

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2013] NZLCDT 12

LCDT 014/11

IN THE MATTER

of the Lawyers and
Conveyancers Act 2006

BETWEEN

**CANTERBURY-WESTLAND
STANDARDS COMMITTEE**

Applicant

AND

TIM BAN CHOON TEE

Respondent

MEMBERS OF TRIBUNAL

Mr D Mackenzie (Chair)

Mr W Chapman

Mr M Gough

Mr A Lamont

Mr S Walker

HEARING at CHRISTCHURCH on 27 March 2013

APPEARANCES

Mr G Nation, for the Standards Committee

No appearance for the Respondent

RECORD OF AND REASONS FOR DETERMINATIONS OF THE TRIBUNAL
MADE ON 27 MARCH 2013

Introduction

[1] The Canterbury-Westland Standards Committee laid three charges against Mr Tee, alleging professional misconduct in each case. The charges were heard in Christchurch on 27 March 2013, and the Tribunal found each charge proven. At the conclusion of the hearing the Tribunal indicated that it would provide a full record of its determination, with its reasons for determination, in due course. This document constitutes that record and reasons.

The Charges

[2] The first charge which Mr Tee faced alleged professional misconduct under s 112(1)(a) Law Practitioners Act 1982. Mr Tee was said to have borrowed \$52,000, in September 2004, from clients of his, A C and B C, contrary to Regulation 6 Solicitors Trust Account Regulations 1998.

[3] The second professional misconduct charge, also under s 112(1)(a) Law Practitioners Act 1982, alleged that Mr Tee had failed to account to a client, D E, for a sum of \$1,400. This amount had been paid to Mr Tee in April 2008 by Mr E, in respect of an application for permanent residency on which Mr Tee was to act. No application was progressed, and Mr Tee took the \$1,400 for his own purposes by transferring it from Mr E's trust account with Mr Tee's firm to Mr Tee's office account in July 2008.

[4] The third misconduct charge faced by Mr Tee related to a sum of \$10,200 received by Mr Tee from a client, F G, in March 2010. Of this amount the sum of \$10,000 was said to be on account of costs for applications for a work permit and residency for Ms G, and the balance of \$200 was said to have been provided to Mr Tee as a gift. It was alleged that the payment was not placed into a trust account for Ms G, no trust account receipt was issued, and that Mr Tee's records regarding the

payment were inadequate, with the location and application of the funds unclear. The part of the payment said to be a gift was alleged to have been made without Ms G obtaining independent advice.

Mr Tee's position

[5] Mr Tee filed a pro forma response to the charges under r 7 Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations 2008. In that response he denied all of the charges.

[6] In respect of the first charge he acknowledged in his response that he had borrowed money from his clients, but said his conduct did not amount to professional misconduct as the money was borrowed with the informed consent of his clients.

[7] In respect of the second charge, Mr Tee indicated in his response that the \$1,400 was taken as fees, and that his delay in rendering an account for fees did not amount to professional misconduct.

[8] So far as the third charge was concerned, in his response Mr Tee denied the facts as alleged, and said that Ms G was not his client. He did acknowledge that Ms G had passed to him \$200 as a gift, but said that taking that gift did not amount to professional misconduct.

[9] Mr Tee lodged no evidence to support his position, despite directions to do so from the Tribunal. Mr Tee did file a "Brief of Evidence" which he claimed raised matters in his defence, but despite repeated requests from the Tribunal he failed to file an affidavit in support of his defence. The Tribunal has read Mr Tee's Brief of Evidence, but gives it little weight. It is not sworn or affirmed, it is not complete, with none of its Appendices attached, and it contains allegations and statements that are not relevant and/or attempt to introduce statements from third parties as evidence of certain matters. It does little to answer the charges or the evidence filed by the

Standards Committee, and in one place appears to contradict a position taken by Mr Tee in his response¹.

The case for the Standards Committee

First Charge – borrowing money from a client in breach of r 6 Solicitors Trust Account Regulations 1982.

[10] Mr C, in his affidavit dated 9 June 2011, deposed that he had lent \$52,000 to Mr Tee as a consequence of an approach made to him by Mr Tee.

