

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2015] NZLCDT 17

LCDT 039/14

BETWEEN

**WAIKATO BAY OF PLENTY
STANDARDS COMMITTEE No. 2**

Applicant

AND

SHARYN McFARLANE

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr C Lucas

Ms C Rowe

Mr T Simmonds

Mr W Smith

HEARING On the Papers

DATE OF DECISION 4 May 2015

COUNSEL

Mr P Davey for the Applicant

**REASONS FOR THE DECISION OF THE NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING
CHARGE AND PENALTY**

[1] The respondent is charged under s 11 of the Act with misconduct in that in the course of her employment by practitioners she engaged in conduct that would, if it were conduct of a practitioner, render the practitioner liable to have his or her name struck off the roll because she stole funds from 211 clients of her employing law firm totalling at least \$469,000.00. She had been employed by the law firm for 40 years and her actions took place from 1998 until 2013.

[2] The Tribunal met by telephone link to consider the charge brought by the applicant against the respondent. It has chosen to do so in exercise of the power it has under Regulation 31 of the Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations 2008 ("the Regulations") in circumstances where the respondent has herself notified the Tribunal that she does not wish to appear and defend the charge of misconduct made against her and does not dispute any of the matters alleged in support of the charge.

[3] Barrister, Judith Fyfe, met with the respondent at the request of the respondent's case manager at the prison and has confirmed to the Tribunal the position that the respondent has taken and advises that the respondent has wished to assure the Tribunal that she has no intention ever of seeking employment in a lawyer's, or similar, office.

[4] The Tribunal has determined that it is just, therefore, to dispense with a formal sitting to hear the charge.

[5] As a result of her offending, the respondent is presently serving a sentence of three years and four months and two weeks imprisonment imposed on her in the District Court at Palmerston North on 12 August 2014.

[6] The brief summary of the offending discloses that it is so serious that, if she were a practitioner, she would likely have her name struck off the roll.¹ The Tribunal notes that such was the decision in *Auckland Standards Committee v Alexandra Holland*² where the employee had stolen approximately \$445,000.00.

[7] The Tribunal concludes that the respondent is clearly guilty of misconduct under s 11(a) of the Act.

[8] Pursuant to s 242(h)(ii) of the Act, the Tribunal now makes an order that no practitioner or incorporated firm employ the respondent in connection with the practitioner's or incorporated firm's practice so long as this order remains in force.

[9] The Tribunal notes that the respondent accepts that she should not be so employed again.

[10] The respondent's conduct leads to the conclusion that she pay the applicant's costs and refund to the applicant the costs of the Tribunal. She is a serving prisoner; is said to have no assets; and is seeking assistance to file for bankruptcy. None the less the Tribunal finds that the orders in respect of costs and refund should be made. It will then remain for the applicant to seek to recover some costs from her in the future.

[11] The orders of the Tribunal are:

- a. Pursuant to s 242(h)(ii) of the Act, the Tribunal orders that no practitioner or incorporated firm employ the respondent in connection with the practitioner's or incorporated firm's practice indefinitely until further order of the Tribunal.
- b. The respondent is to pay the applicant's costs in the sum of \$1,825.00.
- c. The respondent is to refund to the applicant the s 257 costs of the Tribunal which are certified at \$676.00.

¹ *The New Zealand Law Society's Wellington Standards Committee 1 v Nalder* [2015] NZLCDT 5.

² [2014] NZLCDT 27.

DATED at AUCKLAND this 4th day of May 2015

BJ Kendall
Chairperson