

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2014] NZLCDT 13
LCDT 016/13, 002/14

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE No. 2**
Applicant

AND

RICHARD HOLLAND
Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman

Ms C Rowe

Ms M Scholtens QC

Mr P Shaw

HEARING at the Auckland District Court

DATE OF HEARING 17 February 2014

APPEARANCES

Mr M Hodge for the Standards Committee

Mr C Morris for the Practitioner

**DECISION OF NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**
(ON PENALTY)

Introduction

[1] Two sets of charges have been filed against Mr Holland. Five charges were laid in July 2013 and a further two charges in January 2014. The full set of charges are set out in the appendix to this decision.

[2] Charge 4 of the first set of charges was withdrawn by leave of the Tribunal at the penalty hearing.

[3] At the penalty hearing Mr Holland accepted that strike-off was an inevitable consequence of his admitted misconduct. He conceded that he was no longer a fit and proper person to practice as a barrister and solicitor.

[4] On that basis, having unanimously agreed that strike-off was the proper penalty the Tribunal made an order on 17 February striking Mr Holland off and made certain consequential orders as to compensation and costs, reserving the reasons for its decision. In addition the Tribunal has reserved for further submissions the issue of compensation relating to the January charges, and costs on those charges also.

Background

[5] This background is drawn from the submissions of counsel for the Standards Committee, Mr Hodge. The first complainant Ms H who, was also a friend of the practitioner complained, in March 2013 to the New Zealand Law Society that Mr Holland had misappropriated some \$200,000 from her. She made a claim from the Lawyers Fidelity Fund for the maximum amount of \$100,000 in respect of this loss. As set out in Mr Hodge's submissions:

“These funds were the proceeds of the settlement of the sale of a property in X. Mr Holland acted for Ms H on that transaction and took \$39,404.50 as fees. Ms H was not provided with a proper account and it is difficult to conceive of how that amount could be justified as fees on the sale of a residential property.

The remaining \$160,595.50 was misappropriated by Mr Holland. Mr Holland subsequently had Ms H sign a loan agreement in relation to these funds, which was a sham agreement designed to conceal the fact that he had in fact taken them without permission ... “

[6] The charges also arise in part out of an audit of the trust account of Holland and Holland in respect of which Mr Holland was the trust account manager.

[7] The auditor found that Mr Holland had:

[a] Failed to keep correct Trust Account records; and

[b] Improperly took fees from the Trust Account.

[8] These matters form the subject of the four remaining July 2013 charges.

[9] The two recent charges arose out of two further misappropriations by the practitioner from corporate clients, in one case from the proceeds of sale where a shortfall of \$86,943.65 was found in relation to proceeds of sale of a property. In the second matter the practitioner either misappropriated or failed to account for \$4,600 in respect of various transactions for another client.

Submissions for the Standards Committee

[10] Mr Hodge submitted that dishonesty on this scale could only be met by a penalty of strike-off. He referred to the breaches of trust involved, which we accept is abrogation of the most basic and important of a lawyer's duties. We were referred to the dicta in the decisions of *Bolton*,¹ *Dorbu*² and *Hart*.³

[11] All of these decisions refer to the need for absolute integrity and trustworthiness in legal practitioners. We are also reminded that the purpose of penalties in a disciplinary context is primarily the protection of the public and the upholding of professional standards and the reputation of the profession. That said it is recognised that there is usually a punitive effect on the offending practitioner.

¹ *Bolton v New Zealand Law Society* [1994] 2 All ER 486, 492.

² *Dorbu v New Zealand Law Society* [2012] NZAR 481 (HC).

³ *Hart v Auckland Standards Committee No. 1 of the New Zealand Law Society* [2013] NZHC 83.

Submissions for the practitioner

[12] Mr Morris accepted, on behalf of his client that Mr Holland was no longer a fit and proper person to practice as a barrister and solicitor. He acknowledged that Mr Holland had fallen far short in his obligations, and he tendered two written apologies from Mr Holland to Ms H and to his colleagues in the legal profession. We accept his expression of remorse and deep regret that he was ending his 32 year legal career in this manner.

[13] Mr Morris also pointed to the impecunious circumstances of the practitioner (which undoubtedly contributed to the offending, which started when his personal finances suffered). His home has been sold by mortgagee sale with a huge shortfall. He is not working and is dependent on his wife's income. They have one child. He has been treated for stress and depression.

Penalty

[14] The starting point assessing penalty is to focus initially on the nature of the misconduct or put another way, gravity of the charges. It is accepted that admitted dishonesty is, in the large majority of cases, likely to lead to strike-off. In this case the behaviour has been so blatantly dishonest, with the practitioner taking benefit (at least in the short term) at the expense of his clients, that he is realistic enough to accept that no penalty short of strike-off would suffice to meet the purposes stated above.