[11] Mr C deposed that the bulk of the money lent by Mr C to Mr Tee had come from a finance company loan arranged to purchase a commercial building and business. The finance company loan had provided Mr C with a surplus of \$50,000 over the amount required to settle the purchases. Mr Tee had acted for Mr C on the purchases, and he was aware that Mr C had this surplus.

[12] The loan from Mr C to Mr Tee was recorded in an Acknowledgment of Debt prepared by Mr Tee, which was exhibited on Mr C's affidavit.

[13] Mr C stated that at no stage did Mr Tee advise him that he should obtain independent advice about making the loan to Mr Tee, nor did Mr Tee raise the issue of a conflict of interest arising from a client lending money to his solicitor.

[14] As it turned out, Mr Tee defaulted on payments, and the District Court at Christchurch entered judgment against Mr Tee for \$76,504.35 plus costs and disbursements as approved by the Registrar. Of that amount, only \$4,000 has been received by Mr C.

¹ In his response Mr Tee says that he borrowed funds from A C and B C with their informed consent, but in his "Brief of Evidence" Mr Tee says that he did not borrow money from A C, but from A C's father, H I, who was not a client of Mr Tee's.

[15] Mr Tee did not lodge evidence in support of his denial that his conduct in borrowing the money amounted to professional misconduct, and there was no appearance for Mr Tee. We will comment on this more fully later.

Second Charge – failing to account to a client for funds lodged in his trust account by that client.

[16] Mr E, in his affidavit dated 5 May 2011, deposed that he had paid \$1,400 at Mr Tee's office for fees regarding Mr E's application for residency. He stated that he was not given a receipt for that payment.

[17] The application did not proceed as planned, as Mr Tee failed to file it within the required period. Mr E stated that as a consequence he sought to obtain his money back from Mr Tee, but in September 2009 Mr Tee advised Mr E that he was in financial difficulty. Mr E stated that Mr Tee indicated to him at that time that he would pay the money back when able to do so. Mr E's new legal representatives eventually managed to obtain payment of the \$1,400 for Mr E.

[18] In the interim, the evidence showed that Mr Tee had utilised the \$1,400 for his own purposes, by transferring that amount from Mr E's account in Mr Tee's solicitors trust account to Mr Tee's business account. An affidavit of Philip Michael Strang, a New Zealand Law Society inspector, dated 15 June 2011, confirmed that Mr Tee had closed his trust account in July 2008 and had taken the \$1,400 at that time. Mr Tee had used the money to reduce his business account overdraft with his bank.

[19] Again, Mr Tee lodged no evidence in his defence of this charge.

Third Charge – failing to place amounts received from a client on account of costs in a trust account, and not advising that client to seek independent advice regarding a gift.

[20] Ms G, in an affidavit dated 17 July 2011, confirmed that in August 2009 she had been offered employment with a company controlled by a Mr J, conditional on Ms G obtaining a work permit. She made an application to Immigration New

Zealand, but was declined a work permit. As a consequence she decided to seek permanent residency in New Zealand.

[21] Mr J had an interest in this as her intending employer, and arranged for a lawyer he knew, a Mr Y, to assist regarding Ms G's application. It appears that Mr Tee became involved in making the application at some point. Mr Tee applied for a reconsideration of Ms G's earlier application for a work permit and made an application for her residency.

[22] When Ms G became concerned in March 2010 at what she considered a lack of progress, she approached Mr J who informed her that she was required to pay Mr Tee \$10,000 cash for the application plus a further \$200 as a gift to Mr Tee for his work. Mr J insisted that the amounts be paid in cash, she stated.

[23] Ms G's affidavit confirmed that she met with Mr Tee on 22 March 2010, and paid Mr Tee \$10,200 in cash as required for the legal work he was doing on her application. She had withdrawn this money from her bank account that day, as the evidence showed.

[24] Mr Tee did not provide a receipt for \$10,200, and made no comment about independent legal advice regarding the gift of \$200 Ms G was making to him as part of that payment, or whether such a gift was proper. Ms G also deposed that at no time after the payment by her of the \$10,000 for legal work did she ever receive an invoice from Mr Tee indicating the extent and cost of his legal services.

