NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

Decision No. [2010] NZLCDT 10

LCDT 004/10

IN THE MATTER of the Lawyers and Conveyancers Act 2006 and the Law Practitioners Act 1982

BETWEEN **AUCKLAND DISTRICT LAW SOCIETY**

Applicant

AND **JONATHAN BRUCE MATHIAS**

Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr J Clarke
Dr I McAndrew
Ms S Sage
Mr O Vaughan

HEARING at AUCKLAND on 9 June 2010

APPEARANCES

Mr D Jones QC and M Treleaven for the New Zealand Law Society
No appearance for the Practitioner

DECISION OF NEW ZEALAND LAWYERS AND CONVEYANCERS TRIBUNAL

[1] At the commencement of the hearing we were informed by Mr Jones that he had received a message that neither Mr Mathias nor Mr Boyd who had been assisting Mr Mathias in an informal way would be present at the hearing. That did not pose a difficulty because at an early stage Mr Mathias admitted each of the 13 charges faced by him and before the Tribunal for consideration at this hearing. Mr Mathias had also filed a written submission appending some medical reports for the Tribunal's consideration at the sanctioning hearing. He indicated in his response to the charges that he not only saw strike off as an inevitable outcome of the hearing but also that he indeed consented to such.

[2] Mr Mathias admits 13 separate charges of misconduct in his professional capacity. They arise both from complaints made by former clients and from the Law Society's own investigation of Mr Mathias and his practice. Because of the timing of the offending six of the charges fall to be considered under the Law Practitioners Act 1982 ("LPA"), in terms of penalty pursuant to the transitional provisions of the Lawyers and Conveyancers Act 2006 ("LCA") ss.351-353.

[3] The misconduct continued over a period of some six years. As pointed out in the submission filed on behalf of the New Zealand Law Society the misconduct covers the spectrum of improper conduct in which a solicitor can engage. A list of the specific behaviour which forms the basis for the charges is set out in the summary of facts which has been filed by the Society and accepted by Mr Mathias himself. We consider it proper, given the background to this offending and the large number of complainants, to set out the summary of facts in its entirety in this decision.

Summary of Facts

Background

2. Mr Mathias was admitted to the roll of barristers and solicitors on 15 February 1980. He worked as a barrister and solicitor and joined

Stainton & Chellow as a consultant. He then setup and operated the firm Mathias Law, of which he was the sole principal.

3. A model was adopted by the Blue Chip Group of Companies whereby it would recommend to investors a list of professionals to act on behalf of investors who were purchasing property from or through a Blue Chip company. The investors would variously commit to purchasing residential properties and to guaranteeing or funding purchases and/or advances made in relation to property. Many of the investors were persons who owned their own homes, but had few other assets. The interests of the investors depended on the Blue Chip companies involved in the transactions remaining solvent and satisfying their obligations.

4. Mr Mathias became involved with such transactions by receiving referrals from Blue Chip to act on behalf of investors. He became a preferred provider of services for the Blue Chip Group. The situation developed to a point where Blue Chip was a significant source of income for Mr Mathias and his legal firm and he was acting on a large number of transactions arising from the Blue Chip referrals. Mr Mathias' practice became reliant on Blue Chip's referred work. When issues relating to the efficacy of Blue Chip transactions arose, Mr Mathias' advice to clients and his conduct failed to account for legitimate concerns and problems. It is against this background that the matters of complaint arose.

The complaint

5. The charges cover a period of some 6 years. The conduct of the practitioner giving rise to the charges is varied and covers a wide range of impropriety. The areas of misconduct can be summarised as follows:

    5.1 Acting when he had a conflict of interest.

    5.2 Acting in breach of the relationship of trust and not acting as an independent legal adviser in the client's interests.

    5.3 Not advising the client as to the effect of certain documents, transactions generally and the consequences upon their non-compliance with legal obligations or the possible failure of Blue Chip companies.

    5.4 Charging for work which was not done, not completed, or charging for work which was completed but not requested by the client. This work was normally related to the setting up (or not) of a family trust or other vehicle through which transactions would be conducted.

    5.5 Deducting money from funds held in trust to pay invoices for fees without the authority of the client. This related to situations when work had not been done or completed.