[15] Mr Holland has breached the rules which form the protective framework for the handling of client monies. He has stolen from his clients and has no means of repaying them, at least in the short term.

[16] The Tribunal finds unanimously that he must be struck from the Roll of Barristers and Solicitors.

[17] In acknowledging his wrongdoing promptly (he handed in his Practising Certificate as soon as he was discovered) and accepting the gravity of his offending meant inevitable strike-off, the practitioner has acted responsibly.

[18] In addition he appeared before us, in a dignified manner, to receive his penalty and to make his apology in person, as well as instructing counsel to represent him. This is behaviour which, sadly, is not as common as would be expected from professionals from whom integrity is expected. He deserves some credit for this, and it will be reflected in the costs orders we make. It may also serve him well should he apply in future for reinstatement to the Roll.

Orders

1. We confirm the order for strike-off made on 17 February.
2. We make an order as to compensation in favour of the client in respect of the two charges relating to Ms H in the maximum sum of \$25,000 each.
3. We make an order for compensation in favour of ALJWK Ltd in the sum of \$25,000.
4. We make an order for compensation in favour of A Ltd in the sum of \$4,600.
5. We make a Costs order in respect of the costs of the Law Society for 50% of the actual costs incurred in respect of both sets of charges.
6. We make a s 257 order for the costs of the Tribunal, against the New Zealand Law Society (NZLS) in the sum of \$1,628.
7. We make an order that the practitioner reimburse the full Tribunal costs to the NZLS.

DATED at AUCKLAND this 30th day of April 2014

Judge D F Clarkson
Chair

Charges (July 2013)

Misconduct within the meaning of s 7(1)(a)(i) and/or s 7(1)(a)(ii) of the Lawyers and Conveyancers Act 2006 (**Act**).

The particulars of the charge are as follows:

- 1 At all material times between 30 August 2010 and 15 March 2013 (**relevant period**) the Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand and held a current practising certificate.
- 2 During the relevant period, the Practitioner was in practice as principal in the firm Holland & Holland (**firm**). Throughout the relevant period the Practitioner provided regulated services within the meaning of s 6 of the Act.
- 3 During the relevant period, the Practitioner was the firm's trust account supervisor within the meaning of Regulation 16(1)(a) or (b) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (**Trust Account Regulations**).
- 4 On or about 30 August 2010, following the sale of Ms H's property at X, Ms H's share of the settlement funds, which amounted to \$200,000 (**settlement funds**), was deposited into the firm's trust account.
- 5 The practitioner deducted \$39,405.50 in legal fees from the settlement funds without issuing a dated invoice and without a signed authority in writing from Ms H.
- 6 In doing so, the Practitioner's actions amounted to misconduct within the meaning of s 7(1)(a)(i) and s 7(1)(a)(ii) of the Act in that it amounted to conduct that:
 - (a) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable; and/or
 - (b) consisted of a wilful or reckless contravention of Rule 9 the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**Rules**) in that it was not a fair and reasonable fee; and/or
 - (c) consisted of a wilful or reckless contravention of Regulations 9(1)(a) and 9(1)(b) of the Trust Account Regulations.

Charge two

Misconduct within the meaning of s 7(1)(a)(i) and/or s 7(1)(a)(ii) of the Act.

The particulars of the charge are as follows:

- 1 Particulars 1 to 5 for charge one are repeated.
- 2 The Practitioner misappropriated and/or failed to account to Ms H for the balance of the settlement funds \$160,595.50 in the trust account.
- 3 In doing so, the Practitioner's actions amounted to misconduct within the meaning of s 7(1)(a)(i) of the Act in that it amounted to conduct that:

- (a) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable

Charge three

Misconduct within the meaning of s 7(1)(a)(i) and/or s 7(1)(a)(ii) of the Act.

The particulars of the charge are as follows:

- 1 Particulars 1 and 2 for charge two are repeated.
- 2 Having misappropriated and/or failed to account to Ms H for the balance of \$160,595.50 in the trust account, the Practitioner on or about 5 June 2012 encouraged Ms H to sign a sham loan agreement.
- 3 That agreement purported to document a loan agreement between the Practitioner and Ms H by which the misappropriated funds were loaned to him on 25 February 2011.
- 4 In doing so, the Practitioner's actions amounted to misconduct within the meaning of s 7(1)(a)(i) and/or s 7(1)(a)(ii) and/or s 7(1)(b)(ii) of the Act in that it amounted to conduct that:
 - (a) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable; and/or
 - (b) consisted of a wilful or reckless contravention of Rule 5.1 of the Rules, which requires that relationship between lawyer and client is one of confidence and trust that must never be abused;
 - (c) is conduct which is unconnected with the provision of regulated services but which would justify a finding that the Practitioner is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer.

