risk to clients.

### **Young Yoon's Conduct**

[10] The summary of details of Mr Yoon's conduct are again adopted from the Standards Committee submissions.<sup>2</sup>

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<sup>1</sup> Paragraphs [4.2] to [4.14].

<sup>2</sup> Paragraphs [5.2] to [5.8] inclusive.

[11] The most serious element of conduct alleged against Mr Yoon is his signing of false certificates to the New Zealand Law Society concerning the monthly returns for the trust account for the months May to August 2017, in which he certified that the trust ledger correctly reconciled with the bank account and further, that the trust account records were a complete and accurate record of all transactions during that month.

[12] Mr Yoon had become aware in May 2017 that Mr Baker had been using client funds to cover such matters as rent for the firm's premises or fees owed to Land Information New Zealand (LINZ).

[13] This demonstrates, as accepted by Mr Yoon, that he had not faithfully performed his duties as trust account supervisor. As described at the hearing he was "asleep at the wheel", maintaining very little oversight of the trust account and leaving it to the legal accounting bureau who provided him with a monthly report to manage the details. He concedes that he only looked at the first page of the report he received from the Bureau each month. Thus, it was not until the second week in May when he noticed that on that front page was an unexplained payment of \$29,601.00.

[14] At that point, he confronted Mr Baker who explained that the money would be refunded within days from the sale of a property in which Mr Baker had an interest.

[15] In his affidavit to the Tribunal Mr Yoon deposes:

Due to the special relationship between Mr Baker and me, I made the mistake of relying on his assurances that the matter would be regularised within the foreseeable future. Mr Baker was my first employer after my admission; Mr Baker gave me the opportunity to buy equity in a law firm; and Mr Baker elevated me to the position of a salaried director at Baker Law. Over a period of eight years a relationship of trust and loyalty developed between us with Mr Baker being the wise and respected senior while I was the less experienced junior.

[16] And later he states:

I gained the distinct impression that Mr Baker held the view that as the refund would take place within days, it would be unduly particular for me to report the matter. I just lacked the courage to challenge Mr Baker and made the regrettable decision to submit the monthly certificate for April to the Law Society on 12 May 2017 without disclosing the irregular payment.

[17] Unfortunately, the sale in question did not proceed and the funds therefore were unable to be replaced. This created a dilemma, as perceived by Mr Yoon, of continuing to file false certificates while the funds remained unaccounted for, or confess that he had filed a false certificate deliberately for April 2017.

[18] He made the wrong decision to continue making false certificates and eventually borrowed funds personally to replace the overdue amount.

[19] About that time, he discovered that Mr Baker had instructed an experienced trust account consultant, Mr Tim Maffey, to review the trust account records for that year to detect any further irregularities. A further \$25,160.72 was discovered, and Mr Yoon arranged to further borrow to cover this amount.

[20] In total Mr Yoon has paid \$54,721.45 to remedy the trust account errors.

### ***Strike-Off Sought for Mr Baker***

[21] Mr Baker, to his credit, immediately admitted his wrongdoing and the likely consequences. He pleaded guilty to the charges faced by him at the earliest date and appeared at the penalty hearing. He filed a submission expressing his remorse and in particular, the flow-on effect and damage to his partner Mr Yoon. It is clear that this regret was entirely genuine from the documents that Mr Baker has filed with the Tribunal. He offered no excuses, stating that he thought that he was a competent lawyer, but a “bad businessman”. He accepted that rapid expansion of his firm during a period of property boom was unwise and led to financial pressures for the firm.

[22] Mr Baker accepts that he “... committed the ultimate wrongdoing of using trust funds for other than what they were intended” (Memorandum of first respondent – penalty 17 December 2018).

[23] In mitigation Mr Baker points to the fact that no client lost money. That “The funds were not spent on maintaining a lavish lifestyle, but keeping the firm afloat. I understand that this is not justification”. He also points to his cooperation and guilty plea at the first available moment.

[24] In its submissions to the Tribunal the Standards Committee points to the principles to be applied when considering the sanction of strike-off.

[25] The test to be applied is:

... Whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner's conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner's offending. Wilful and calculated dishonesty normally justifies striking off ... finally, personal mitigating factors may play a less significant role than they do in sentencing.<sup>3</sup>

[26] We were also referred to the decision of *Bolton*:<sup>4</sup>

Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.

[27] We remind ourselves of the Tribunal's duty to have regard to the purposes of the legislation, including the protection of the public and the maintenance of public confidence in the provision of legal services.

