

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2019] NZLCDT 21

LCDT 001/19

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**WAIKATO BAY OF PLENTY
STANDARDS COMMITTEE NO. 1**

Applicant

AND

SARAH BUSCHMAN

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS

W Chapman

N McMahon

C Rowe

W Smith

On the Papers

DATE OF DECISION 12 August 2019

COUNSEL

Mr E McCaughan for the applicant

No appearance of the respondent

**DECISION OF THE NEW ZEALAND LAWYERS AND CONVEYANCERS
DISCIPLINARY TRIBUNAL CONCERNING CHARGE AND PENALTY**

[1] The respondent was employed by her employing legal firm between 5 May 2014 and 11 August 2017. She was initially employed as a secretary. Upon the retirement of the firm's then accountant, Ms Buschman took over that role from 29 April 2016 and remained in that position until 11 August 2017.

[2] Between 26 May 2017 and 26 July 2017, the respondent authorised the payment of eight creditor invoices by electronic transfer from the firm's bank account. Five of the invoices had previously been paid by the firm. None of the payments were made into the creditors' bank accounts. The respondent dishonestly arranged for all eight payments to be paid into her own bank account. The total sum taken by the respondent was \$2,947.71.

[3] The respondent, at a meeting with her employer, said that the payments were either a mistake or an accident. She indicated that she would repay the money but has to date not done so.

[4] The respondent is charged with conduct that would, if it were conduct of a practitioner, render the practitioner liable to have his or her name struck off the roll pursuant to s 11(a) of the Lawyers and Conveyancers Act 2006 (the Act). She has not filed a response to the charge and did not participate in any teleconferences relating to the hearing of the charge despite being given the opportunity to do so. She is understood to be now living in Australia.

[5] Service having been proved, the hearing before the Tribunal has been by way of formal proof on the papers. The Tribunal has been mindful of its duty to ensure a fair hearing in the absence of the respondent.¹

[6] Proof of the charge has been provided by the affidavits of ALW, the employer, and Claire McInnes, Legal Standards Officer. The evidence discloses the unlawful transfer of \$2,947.71 into the respondent's bank account, achieved by means of the unauthorised use of her employer's password for the banking software.

¹ *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] 3 NZLR 103.

[7] The Tribunal is satisfied that the charge has been proved.

[8] As to penalty, the Tribunal accepts the submission of the applicant that an order be made under s 242(1)(h)(ii) of the Act that no practitioner or incorporated firm employ Ms Buschman in connection with the practitioner's or incorporated firm's practice so long as the order remains in force.

[9] In reaching that decision, the Tribunal has taken into account the following matters:

- (a) Ms Buschman's dishonest handling of client funds and the resulting breach of trust.
- (b) The need to maintain standards and protect the public.

[10] The Tribunal accordingly makes the following orders:

1. An order pursuant to s 242(1)(h)(ii) of the Act that no practitioner or incorporated firm employ Ms Buschman in connection with the practitioner's or incorporated firm's practice so long as this order remains in force.
2. That Ms Buschman refund to her former employer, FWT, the sum of \$2,947.71, pursuant to s 156(1)(d).
3. That Ms Buschman pay the costs of the New Zealand Law Society totalling \$3,400.00, pursuant to s 249(3) of the Act.
4. That the New Zealand Law Society pay the costs of the Tribunal which are fixed at \$566.00, pursuant to s 257 of the Act.
5. That Ms Buschman is to refund to the New Zealand Law Society the Tribunal's costs in the sum of \$566.00, pursuant to s 249(3) of the Act.

DATED at AUCKLAND this 12th day of August 2019

BJ Kendall
Chairperson