[25] Eventually, after Mr Tee had told her it had been suggested to him by Mr J that there was a problem with her immigration application, and that it would require another \$50,000 in cash to sort the problem out, Ms G discontinued her application for permanent residency.

Determination made

[26] There was no evidence filed by Mr Tee in support of his defence, nor any appearance for Mr Tee at the substantive hearing. It had been apparent through the

entire disciplinary process following the laying of charges that Mr Tee was refusing to engage in the process. The Tribunal can of course only deal with the matters properly in evidence, and the Tribunal had warned Mr Tee on a number of occasions that he needed to engage in the disciplinary process to ensure his defence was adequately before us.

[27] At the conclusion of the substantive hearing on 27 March 2013, the Tribunal found that the evidence put before the Tribunal by the Standards Committee² proved each of the charges to the required standard.³

[28] The evidence against Mr Tee was unequivocal. His conduct, as specified in the particulars of each charge (subject to what we say below regarding one particular in the third charge) marks a significant and unacceptable departure from required standards.

[29] In respect of the first and second charges (which were heard under the transitional provisions contained in s 351 Lawyers and Conveyancers Act 2006) Mr Tee's conduct is clearly misconduct under the Law Practitioners Act 1982.

[30] First, he has borrowed money personally from a client without raising the issue of independent advice. It is an action that prejudices the solicitor/client relationship, and reflects a serious conflict of interest involving personal advantage to the solicitor.

[31] Second, he has taken client funds in a trust account and applied them for his own purposes. Even if he had completed the legal work for which the \$1,400 was paid (and it appears he did not), Mr Tee has had no regard for the transparency necessary in such situations, achieved by the rendering of an account showing services provided and fees charged. The client had no idea where his money had gone and had to retain other legal advice to get that money back.

² Affidavit of A C dated 9 June 2011, affidavit of D E dated 5 May 2011, affidavit of Philip Michael Strang dated 15 June 2011, and an affidavit of F G dated 17 July 2011. All of these affidavits were filed in support of the charges on 17 August 2011. There was also a further affidavit from D E dated 12 September 2012, filed with the Tribunal on 14 September 2012, in response to Mr Tee's "Brief of Evidence" filed in this matter.

³ On the balance of probability, flexibly applied – see *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

[32] These actions represent a deliberate departure from accepted standards of conduct. They are compounded by the personal advantage accruing to Mr Tee from his misconduct, an advantage which directly correlates to the disadvantage suffered by his clients involving their funds used by Mr Tee. Mr Tee shows by his conduct a complete indifference to his professional duties and his responsibilities to his clients. His actions and attitude constitute professional misconduct.⁴

[33] In respect of the third charge, Mr Tee's conduct constitutes misconduct under s 7(1)(a)⁵ and (b)⁶ Lawyers and Conveyancers Act 2006. Mr Tee has taken funds with no proper trust accounting, and with no invoicing showing a justification for such an amount, as more particularly set out in the evidence. Our focus here is the \$10,000 Mr Tee was paid by Ms G in respect of her applications, which contradicts his claim that he did not act for Ms G but acted only for her potential employer. While we have some concerns about the \$200 taken as a "gift", because it was not a significant amount we doubt that prior independent advice was necessary under the relevant provision of the Client Conduct and Care Rules in respect of that gift.⁷

[34] We commented above regarding Mr Tee's failure to provide any proper evidence or to adequately engage in the disciplinary process. Mr Tee retained counsel (Mr M I Withers) to assist him in his defence of these charges. Apart from his response to charges, as required by r 7 Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations 2008, Mr Tee has chosen not to file a defence, to continually ignore Tribunal directions, and not to appear at the hearing of the substantive charge, either in person or by counsel. Because Mr Tee is now working and residing in Asia, the Tribunal offered him Remote Participation by audio visual link, but he declined to take that up.