    5.6 Using clients' funds for a purpose other than that which they were paid into trust for.

5.7 Failing to re-pay client funds held by him when requested by the client.

5.8 Allowing his trust account to be overdrawn on 5 different occasions.

5.9 Failing to respond to client requests or queries in a timely manner, or at all.

5.10 Entering into transactions with a client when he, or an entity he was involved with, was a party to those transactions, without advising the client of his conflict or to obtain independent advice.

5.11 Misleading clients in terms of the effect of a transaction.

5.12 Breach of undertakings to other solicitors during the course of transactions involving entities that he was associated with and in control of.

5.13 Completing the settlement of a conveyancing transaction by transferring title of 10 units to his own company when the full settlement funds had not been paid into trust.

5.14 Providing (belatedly) a settlement statement (for the above transaction) which was misleading and showed the full settlement amount had been paid into trust, when it had not.

5.15 Failure to disclose to the client agency fees or commissions he was receiving.

5.16 Used his trust account for personal transactions in breach of trust account regulations.

5.17 Borrowed money from a client without advising the client to obtain independent legal advice or the client's informed consent.

5.18 Failure to produce documents for inspection when required to do so under section 147(2) of the Lawyers and Conveyancers Act 2006.

6. The complaints cover a broad spectrum of misconduct ranging from: not responding adequately or at all to client request or instructions – to negligence in his advice – to dishonesty in his dealings with other practitioners and clients. As a result of his conduct, the practice of Mr Mathias and his dealings with clients and other practitioners was significantly compromised for an extended period of time. He has accordingly brought the profession into disrepute.

7. As a result of Mr Mathias' conduct, clients have suffered significant financial hardship including in some cases, the actual or impending loss of their home.

8. Mr Mathias voluntarily undertook not to practise on 27 February 2009. His practising certificate expired on 30 June 2009.

9. Mr Mathias was adjudicated bankrupt on 1 October 2009.

10. The Society seeks reimbursement of its costs in terms of this prosecution.

11. The Society's position is that the conduct of the practitioner is such that strike off from the roll of barristers and solicitors is the only appropriate sanction.

[4] As pointed out by counsel for the Society Mr Jones, any one of the 18 charges, reflected in the 13 charges, could of itself warrant strike off. We accept Mr Jones' submission that the combined effect of the charges is that Mr Mathias is utterly unsuited to practising as a lawyer and that protection of the public and upholding of the profession's reputation as a whole require that he be removed from the roll. It is the unanimous decision of the five members of the Tribunal that he is not a fit and proper person to be a legal practitioner.

[5] In his submissions Mr Jones refers to self-interest and greed as the motivating factors behind the misconduct and goes on to point out that the breaches of his obligations to his clients and his colleagues became more egregious as time went on. As the number of referrals from the Blue Chip Group of companies increased Mr Mathias became increasingly financially dependent on the work which was referred to him, thus he lost his independence as a solicitor for the clients whose interests he ought to have had foremost in his mind. He charged fees for work not requested or completed, breached undertakings to other solicitors in transactions where he was personally involved and misled clients in relation to the effect of transactions or failed to advise them entirely of the risks which they faced in signing documents with the Blue Chip Group.

[6] To his credit Mr Mathias is at least able to acknowledge the accuracy of the summary of facts. He refers in his submission to being flattered by the referrals from Blue Chip believing them to be a successful company with a strong professional board. He says he had no reason to doubt or question their bona fides. On reflection he accepts the additional work referred by them and the extra revenue "blurred [his] vision". He acknowledges that as a result he did not scrutinise the

transactions in a way that he ought to have as an independent legal adviser. He acknowledges that in that way he failed his clients. He goes on to talk about how overwhelmed he was after the collapse of Blue Chip and that his inaction at this time aggravated matters further, particularly for the clients who relied on him.

[7] Mr Mathias has been declared bankrupt and at 55 has lost his career and his home and is said to be medically unfit to work (other than part-time) at the present time.

[8] We accept the Society's submission that Mr Mathias has conducted himself in a way which has brought the profession into disrepute and undermined public faith in the legal fraternity. That his actions continued over such a lengthy period of time demonstrates Mr Mathias as completely untrustworthy in the role of a legal adviser. The statements of many of the complainants, his former clients, are a sad testament to Mr Mathias' failures. Some are elderly, some were persuaded by Blue Chip representatives to engage Mr Mathias rather than their usual lawyer.

