

NAME OF FORMER EMPLOYER, THE BANK, AND THE FIRM'S CREDITOR ARE
SUBJECT TO A PERMANENT NON-PUBLICATION ORDER. THIS ORDER MADE
PURSUANT TO S 240 LAWYERS AND CONVEYANCERS ACT 2006.

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 36

LCDT 001/23

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

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

Applicant

AND

RHIANNON SMITH

Respondent

DEPUTY CHAIR

Dr J Adams

MEMBERS OF TRIBUNAL

Ms K King

Mr G McKenzie

Ms M Noble

Prof D Scott

On the papers

DATE OF DECISION 18 August 2023

COUNSEL

Ms N Town counsel for the Applicant

Mr S McKenna counsel for the Respondent

DECISION OF TRIBUNAL ON PENALTY

[1] Ms Smith, while a teenage employee of a law firm, misappropriated funds from her employer's account. On two occasions, she arranged for payments to be deposited in her friend's bank account instead of the account of a creditor for whom they were intended. The first such payment was \$875.73 made on 19 July 2019. That amount is still outstanding. The second such payment, \$1413.93 made on 21 May 2020, was recovered by bank action.

[2] The charge is one of misconduct under s 11(a) and 241(a) Lawyers and Conveyancers Act 2006 being conduct in the course of her employment that would, if it were conduct of a practitioner, render the practitioner liable to have her name struck off the roll.

[3] Ms Smith initially denied, but later admitted, the charge. She seeks to have the matter resolved as inexpensively for her as possible. Counsel agree that the matter can be dealt with upon the papers. There is substantial consensus between counsel about appropriate orders. Mr McKenna submits she might not be required to pay costs.

[4] The conduct was covert and dishonest. It breached her duty to her employer who entrusted her with work that involved handling accounts. Ms Smith's deceit involved premeditation and sophistication. The initial misconduct was repeated after 10 months.

[5] We do not accept her youth or inexperience as significant mitigating features. Her misconduct was discovered after she had been dismissed for other unrelated irregularities. She never volunteered the information and initially denied wrongdoing. Although she now says she accepts the \$875.73 will have to be repaid, she has taken no step to do so. Four years after she deprived her employer of that sum, she simply waits for us to order her to repay it.

[6] We find no sign of genuine remorse, and no indication that Ms Smith has any movement of grace towards reparation.

[7] We have paid regard to the cases cited by the Standards Committee. No novel principle arises in this case.

[8] The Standards Committee seeks costs only for external payments it has incurred. It does not seek costs for in-house work on this file. This means that members of the profession will already bear the costs of this prosecution apart from reimbursement of external costs. We cannot find any fair basis to shift any part of the external costs burden from Ms Smith to the members of the profession.

[9] We find that proper compensation for Ms Smith's former employer requires a contribution for the loss of use of the money they have experienced for four years, and ongoing until payment.

[10] In these circumstances, an order must be made preventing Ms Smith's employment by a practitioner so long as the order remains in force. That order is necessary to protect the public and the profession.

[11] We make the following orders:

1. No practitioner or incorporated firm shall employ Ms Smith in connection with the practitioner's or incorporated firm's practice so long as the order remains in force (s 242(1)(h)(ii)).
2. Ms Smith shall pay her former employer \$875.73 in compensation, together with interest on that sum calculated from 19 July 2019 until payment, calculated in accordance with <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/> (ss 156(1)(d) and 242(1)(a)).
3. Ms Smith shall pay the Standards Committee costs of \$1641.90 (s 249).
4. The New Zealand Law Society shall pay the Tribunal costs certified in the sum \$639 (s 257).

5. Ms Smith shall reimburse the New Zealand Law Society for the Tribunal costs payable under s 257 which are certified at \$639 (s 249).
6. The names of Ms Smith's former employer, the bank, and the name of the firm's creditor are subject to a permanent non-publication order (s 240).

DATED at AUCKLAND this 18th day of August 2023

Dr J G Adams
Deputy Chair