IN THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2011] NZLCDT 2

LCDT 006/10

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**NELSON STANDARDS COMMITTEE**
	Applicant
AND	**STEPHEN LAWRENCE DELAMERE WEBB** of Nelson, Lawyer
	Respondent

CHAIR

Mr D J Mackenzie

MEMBERS OF THE TRIBUNAL

Mr W Chapman
Mr Peter Radich
Ms C Rowe
Mr W Smith

REPRESENTATION

Mr P Whiteside for the Nelson Standards Committee
Mr Paul Radich and Ms Kerr for Mr Webb

HEARING at Nelson District Court, 29 and 30 November 2010

RESERVED DECISION OF THE TRIBUNAL ON CHARGES

Introduction

[1] The Tribunal convened in Nelson on 29 November 2010 to hear three charges laid by the Nelson Standards Committee against Mr Webb. The charges were heard over two days, and at the conclusion of the hearing the Tribunal reserved its decision.

[2] The three charges against Mr Webb all alleged he was guilty of misconduct in his professional capacity. The misconduct was said to have arisen from the way Mr Webb administered an estate of a deceased person, including the way he dealt with the United Kingdom based solicitors who were acting for the executors of the estate.

The Charges

[3] The first charge against Mr Webb related to an email of 28 July 2008 which he sent to the estate solicitors (Milford & Dormer, of Devon, in the United Kingdom). The Standards Committee alleged that Mr Webb, in that email:

(a) Misled Milford & Dormer by stating that it was common practice in Nelson to place a house-sitter into a vacant estate property on a rent-free basis until the property was sold; and/or;

(b) Failed to advise Milford & Dormer that the estate property had been tenanted on a rent paying basis until 23 May 2008, but stated that the property had previously had a house-sitter who looked after the property on a daily basis in lieu of rent; and/or

(c) Informed Milford & Dormer that the law firm in which he was a partner (Stevens Orchard) had some reliable retired couples on their books who could act as house-sitters when in fact that firm had never had any books which listed house-sitters.

[4] Particulars supporting the charge included a statement that it was not in fact common practice in Nelson to place a house-sitter in a vacant estate property on a rent-free basis until such property was sold. In his formal response to the charge, Mr Webb admitted all the particulars, except this statement about what constituted common practice, and he denied that his acts and omissions constituted misconduct.

[5] We refer to this first charge as *"the Email Charge"*.

[6] The second charge against Mr Webb was that he had permitted his parents to occupy the estate property from late August 2008 until mid January 2009 on a rent-free basis, without disclosing that fact to Milford & Dormer.

[7] Particulars supporting the charge were listed, and Mr Webb admitted those particulars in his formal response to the charge, except in respect of the allegation that he did not disclose to Milford & Dormer that he had arranged for his parents to occupy the property. Mr Webb said he had made such a disclosure, and he denied that his acts and omissions constituted misconduct.

[8] During the course of the hearing Mr Webb changed his position on the issue of whether or not he had disclosed to Milford & Dormer the fact that it was his parents occupying the estate property. He accepted that he had not disclosed that fact to Milford & Dormer, but maintained his position that the facts did not disclose any conduct that amounted to misconduct.

[9] We refer to this second charge as *"the Non-disclosure Charge"*.

[10] The third charge against Mr Webb related to the sale of estate chattels, and was laid as follows (so far as relevant):

> "… that on or about 24 October 2008, he effected a sale of chattels ... belonging to the estate ... for $2,000 to his parents at an undervalue, without fully and properly accounting for the chattels so sold, and without disclosing to the Executors of the estate ... that the sale was to his parents."

[11] Mr Webb admitted the particulars supporting the charge, except in respect of an allegation that he had failed to list the chattels sold. He said he had listed the chattels sold. Again, he denied that his acts or omissions constituted misconduct.

[12] We refer to this charge as *"the Chattels Charge"*.

The Tribunal's Approach

[13] The approach we have taken in respect of these charges is: first, to consider what particulars have been established, whether by way of admission or by our findings based on the evidence received by the Tribunal; and second, to consider those particulars established and the evidence, to reach a view as to whether the charges are proven and Mr Webb's conduct amounts to misconduct.

The Particulars

Email Charge

[14] With regard to the particular denied in respect of the Email Charge (that is, whether placing house-sitters into an estate property on a rent-free basis constituted a common practice in Nelson), the Tribunal received evidence from a number of persons.