[9] In the course of the proceedings the Law Society provided to the Tribunal evidence of Mr Mathias' previous offending. What is particularly relevant is that a number of the defaults which feature in the present charges also featured when he was charged in 2001.

[10] On 17 August 2001 the then New Zealand Law Practitioners' Disciplinary Tribunal made orders preventing Mr Mathias from practicing as a solicitor on his own account. He was censured and in addition there was an order that even as an employee he was to play no part in the administration of any firm's trust account. The decision was a brief one with a note that full written reasons would be delivered subsequently. There was no order for suppression and indeed there was a recommendation under s.134 of the LPA that there be publication under s.135 of the outcome of the hearing. The written reasons do not seem to have been provided which is somewhat unfortunate since in December 2005. Mr Mathias' situation was again considered by the New Zealand Law Practitioners' Disciplinary Tribunal which comprised different members from those who had sat in 2001; these were not before the Tribunal. Mr Mathias sought an order removing the restriction on his ability to

practise on his own account. The Tribunal then recorded that the application was not opposed by the Auckland District Law Society and because of that was prepared to make an order authorising Mr Mathias to practise on his own account recording:

> "[4] It is not intended that we will go into the circumstances of the previous case or traverse the matters raised before us, suffice that we are satisfied that the authority should now be given."

[11] The authority to practise was given on conditions that the practice was to be available for inspection at six-monthly intervals by the audit inspector for the New Zealand Law Society; secondly that advice be taken by Mr Mathias from a principal in another Auckland law firm and that Mr Mathias provide that practitioner authority to enable an audit should that be considered appropriate.

[12] Although publication had been recommended in 2001, it was recorded in the 2005 decision that this had not occurred. Further it was erroneously recorded by the second Tribunal that no recommendation on publication had been made. In fact, as referred to above, a recommendation had been made pursuant to s.134. Because there had been no publication the Tribunal recommended in 2005 that Mr Mathias' name not be published. While the error as to non-publication orders seems to have been addressed shortly after the 7 December 2005 hearing, there was still a determination that no publication occur.

[13] We do not have evidence as to the process by which the decision about non-opposition to Mr Mathias' practising on his own account was reached. We make the comment that in future such applications will undoubtedly need to be carefully scrutinised by the Society before there is agreement or non-opposition to a practitioner applying to recommence practice on his own account.

[14] The Society seeks costs in respect of the considerable work which has been put into presenting the case against Mr Mathias. Although Mr Mathias' circumstances are poor at the present time, he deposes that he receives a "modest weekly sum from medical disability insurance".

[15] We accept the Society's submission that costs orders ought to be made notwithstanding Mr Mathias' circumstances in case they are able to be enforced at

some time in the future, because there is no reason why the profession as a whole ought to have to bear the entire costs of the prosecution. Because the charges range over a period of time so that approximately half are to be considered under the LPA and half under the LCA, we have apportioned costs accordingly. We consider the total costs of $24,890 high. We have reduced the award to $20,000 in part to reflect the level of co-operation of the practitioner. Thus we make the following orders:

(1) There will be an order under s.242(1)(c) of the LCA striking the practitioner's name off the role of barristers and solicitors.

(2) Pursuant to s.112(2)(g) of the LPA, costs are awarded to the New Zealand Law Society in the sum of $10,000.

(3) Pursuant to s.249 of the LCA:

(a) Costs are awarded to the New Zealand Law Society in the sum of $10,000.

(b) There is a reimbursement order against the practitioner for those costs ordered against the Society under s.257 of the LCA ($2250).

(4) An order that the Society reimburse the Crown for the costs of the Tribunal pursuant to s.257 LCA to be an award of 50 percent of the actual costs as fixed by the Chairperson, namely $2250.

(5) Pursuant to s.240 the only restriction on publication is to relate to the practitioner's medical condition and to names and particulars of the complainants.

(6) There is to be publication of the strike off pursuant to s.256.

DATED at AUCKLAND this 21st day of June 2010

Judge D F Clarkson
Chairperson