Charge four

Misconduct within the meaning of s 7(1)(a)(i) and/or s 7(1)(a)(ii) of the Act.

The particulars of the charge are as follows:

- 1 Particulars 1 to 3 for charge three are repeated.
- 2 As part of an investigation into the Practitioner's conduct following a complaint by Ms H, the Committee resolved to set the matter down for a hearing.
- 3 By a letter dated 18 March 2013, the Committee, pursuant to s 147(2)(a) of the Act, also required the Practitioner to produce a number of documents for inspection.
- 4 The Practitioner failed to comply with the Committee's direction.
- 5 In failing to do so, the Practitioner's actions amounted to misconduct within the meaning of s 7(1)(a)(i) of the Act in that it amounted to conduct that:
 - (a) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable.

Charge five

Misconduct within the meaning of s 7(1)(a)(i) and/or s 7(1)(a)(ii) of the Act.

The particulars of the charge are as follows:

- 1 Particulars 1 to 3 of charge 1 are repeated.
- 2 The Practitioner failed to comply with the Trust Account Regulations as particularised in the report of Tim Maffey dated 16 November 2011, which failures included (but are not limited to):
 - (a) failing to keep correct trust account records; and
 - (b) improperly taking fees from the trust account.
- 3 Following the report of Tim Maffey dated 16 November 2011, the Practitioner filed monthly trust account certificates for the months November 2011 to April 2012 inclusive stating that he had complied with the Trust Account Regulations.
- 4 In doing so, the Practitioner's actions amounted to misconduct within the meaning of s 7(1)(a)(i) and s 7(1)(a)(ii) of the Act in that it amounted to conduct that:
 - (d) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable; and/or
 - (e) consisted of a wilful or reckless contravention of Regulations 11 and/or 12 and/or 14 and/or 17 of the Trust Account Regulations.

Charges (January 2014)

Misconduct within the meaning of s 7(1)(a)(i) of the Lawyers and Conveyancers Act 2006 (**Act**).

The particulars of the charge are as follows:

- 7 At all material times between 1 January 2009 and 15 March 2013 (**relevant period**) the Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand and held a current practising certificate.
- 8 During the relevant period, the Practitioner was in practice as principal in the firm Holland & Holland (**firm**). Throughout the relevant period the Practitioner provided regulated services within the meaning of s 6 of the Act.
- 9 During the relevant period, the Practitioner was the firm's trust account supervisor within the meaning of Regulation 16(1)(a) or (b) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (**Trust Account Regulations**).
- 10 During the relevant period the Practitioner acted for ALJWK Limited (**ALJW**) on the sale of a property at X (**property**). The total amount received into the firm's trust account on behalf of ALJW in respect of the sale of the property was \$252,120.00.
- 11 Of this amount, the Practitioner has paid only \$165,176.35 to or on behalf of ALJW. The shortfall of \$86,943.65 has been misappropriated by the Practitioner.

In the alternative, misconduct within the meaning of s 7(1)(a)(ii) of the Act in that the Practitioner has wilfully or recklessly contravened ss 110 and/or 111 of the Act by not holding the \$86,943.65 on trust for ALJW and/or not accounting to ALJW for the \$86,943.65.

Charge two

Misconduct within the meaning of s 7(1)(a)(i) of the Act.

The particulars of the charge are as follows:

- 4 Particulars 1 to 3 of charge one are repeated.
- 5 During the relevant period, the Practitioner acted for A Limited (**A**) on transactions relating to apartments in X. Statements of the firm show that the firm should have been holding the amount of \$10,665.00 on trust for A.
- 6 The firm has paid out \$6,187.64 to A. The firm's statement dated 18 July 2013 shows a fee having been paid to the firm of \$4,600.00. No fee invoice for that amount was ever rendered by the firm. The Practitioner has misappropriated the \$4,600.00.

In the alternative, misconduct within the meaning of s 7(1)(a)(ii) of the Act in that the Practitioner has wilfully or recklessly contravened ss 110 and/or 111 of the Act by not holding the \$4,600.00 on trust for A and/or not accounting to A for the \$4,600.00 and/or reg 9 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 by debiting \$4,600.00 in fees from the firm's trust account without complying with the requirements of reg 9.

And upon the grounds appearing in the affidavit of Timothy Richard Maffey filed in support of these charges.