[15] A local real estate agent, Ms Rollston, gave evidence that house-sitting arrangements did occur in Nelson. She said that when owners were away they sometimes sought the comfort of having someone in the house to reduce the risk of burglary. She said owners saw it as a safety issue, so that when they returned they were "not going to find anything broken into…".[1]

[16] Mr Webb himself gave evidence of his familiarity with other house-sitting arrangements, but acknowledged that in the context of his legal practice that related to arrangements in Christchurch, rather than Nelson. He also acknowledged that while he considered it common practice to have house-sitters occupy a property, he had no experience of such arrangements in Nelson in an estate context.[2]

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[1] Transcript, at pp 190, line 19: Cross-examination evidence of Penelope Rollston.
[2] Transcript, at pp 177, lines 14-31: Cross-examination evidence of Stephen Webb.

[17] Mr Webb's former legal partner, Ms Stevens, said in her affidavit of 15 March 2010 that it was not common practice in Nelson for estate properties to be in the hands of house-sitters until sale. In a second affidavit, dated 14 June 2010 and filed in response to affidavits filed for Mr Webb, Ms Stevens accepted that house-sitting may occur from time to time where a property would otherwise be left unoccupied for an extended period of time, but stated that she had not been aware of arrangements where an house belonging to an estate was involved.

[18] Ms Watson, an employee of Ms Stevens, stated in her affidavit of 9 June 2010 that she had worked for a real estate firm in Motueka from 2000 to 2004, and that to her knowledge the use of house-sitters was never common practice in Motueka or Nelson during that time.

[19] Mr Farnsworth, a legal practitioner who had practised in Nelson for more than 29 years and was familiar with deceased estate practice, stated in his affidavit of 2 November 2010 that he was not aware of the practice of using house-sitters to occupy an estate property on a rent-free basis to look after the property pending sale. He considered the norm, if such occupation of an estate property was sought, would be to implement a tenancy on agreed rental and conditions.

[20] We deduced from the evidence that house-sitting arrangements did occur from time to time in Nelson, but that it was not usual in the particular situation of an estate property. We doubt that it could ever be accurately described as common practice in such a case. Accordingly we find that this particular supporting the Email Charge, to the effect that house-sitting of vacant estate properties is not common practice in Nelson, is established.

[21] As a consequence, all particulars supporting the Email Charge are established, Mr Webb having admitted the others in his response to charges filed with the Tribunal.

Non-disclosure Charge

[22] With regard to the particular denied by Mr Webb in respect of the Non-disclosure Charge (that is, whether he had disclosed to Milford & Dormer that he had

arranged for his parents to occupy the estate property on a rent-free basis), Mr Webb changed his position during the hearing.

[23] During cross-examination he accepted that he had not disclosed that fact to Milford & Dormer, and that his statements about giving advice to Milford & Dormer of his parents' involvement by way of email, and also by way of a telephone call, were not correct.

[24] As a consequence, all particulars of the Non-disclosure Charge are established, Mr Webb having admitted the others in his response to charges filed with the Tribunal.

Chattels Charge

[25] With regard to the particular denied by Mr Webb in respect of the Chattels Charge (that is, that Mr Webb had failed to list the chattels which were sold to his parents), there was evidence that they had been listed in the QV valuation which assessed their value at $2,000.

[26] That list had been provided to Milford & Dormer as part of the QV valuation, and was specifically referred to by Milford & Dormer which, in its communications, used descriptions attributed to the chattels by QV and Mr Webb.

[27] The Tribunal considers this particular, failure to list the chattels sold, has not been established by the Standards Committee. We note that this in itself does not dispose of this charge as the elements of the charge could be proven without relying on this particular.

Is there Misconduct?

[28] Turning now to consider whether the proven conduct of Mr Webb amounts to misconduct. Misconduct under the Law Practitioners Act 1982 was well-established by case law, and key principles from those cases have been carried forward into the statutory definition of misconduct in the Lawyers and Conveyancers Act 2006.

[29] *Myers v Elman*[3] noted that misconduct required acts or omissions that were sufficiently serious as to be considered "disgraceful" or "dishonourable". Section 7(1)(a)(i) Lawyers and Conveyancers Act describes misconduct as including conduct "that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable". That Act has picked up the descriptions used in *Myers*.

