

NAMES OF EMPLOYER, ACCOUNTING FIRM AND ANY OTHER CLIENTS OR PERSONS INVOLVED IN THIS MATTER ARE NOT TO BE PUBLISHED. THIS NON-PUBLICATION ORDER IS MADE PURSUANT TO S 240 LAWYERS AND CONVEYANCERS ACT 2006.

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 48

LCDT 017/23

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 3**

Applicant

AND

JANET DAWN XUCCOA

Respondent

DEPUTY CHAIR

Dr J Adams

MEMBERS OF TRIBUNAL

Ms K King

Prof D Scott

Ms S Stuart

Ms N Taefi

HEARING 27 October 2023

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 31 October 2023

COUNSEL

Mr H Steele for the Standards Committee

Mr A Gilchrist for the Respondent Practitioner

DECISION OF TRIBUNAL ON PENALTY

[1] Ms Xuccoa was an in-house employee of a Trust company that had an association with a firm of chartered accountants. For a period of nine months Ms Xuccoa provided regulated services to her employer, to the accountants, and to their clients. She did not realise she was breaching s 9(1) of the Lawyers and Conveyancers Act 2006 (LCA).

[2] Ms Xuccoa admits the charge of misconduct. The Standards Committee accepts her breach was inadvertent and there is no suggestion Ms Xuccoa is unfit to practise or that she would present a risk in the future.

[3] No harm was caused to anyone by her actions but any breach of s 9 is structurally important. It is legislatively defined as misconduct.

[4] Ms Xuccoa immediately surrendered her practising certificate and co-operated fully with the Standards Committee. She has expressed contrition. The gravity of the offending is low. She has no prior disciplinary history. As Mr Gilchrist observed, “the non-compliance...was brief, unintended, and remedied almost immediately.”¹

[5] This case is like that of *Vujnovich*² and we deal with it in similar fashion by censure, costs (which in this case are broadly within the same range) and an order to reimburse the costs payable to the Tribunal by the New Zealand Law Society.

¹ Gilchrist submissions at [11].

² *Auckland Standards Committee 2 v Vujnovich* [2021] NZLCDT 1.

Orders

[6] We make the following Orders:

1. Ms Xuccoa is censured in the following terms (pursuant to ss 156(1)(b) and 242(1)(a) LCA:

Ms Xuccoa, although inadvertent, your breach of the strict terms of s 9(1) of the LCA crossed a line that the statute treats as misconduct. We acknowledge that you have behaved impeccably in relation to the investigation and this hearing. Although you are censured, this does not reflect adversely on your character.

2. Ms Xuccoa is ordered to pay costs to the Standards Committee of \$6,024 (pursuant to s 249 LCA).
3. The New Zealand Law Society are to pay the Tribunal costs certified in the sum of \$895 (pursuant to s 257 LCA).
4. Ms Xuccoa is ordered to reimburse the New Zealand Law Society in respect of the Tribunal costs payable under s 257, which are certified in the sum of \$895 (pursuant to s 249 LCA).
5. An order is made preventing the publication of the names of Ms Xuccoa's employer, the accounting firm, and any other clients or persons involved in this matter (pursuant to s 240 LCA).

DATED at AUCKLAND this 31st day of October 2023

Dr J G Adams
Deputy Chair