[28] One of the core obligations of a lawyer is to safely and honestly hold and manage, through the trust account, any funds on behalf of his or her client. Every client must be able to have absolute confidence that this obligation will be strictly honoured.

[29] Any lawyer who conducts the trust account as did Mr Baker must be seen as unfit to continue to practice as a lawyer. As he openly acknowledged in his submission, Mr Baker crossed the line which must never be crossed.

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<sup>3</sup> *Dorbu v New Zealand Law Society* [2012] NZAR 481 (HC) at [35].

<sup>4</sup> *Bolton v Law Society* [1994] 1 WLR 512, 518.

[30] We must take account of the fact that this was not an isolated instance of allowing the trust account to go into overdraft or using client funds to pay firm debts. It occurred on many occasions over the two periods in question.

[31] While, due to the borrowings of both Mr Baker and Mr Yoon to reimburse the client funds, no client has suffered any loss, that cannot be determinative of the outcome or how the practitioner's fitness is viewed. A lawyer who behaves in this manner damages the reputation of the profession as a whole.

[32] The Tribunal found, as a panel of five members, unanimously, that Mr Baker is no longer a fit and proper person to practice as a lawyer and thus made the order pursuant to s 242(1)(c).

### ***Penalty for Mr Yoon***

[33] While Mr Yoon pleaded guilty to one charge of misconduct, the Standards Committee has not sought that he be suspended.

[34] It was common ground that as trust account supervisor he had failed woefully in his obligations.

[35] More serious, however, is the submitting of false certificates to the NZLS in the knowledge of the misuse of funds by Mr Baker.

[36] While the Tribunal can appreciate the human response and loyalty displayed by Mr Yoon to his colleague and mentor, Mr Baker, that is no excuse for what was a gross breach of his professional obligations.

[37] Mr Yoon needs to understand that as a member of a professional body with considerable privileges, he has a duty, particularly when entrusted with client funds, to ensure that his professional obligations dominate over his personal inclinations and loyalties.

[38] We were referred by the Standards Committee to four previous decisions of the Tribunal, namely *Wellington Standards Committee v Manktelow*,<sup>5</sup> *Auckland Standards*

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<sup>5</sup> *Wellington Standards Committee v Guy William David Manktelow* [2012] NZLCDT 30.

*Committee 4 of the New Zealand Law Society v Appleby*,<sup>6</sup> *Wellington Standards Committee 2 of the New Zealand Law Society v Jones*<sup>7</sup> and *Auckland Standards Committee 5 v Low*<sup>8</sup> which considered similar conduct.

[39] We also considered the mitigating feature that Mr Yoon admitted his guilt promptly and cooperated with the investigation, has borrowed significant funds to rectify the trust account position and thus has a significant financial burden to carry.

[40] Having regard to those factors and to (as with Mr Baker) a previously unblemished disciplinary record we accept that in this matter a proper response can fall short of a suspension of the practitioner. In all of the four cited decisions the practitioners avoided suspension, with a fine imposed in a similar range to that sought for this practitioner. We consider that the Standards Committee has properly and accurately assessed the level of penalty.

### **Costs**

[41] We consider that both practitioners ought to bear the burden of costs in this matter. Although, in an effort to assist Mr Yoon, Mr Baker was prepared to assume 100 per cent of the costs, we do not consider that would have been a proper reflection of professional responsibility in this matter. Mr Yoon's lack of attention to trust account proper reconciliation and supervision, meant that he did not detect the second period of Mr Baker's misconduct for many months. He also concealed that misconduct by the false certificates and thus he ought to bear an equal share of the costs in prosecuting and hearing of this matter.

**DATED** at AUCKLAND this 14<sup>th</sup> day of January 2019

Judge D F Clarkson  
Chair

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<sup>6</sup> *Auckland Standards Committee 4 of the New Zealand Law Society v John Appleby* [2014] NZLCDT 34.

<sup>7</sup> *Wellington Standards Committee 2 of the New Zealand Law Society v Christopher Verrier Jones* [2014] NZLCDT 52.

<sup>8</sup> *Auckland Standards Committee 5 v Diane Faye Low* [2018] NZLCDT 7.

**CENSURE**

Mr Yoon, as trust account supervisor you held a special duty to the clients of your firm and to your professional body to carry out your obligations with diligence and the utmost good faith.

You failed in these responsibilities, firstly by taking short cuts in reviewing the monthly trust account reconciliations, which you must in future scrutinise with great care. Secondly, by misleading your professional body, the New Zealand Law Society, by the filing of false certificates you have let yourself and your profession down.