[30] In *Pillai v Messiter* (No 2)[4] Kirby P noted that misconduct requires a deliberate departure from accepted standards, or such negligence as, although not deliberate, to portray indifference and an abuse of the privileges of professional practice. That was approved by the High Court in New Zealand in *Re A (Barrister and Solicitor of Auckland)*.[5]

[31] Also noted in *Pillai*, and approved in *Re A* was this passage:[6]

> "Both in law and in ordinary speech the term "misconduct" usually implies an act done wilfully with a wrong intention, and conveys the idea of intentional wrongdoing. The term implies fault beyond the error of judgment; a wrongful intention, and not a mere error of judgment; but it does not necessarily imply corruption or criminal intention, and, in the legal idea of misconduct, an evil intention is not a necessary ingredient. The word is sufficiently comprehensive to include misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences."

[32] It is clear that under the Law Practitioners Act 1982, and also under the Lawyers and Conveyancers Act 2006 which has utilised descriptions related to misconduct established by the cases, a range of conduct may amount to professional misconduct, and intentional wrongdoing is not an essential element. That range extends from actual dishonesty through to serious negligence of a type that evidences an indifference to and abuse of the privileges that accompany registration as a legal practitioner.[7]

[33] The task for the Tribunal is, of course, to establish whether Mr Webb's conduct falls inside or outside that range. With regard to facts which have been

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[3] [1940] AC 282.
[4] (1989) 16 NSWLR 197 (CA).
[5] [2002] NZAR 452 (HC).
[6] *Corpus Juris Secundum* (1948) Vol 58, at pp 818.
[7] *Complaints Committee No 1 of the Auckland District Law Society v C* [2008] 3 NZLR 105.

proven or admitted, it is a question of assessing Mr Webb's conduct in respect of those matters so established, to ascertain where his conduct falls.

[34] The Lawyers and Conveyancers Act 2006 has also added another element of conduct that may amount to misconduct – the wilful or reckless contravention of that Act, or of regulations or practice rules made under that Act.[8] We deal with statutory misconduct later in this decision.

[35] Dealing first with the Chattels Charge, the Standards Committee has not been able to establish one of the particulars alleged, that Mr Webb failed to list the chattels sold to his parents, but in our view that is not the definitive issue in deciding this charge. The definitive issues in this charge are whether there was proof that the sale was at an undervalue, and whether there was full and proper accounting for the chattels sold.

[36] There was evidence of a valuation by QV Valuations dated 16 July 2008 which listed the chattels Mr Webb would sell to his parents, and that valuation assigned a value to each chattel. The aggregate value of chattels to be sold was $2,000 in that valuation.

[37] The valuation was sent to Milford & Dormer by Mr Webb. Mr Webb obtained consent to the sale of the chattels at the valuation, which he mistakenly advised Milford & Dormer totalled $1,850, not $2,000. Milford & Dormer approved the sale of chattels on that basis.

[38] In fact Mr Webb received $2,000 for the estate on sale of the chattels to his parents, the correct valuation figure. He accounted for the sale by reporting it to Milford & Dormer and by crediting the sale funds to the estate's trust account with his firm.

[39] While he did not disclose to Milford & Dormer when seeking approval to sell at valuation, nor subsequently, that his parents were the buyers, the charge requires that Mr Webb be found to have sold at an undervalue and not to have fully and properly accounted for the chattels so sold. We find that he could not be said to have sold the chattels at an undervalue, nor could he be said to have failed to fully and

[8] Lawyers and Conveyancers Act 2006, section 7(1)(a)(ii).

properly account for the chattels sold. As those are essential elements of this charge of misconduct levelled against Mr Webb, the Chattels Charge must be dismissed.

[40] In respect of the other charges, all the particulars stated have been proven or admitted. The issue for the Tribunal is whether the proven conduct of Mr Webb amounts to misconduct in respect of these charges.

[41] In the Email Charge, Mr Webb has been shown to have sent an email dated 28 July 2008[9] to Milford & Dormer, the law firm in the United Kingdom acting for the executors of an estate with some New Zealand assets, suggesting that house-sitters be put into the vacant estate house in Nelson.

[42] In that email he advised Milford & Dormer that the estate's property was in what he called a "*rougher*" area of the city, and that due to its location in that area he had been "*keeping an eye on the estate property".*

[43] Mr Webb went on to say that the property "*previously had a house-sitter who looked after the property on a daily basis in lieu of rent*".

