

**LEGAL COMPLAINTS REVIEW OFFICER  
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2020] NZLCRO 144

Ref: LCRO 235/2018

**CONCERNING**

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

a determination of [Area] Standards Committee [X]

**BETWEEN**

**AB**

Applicant

**AND**

**CD**

Respondent

**DECISION**

**The names and identifying details of the parties in this decision have been changed.**

**Introduction**

[1] Mr AB has applied for a review of the determination by [Area] Standards Committee [X] to take no further action on his complaints about Mr CD.

**Background**

[2] [EF] Ltd [(EF)] was the holder of the [GH XX] real estate franchise in [Suburb]. Mr AB refers to [EF] as ‘his company’.

[3] In 2014, the master franchise for [GH XX] was sold to a new company, [GH XX] New Zealand Ltd [(GH XX NZ Ltd)]. In his complaint to the Lawyers Complaints Service, Mr AB stated that he “experienced constant bullying and harassment by the

management team of [GH XX NZ Ltd] ... a deliberate attempt to drive [him] out of the real estate business in [Suburb]”.

[4] Through a complicated arrangement between [EF], the previous master franchisor, and [GH XX NZ Ltd], [EF] became indebted to [GH XX NZ].

[5] Mr CD acted for [GH XX NZ]. A statutory demand pursuant to s 289 of the Companies Act 1993 was prepared by Mr CD and served on [EF].

[6] Mr AB, acting for himself, filed an application to set the demand aside. Ultimately however, the application to set the demand aside was withdrawn by Mr AB and orders made by the Court for [EF] to pay [GH XX NZ] the sum of \$47,291.27 by 20 July 2018.

[7] [EF] was also ordered by the Court to pay [GH XX NZ] costs on a 2B basis, amounting to \$2,480.63.

[8] Mr CD rendered accounts to [GH XX NZ] amounting to \$14,731. Pursuant to paragraph 11(1)(e)(vii) of the franchise agreement entered into by [EF] with [GH XX NZ], the franchisee was required to:

...indemnify and hold harmless [GH XX] Regional, [GH XX] International and their subsidiaries, affiliates, directors, officers and employees, and all other [GH XX] franchisees from all expenses, fines, suits, proceedings, claims, losses, damages, liabilities or actions of any kind or nature (including, but not limited to, costs and attorneys' fees) arising out of or in any way connected with Franchisee's operations.

[9] The amount payable pursuant to that clause was in addition to the 2B costs ordered to be paid by the court. Those costs related only to the statutory demand process.

[10] [GH XX NZ] made demand on [EF] for those costs.

### **Mr AB's complaints**

[11] Mr AB's complaint is that Mr CD “has been instrumental in the oppressive and bullying tactics that were used by [GH XX NZ] in this matter”. His “main complaint relates to [Mr CD's] role in the serving of the statutory demand” on [EF] as that he “had on numerous occasions advised Mr CD that there were deficiencies in the way that the debt amount was calculated”.

[12] Mr AB considers that service of the statutory demand constituted “unfair, oppressive and bullying” conduct and that it “hindered [EF's] ability to dispute the debt”.

[13] Mr AB also complains about the quantum of Mr CD's fees.

### **The Standards Committee determination**

[14] At [9] of its determination, the Committee said:<sup>1</sup>

Mr CD acts for [GH XX]. He does not act for Mr AB or [EF]. Mr CD's primary duties are therefore owed to his own client and it is to his client company that he must provide advice and it is from his client company that he must take his instructions. Mr CD does however owe a duty of courtesy to Mr AB, as a representative of [EF].

It could "find no evidence of discourtesy or disrespect on Mr CD's part".<sup>2</sup>

[15] It also noted "that it is not an alternative forum to rehear [EF's] application to the High Court to have the statutory demand set aside".<sup>3</sup>

This is a particularly relevant observation.

[16] The Committee addressed the issue of Mr CD's fees and noted that [EF] had a contractual obligation to pay these.