The Tribunal acknowledges that you recognise these professional failings and undertake to do better in the future.

You are formally censured for your misconduct and warned that should you transgress in any similar way in the future you can expect that your ability to practice may be at risk.

Excerpts from Submissions of the Standards Committee

**4 Frederick Baker**

**Summary of conduct – charge one**

*Use of client trust funds to pay firm debts*

- 4.2 The first, which is the most serious conduct, is Mr Baker's use of client trust funds to support the firm. Over a period of approximately four years, from August 2013 to September 2017, Mr Baker regularly transferred trust account funds (either directly or via the firm practice account) to pay debts owed to Land Information New Zealand (**LINZ**) or the Inland Revenue Department (**IRD**), to pay rent owed by the firm, and to repay bank loans.
- 4.3 Mr Baker would subsequently reimburse the trust account with external funds. The transactions were obscured by inaccurate or false entries on the trust account ledgers, or were not posted to any trust account ledger at all. A large number of transactions were posted to the ledger for Baker, Daughters & Associates Limited (**Baker Daughters**), a company which Mr Baker had formed in 2005 and of which he was a former director.
- 4.4 For the purposes of these submissions, the Committee highlights by way of example three withdrawals from the trust account by Mr Baker (the latter two from 2017 directly relate to the charge against Mr Yoon, addressed below):
- (a) On 10 September 2014, Mr Baker paid \$35,000 to the IRD from the firm trust account, which was posted to the ledger "Mr Y Yoon, Shareholder Matter" (**Yoon ledger**). That ledger only held \$5,000. To cover the overdrawn \$30,000, Mr Baker transferred \$19,000 and \$11,000 into the firm trust account the next day and posted these payments to the Yoon ledger. These transactions were respectively a loan in relation to a vehicle owned by Mr Baker, and a cheque drawn on the bank account of Baker Daughters.
  - (b) On 18 April 2017, Mr Baker paid \$29,601 from the firm trust account to LINZ to pay outstanding fees owed by the firm for conveyancing transactions. This was not posted to any client ledger and no funds were received to cover the payment.

- (c) On 13 June 2017, Mr Baker transferred \$24,092.49 from the firm's interest in trust ledger (**FIT ledger**) to the ledger for Baker Daughters, which overdrawed the FIT ledger. Mr Baker then put those funds toward a payment of \$25,160.72 in respect of rent for the firm's premises. No repayments were made on either the 18 April 2017 or the 13 June 2017 transactions until 15 September 2017, when Mr Yoon repaid the funds after obtaining a personal loan.

4.5 Mr Baker has breached:

- (a) s 110(1)(b) of the Act, by failing to hold money received on behalf of another person, and/or failing to ensure such money is held, exclusively for that person or as that person directs; and
- (b) reg 6(1) of the Regulations,<sup>9</sup> by conducting transactions which allowed clients' trust accounts to become overdrawn.

*Overdrawn FIT ledger*

- 4.6 The second, related area of conduct relates to the FIT ledger. Over the same period of time, Mr Baker regularly transferred funds out of FIT ledger when no funds were available, causing the FIT ledger to become overdrawn. These transactions involved both client advances where no funds were available, and creation of funds to pay firm debts as described above. Mr Baker was aware that the FIT ledger was being operated in overdraft as it had been brought to his attention during a review in August 2013.

- 4.7 Mr Baker has breached reg 6(3) of the Regulations, by operating an advance account in overdraft for an extended period of time.

*PW and T Trust ledger*

- 4.8 The third and fourth areas of conduct both relate to a particular client ledger, PW and T Trust, for whom Mr Baker was appointed as attorney.

- 4.9 The review by the NZLS Inspectorate identified an absence of documentation for a large number of transactions recorded on the client ledger, which were posted simply as "BAKER LAW BUSINESS A/C, FEES". No client reporting had occurred since funds were first held in trust from March 2015.

- 4.10 Mr Baker breached:

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<sup>9</sup> Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

- (a) s 112(1)(c) of the Act and reg 11(1) of the Regulations, by not maintaining records in a manner that enabled these records to be conveniently and properly reviewed or audited by the NZLS Inspectorate; and
- (b) reg 12(7) of the Regulations, by not providing to Mr W a complete and understandable statement of all trust money handled for the client, and all transactions, and a balance of Mr W's account, at any stage since 12 March 2015.

