

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2021] NZLCDT 28

LCDT 014/20

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**WAIKATO BAY OF PLENTY
STANDARDS COMMITTEE 1**
Applicant

AND

**KYLEE ROSLYNNE DENISE
JACOBSEN**
Respondent

DEPUTY CHAIR

Judge J G Adams

MEMBERS OF TRIBUNAL

Mr S Hunter QC

Ms N McMahon

Ms S Stuart

Ms P Walker

DATE OF HEARING 22 October 2021

HELD AT Specialist Courts and Tribunals Centre, Auckland (by way of virtual meeting room)

DATE OF DECISION 1 November 2021

COUNSEL

Mr P Collins for the Standards Committee

Mr T Cooley for the respondent

DECISION OF THE TRIBUNAL RE PENALTY

Introduction

[1] Ms Jacobsen admitted two charges of misconduct and was found guilty of a third. All charges arise out of conveyancing transactions involving her mother to whom she was closely attached when the conveyancing was first undertaken. The charges respectively relate to:

- Acting in circumstances of conflict.
- Failing to act competently to protect her mother's interests (as a client).
- Engaging in misleading conduct. (Substantially, this amounted to promising to protect her mother's interests and failing to do so.)

[2] Full details of the facts are set out in Tribunal's liability decision of 25 May 2021.¹ In summary, when Ms Jacobsen first undertook the transactions, she seemed to be helping her mother out, but Ms Jacobsen had a conflict of interest. Ms Jacobsen's mother's sister decided to sell her one-fifth share in a holiday home in which Ms Jacobsen's mother owned the other four-fifths share. Ms Jacobsen's mother, who could not afford to buy out her sister's share, was unhappy and troubled about selling the property. Ms Jacobsen had happy memories of holidays in the property. What started as an intended rescue package led to neglect of Ms Jacobsen's mother's property interests, despite promises to protect those interests.

[3] The subject property was transferred to a company owned by Ms Jacobsen and her husband. Between June 2016 and March 2019, Ms Jacobsen's mother was seriously exposed as Ms Jacobsen borrowed additional money secured against the property which she used for her own purposes. Only when her mother engaged

¹ *Waikato Bay of Plenty Standards Committee 1 v Jacobsen* [2021] NZLCDT 18.

independent lawyers did the matter get resolved. Luckily, the property had risen in value and her mother did not lose money.

[4] Although Ms Jacobsen and her mother (then independently advised) settled their issues with a confidential agreement, one of Ms Jacobsen's brothers brought this complaint. Ms Jacobsen's mother wrote to support her son's action. In terms of shifting family relationships, Ms Jacobsen has already suffered chastening lessons from her poor performance in this matter.

[5] The Standards Committee initially proposed that Ms Jacobsen should be suspended from practice for nine months but having considered the submissions of Mr Cooley, it revised its proposal to three months suspension. The opening proposition of nine months did not at first seem unreasonable compared with several apparently similar cases, but Mr Cooley's written submissions drew attention to salient distinguishing features. We commend the genuine fairness in the adjustment adopted by the Standards Committee. This matter was therefore presented at hearing by both parties within a fair and balanced range.

[6] We were greatly helped by the submissions of both counsel. Their submissions helped us situate and weigh Ms Jacobsen's shortcomings in this matter. They also helped us locate a penalty response that balanced the relevant factors. With that help, we readily reached consensus.

[7] Although there are three charges of misconduct, they arise out of the same set of circumstances. That is broadly so, even though Ms Jacobsen added to her original errors by borrowing more money secured over the property (without advising her mother) and by discussing the matter directly with her mother after her mother had instructed solicitors to represent her. We find that Ms Jacobsen did not present a risk to other clients or members of the public. She had a blind spot about this matter where she convinced herself she was assisting her mother but then took personal advantage from the arrangements.

[8] Ms Jacobsen, who has no previous disciplinary record, produced references that reflect well on her and her practice management. She is remorseful for her errors which placed her mother's property interests at risk for a time. We recognise her eventual acceptance of her misconduct. Although she admitted the first two

charges late, her defence of the third charge was understandable, as Mr Cooley observes, because we took a more liberal interpretation of the charge than that advanced on her behalf.

[9] In order to promote public confidence in the profession and to send an appropriate message to other practitioners, we need to make orders that adequately mark Ms Jacobsen's failure to protect her mother's property interests. We find no need to go beyond that. We find that neither a fine nor a censure is called for in these circumstances. There are understandable features to her misconduct, however formally grievous, being Ms Jacobsen's inattention to her mother (as client) and helping herself to the finance she could raise against the property.

[10] The features noted in paragraphs [7] to [9] (above) situate this case at a markedly different pitch from cases like *Mason*,² *Johnson*,³ *Williams*,⁴ and *Woodward*.⁵ We have no concern that Ms Jacobsen is likely to repeat this kind of misconduct. We do not find that the general public has been or is at risk. We see no need to take a penalty approach that would be ruinous to her.

[11] The penalty must be adequate to send an appropriate message to other lawyers and the general public but we are also obliged to impose the "least restrictive outcome": *Daniels*.⁶ Any period of suspension sends a message of strong disapprobation. We do not consider this isolated area of past blemish renders Ms Jacobsen unfit to continue to practise.

[12] Suspension poses significant stresses on Ms Jacobsen and others. Her husband is an employee. Other employees will be affected. These are inevitable consequences of suspension but, in fixing the term and positioning of suspension, we are cognisant of them. The orders requiring payment of costs will also have heavy effect.

² *Auckland Standards Committees 2 & 3 v Mason* [2019] NZLCDT 5.

³ *Auckland Standards Committee 2 v Johnson* [2021] NZLCDT 19.

⁴ *Canterbury Westland Standards Committee No. 1 v Williams* [2020] NZLCDT 8.

⁵ *Canterbury Westland Standards Committee 2 v Woodward* [2020] NZLCDT 9.

⁶ *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 at [22].

Orders

[13] Ms Jacobsen is suspended from practice for a period of ten weeks commencing on a day to be nominated by Ms Jacobsen but no later than 1 March 2022. Ms Jacobsen shall inform the Tribunal of her nominated start date for suspension by 1 December 2021.

[14] Ms Jacobsen is ordered to pay the Standards Committee costs in the sum of \$39,049.24.

[15] Ms Jacobsen is ordered to reimburse the New Zealand Law Society for the Tribunal s 257 costs which are certified at \$3,650.

DATED at AUCKLAND this 1st day of November 2021

Judge JG Adams
Deputy Chairperson