[17] Having determined liability, it then addressed the quantum of the fee and referred to the r 9 factors to be taken into account.<sup>4</sup> It said:<sup>5</sup>

...the Standards Committee, whose members include those experienced in civil litigation, took into particular account the time and labour expended by Mr CD, the importance of the matter to Mr CD's client, the results achieved for the company and Mr CD's experience as a litigator.

[18] Overall, the Committee could find no grounds to uphold Mr AB's complaints.

### **Mr AB's application for review**

[19] Mr AB's application for review primarily comprises all the material before the Standards Committee.<sup>6</sup> In his application for review, Mr AB does however state that "not all of [his] submissions have been addressed". Unfortunately, Mr AB has not identified which of his submissions he considers has not been addressed.

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<sup>1</sup> Standards Committee determination (12 November 2018).

<sup>2</sup> At [10].

<sup>3</sup> At [11].

<sup>4</sup> At [16]. Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

<sup>5</sup> At [17].

<sup>6</sup> It is standard practice for this Office to receive a full copy of all of the material received by a Standards Committee in connection with a complaint.

[20] In addition, Mr AB does not specifically identify what outcome he seeks from this review as provided for in Part 8 of the application. Nevertheless, given the outcome of this review, that becomes immaterial.

### **Review**

[21] This review has been completed on the basis of all of the material provided to the Standards Committee and to this Office on review.

[22] Mr AB holds the view that “the nature of the statutory demand procedure (and any ensuing litigation to oppose it) is that the quantum of the debt is not examined”.<sup>7</sup>

[23] That is not correct. Section 290(4) of the Companies Act 1993 provides:

The court may grant an application to set aside a statutory demand if it is satisfied that—

- (a) there is a substantial dispute whether or not the debt is owing or is due;
- ...

[24] In addition, Mr CD acted for [GH XX NZ]. He owed no duty to [EF] other than those noted by the Standards Committee.

[25] Mr AB says he disputed the demand in the High Court and that he wanted “to negotiate a fair settlement”. That was a decision to be made by [GH XX NZ]. Mr CD acted on the instructions of his client.

### *Mr CD's fees*

[26] Mr AB submits that no costs other than those ordered by the court should be payable. He also submits that “no legal fee should be payable ... due to the oppressive and unreasonable approach taken by [Mr] CD during the conduct of this case” on the basis that “if he [had] taken a fair and reasonable approach, the matter would have resolved a long time ago”.

[27] The immediate response to this comment, is that Mr CD acted on his client's instructions. It was not part of his duties to promote Mr AB's views.

[28] With regard to the quantum of Mr CD's fees, I take particular note of the comments of the Standards Committee in [17] of its determination referred to above. The amount claimed relates to Mr CD's attendances in addition to the fees ordered to be paid by the Court, which relate only to the statutory demand process.

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<sup>7</sup> Application for review supporting material, page 5.

[29] There is considerable authority for the principle that a Standards Committee or this Office should not “tinker” with a lawyer’s fee,<sup>8</sup> and there is no breach of r 9 by Mr CD in this regard.

*Issues not addressed by the Standards Committee*

[30] One of the reasons provided by Mr AB for applying for a review of the Standards Committee determination is that he considers that the Committee has not addressed all of the issues raised by him in his complaint.

[31] He has not identified what issues he considers have not been addressed, and having considered all of the material provided to the Committee, I cannot identify any matter which has not been addressed by it. If I am wrong in this regard, I nevertheless do not consider that any issue would affect the outcome of this decision. Mr CD’s major duty was to his client and he presumably acted on instructions when issuing the statutory demand. This constituted a legitimate means of pursuing [EF] for the monies owed.

**Decision**

[32] Pursuant to s 211(1) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

**DATED** this 5<sup>th</sup> day of August 2020

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**O Vaughan**  
**Legal Complaints Review Officer**

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr AB as the Applicant  
Mr CD as the Respondent  
Ms IJ as the Related Person  
[Area] Standards Committee [X]  
New Zealand Law Society

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<sup>8</sup> See for example *Hunstanton v Camborne & Chester* LCRO 167/2009 at [62].