4.11 On 21 and 31 July 2017, Mr Baker borrowed funds totalling \$11,400 from the firm trust account which were posted to the PW and T Trust ledger. These were used to repay a personal loan that Mr Baker owed to Core Finance. Although Mr Baker has stated he had verbal authority from PW to borrow funds held for his client in trust, that authority is not recorded in any manner.

4.12 Mr Baker has breached:

- (a) reg 12(6)(b) of the Regulations, by not retaining a written record of Mr W's instructions to transfer funds; and
- (b) reg 7(1) of the Regulations, by authorising client money to be lent to a director of an incorporated firm without Mr W obtaining independent legal advice.

#### **Summary of conduct – charge two**

4.13 Mr Baker has also pleaded guilty to a second charge of negligence under s 241(c), in relation to the poor standard of the firm trust account records. As set out in the particulars of the charge, numerous issues were identified with the trust account records including:

- (a) inadequate and inaccurate transaction narrations;
- (b) transactions not being posted to any client ledger;
- (c) calculation errors;
- (d) transactions being posted to the incorrect client ledger, and corrected in an improper manner; and
- (e) lack of documentation for client ledgers.

4.14 The Baker Law trust account records are of such a standard that they breach:

- (a) s 112(1)(a) of the Act, by not clearly disclosing the position of the money in the trust account;
- (b) reg 11(1) of the Regulations, by not maintaining records in a manner that enables these records to be conveniently and properly reviewed by the NZLS Inspectorate;
- (c) reg 11(3) of the Regulations, by not ensuring that all entries in the client ledger accounts include references that identify their source or destination;
- (d) reg 11(4) of the Regulations, by not ensuring that all entries in the journal have sufficient detail to make their purpose evident;
- (e) reg 12(1) of the Regulations, by not recording every receipt or payment of trust money in a trust account ledger; and
- (f) regs 12(3) and (4) of the Regulations, by not recording every receipt of trust money accurately in the relevant client ledger account, in a manner that states the source and purpose of the receipt and/or the client for whom the trust money is to be held.

## 5 Young Yoon

### Summary of conduct

#### *Breach of trust account supervisor duties*

- 5.2 The first set of particulars concern Mr Yoon's conduct in his role as trust account supervisor, with reference to regs 16 and 17 of the Regulations. He has held that role since August 2013 (affidavit of Young Yoon at [6]).
- 5.3 As trust account supervisor, Mr Yoon was responsible for the administration of the trust accounting of the firm, and for ensuring that all provisions of the Act, Regulations, and practice rules relating to trust accounts were complied with. The charge alleges that Mr Yoon's oversight of the trust account was wholly lacking, such that he did not identify much of Mr Baker's conduct which is the subject of charges one and two, including:
- (a) Mr Baker's use of client trust funds to pay debts owed by Baker Law;
  - (b) the lack of documentation in respect of transactions posted to the ledger for PW and T Trust;

(c) Mr Baker's taking of a loan from the PW and T Trust matter without written instructions; and

(d) the poor standard of Baker Law's trust account records.

5.4 In particular, Mr Yoon did not identify that the FIT ledger was being regularly overdrawn. Although he received monthly reconciliations and accompanying documentation from an external provider, Legal Accounting Bureau, Mr Yoon's practice was only to read the front page which showed whether the trust account balanced. He did not read further into the report where the overdrawn FIT ledger was evident on the matter balances report.

5.5 By way of example, the transfer of \$24,092.49 from the FIT ledger on 13 June 2017 was not identified by Mr Yoon, even though the FIT ledger was overdrawn as a result for a period of three months.

*Submitting false certificates to NZLS*

5.6 The second set of particulars, which the Committee submits involves more serious conduct, concern Mr Yoon's actions once he became aware that Mr Baker had transferred \$29,601 from the trust account on 18 April 2017.

5.7 Mr Yoon became aware of the transfer in May 2017 after receiving the monthly reconciliation report from the Legal Accounting Bureau, which identified the unexplained payment. However, Mr Yoon then submitted four certificates to the NZLS for the months May to August 2017, each of which falsely stated that:

(a) the Baker Law trust ledger correctly reconciled with the corresponding trust bank account; and

(b) the trust account records were a complete and accurate record of all transactions during that month.

5.8 Mr Yoon did not take any steps to rectify the situation until September 2017, when he secured a personal loan to repay the outstanding funds (together with the other set of outstanding funds transferred by Mr Baker on 13 June 2017). He then advised the NZLS Inspectorate by way of letter dated 22 September 2017.