[35] To ensure there is clarity about the approach Mr Tee has chosen to take to this matter, we have set out the history at Annex A, commencing from the time

⁴ See *Re A (Barrister and Solicitor of Auckland)* [2002] NZAR 452; and *Complaints Committee No.1 of the Auckland District Law Society v C* [2008] 3 NZLR 105.

⁵ His conduct is properly described as disgraceful or dishonourable – *Myers v Elman* [1940] AC 282.

⁶ For example, his conduct breaches ss 110 – 112 Lawyers and Conveyancers Act 2006.

⁷ Rule 5.8.1.

charges were laid. This history, which forms part of the formal record of our determination, shows continuing delay, lack of cooperation in the disciplinary process itself, non-compliance with directions, and a deliberate decision not to participate.

Record of Determination

[36] At the conclusion of the substantive hearing, we found all three misconduct charges against Mr Tee proven. Those findings are now formally recorded against Mr Tee. Our reasons are set out above.

Section 257 Certification

[37] For the purposes of s 257 Lawyers and Conveyancers Act 2006, costs will be certified at the hearing on penalty. At the date of this record of decision and reasons therefore, those costs stand at \$7,100. A final amount will be certified at the penalty hearing.

Submissions on Penalty and Costs

[38] The Standards Committee is to file and serve its submissions on penalty and costs within three weeks of the date of this record of determination and reasons. Mr Tee is to file and serve his submissions on penalty and costs within three weeks of service of the penalty submissions of the Standards Committee.

DATED at AUCKLAND this 5th day of April 2013

D J Mackenzie
Chair

Annex A

1. Charges filed with the Tribunal on 17 August 2011.
2. Service on Mr Tee completed on 4 October 2011.
3. Rule 7 response due from Mr Tee within 10 working days of service.
4. No response received from Mr Tee by due date.
5. Rule 7 response from Mr Tee filed on 27 March 2012.
6. First judicial conference 29 March 2012: Mr Tee requires a separate hearing for each charge – directed to make an application with supporting material within 14 days.
7. Application by Mr Tee filed 12 April 2012 seeking: a series of separate hearings over a period of six years: different Tribunal members for each hearing; and, an order that witnesses be personally present for cross examination rather than by video link.
8. Application for separate hearings dismissed and video link approved for participation of any witness overseas, on 14 May 2012.⁸
9. Second judicial conference 28 June 2012 and directions given that: Mr Tee must file his evidence in affidavit form by 27 July 2012⁹; Mr Tee (who was residing overseas) must advise whether he can attend the substantive hearing, and if not, he is to make a formal application by 27 July 2012 for

⁸ *Standards Committee 3 of Canterbury-Westland Branch of the New Zealand Law Society v Tee* [2012] NZLCDT 11.

⁹ All evidence is to be filed by way of affidavit in this Tribunal – see r 25(1) Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations 2008 and see also Tribunal Practice Note dated 10 September 2010, Amended 28 September 2012 at paragraph [5.2].

an alternative mode of participation. Case Manager to liaise with counsel regarding a substantive hearing in late September 2012.

10. Mr Tee fails to comply with above directions.
11. Third judicial conference 15 November 2012: Mr Tee is again required to file his evidence in affidavit form, this time by 7 December 2012. Substantive hearing proposed for a date in mid February 2013.
12. Mr Tee fails to comply with above direction.
13. Fourth judicial conference 5 February 2013: Counsel for Mr Tee acknowledges that his client has continued to fail to comply with directions and that no defence evidence has been filed in affidavit form as required. Charges are set down for hearing in Christchurch on 27 March 2013 and Mr Tee is directed: to file his defence affidavits by 28 February 2013; and, to confirm in writing his mode of participation (video link or in person). Mr Tee is warned that his lack of engagement in the disciplinary process may result in the Tribunal dealing with the matter by way of formal proof at the hearing set down for 27 March 2013 if he continues to fail to comply with the Tribunal's directions.
14. Mr Tee fails to comply with above directions.
15. Substantive hearing held on 27 March 2013 as notified. No evidence from Mr Tee and no appearance for Mr Tee. The matter proceeded on the basis of the Standards Committee's evidence before the Tribunal at that time.