[44] He then proposed that someone should be put into the property until sold, suggesting that would be "*in the estate's best interests"*. He said this was "*common practice*", that the person "*would be vetted"* by his firm (noting his firm already had some reliable retired couples on its "*books*", with no children or pets), and that if rent was not paid the Residential Tenancies Act would not apply, as the house-sitters would not be considered tenants under that Act which he said was "*important as there would be no minimum notice period needed once the property is sold."*

[45] Mr Webb noted in closing his email that *"these people would also be available to prepare the property for viewing once it is on the market"*.

[46] The solicitors in the United Kingdom responded by thanking him for his attention and saying they accepted his advice.

[47] The Standards Committee position is that the house-sitting proposal was nothing more than an elaborate scheme by Mr Webb to house his parents rent-free, and that his claims of rent-free house-sitting being common practice in respect of

[9] Affidavit of David Deekes (dated 26 February 2010), Exhibit "F".

vacant properties, the availability of a group of vetted persons from which a selection could be made (by the use of the reference to maintaining *"a book"* of such persons), and the effect of the Residential Tenancies Act, were all factors intended to persuade Milford & Dormer to give consent to the scheme. The Committee also suggested that the risk to the unoccupied property had been overstated by Mr Webb.

[48] For Mr Webb, it was acknowledged that he had not been accurate in the way he described matters. He said he had not chosen his words well when describing the arrangements as common practice, and when referring to books of house-sitters in his email to Milford & Dormer, but denied that there was any scheme of the type suggested by the Complaints Committee.

[49] In summary, it was Mr Webb's submission that he:

(a) Did not intend to mislead or deceive Milford & Dormer about house-sitting arrangements in his 28 July 2008 email;

(b) Had at all times acted consistently, with the best interests of the estate in mind; and

(c) Had no intention of obtaining any personal or financial benefit for himself or his parents, and considered that his conduct had not resulted in any loss or harm to the estate or to Milford & Dormer.

[50] We do not consider that Mr Webb's statement in the email of 28 July 2008, to the effect that house sitting was a common practice, amounts to professional misconduct. From evidence we heard, house-sitting was a known practice, although perhaps not the norm in estate situations in Nelson. The essence of such arrangements is that a person occupies a vacant property to look after it, on terms that do not involve rental payment, on behalf of an absentee owner. Those arrangements do occur from time to time, and consequently Mr Webb's statement in his email regarding house-sitting being a common practice, in the context of a proposition that somebody occupy the vacant estate property rent free to look after it, is not of such a nature that it amounts to misconduct.

[51] The issue of advising Milford & Dormer that the estate property had previously been occupied by a house-sitter who did not pay rent was explained by Mr

Webb as a mistake, arising from his misunderstanding of favourable terms given to that previous tenant by the owner when alive. We accept there was room for such a mistake in the circumstances outlined in evidence, and do not consider this incorrect advice to Milford & Dormer to constitute professional misconduct.

[52] The advice to Milford & Dormer regarding *"books"* of persons who were vetted and available for house-sitting duties was said by Mr Webb to be only an expression, a colloquialism, not a definitive fact. We accept that as a reasonable proposition, and while not strictly accurate, use of that phrase in the course of indicating the availability of house-sitters does not amount to misconduct.

[53] As a result, we find that none of the conduct itemised in the Email Charge, and forming the basis of the charge, constitutes misconduct. It may represent carelessness, perhaps even to the extent that would support a finding of unsatisfactory conduct, but that was not the charge Mr Webb faced. As there is nothing proven in respect of this charge that would justify the Tribunal finding Mr Webb's conduct comprised misconduct, the Email Charge will be dismissed.

[54] In the Non-disclosure Charge, the principal focus is Mr Webb's failure to advise Milford & Dormer that it was his parents who were to undertake the house-sitting he had recommended, on the rent-free basis he had suggested. Mr Webb said that he did not deliberately fail to disclose to Milford & Dormer his parents' involvement in the house-sitting arrangement. He said his failure to advise about his parents' involvement was nothing more than an oversight, and he accepted that he had not properly managed a conflict of interest.

[55] In our view the misconduct threshold in this charge is marked by whether failure by Mr Webb to disclose his parents' involvement was an oversight, or a deliberate decision to suppress that information.

[56] In the latter situation Mr Webb's behaviour would represent a deliberate departure from accepted standards and would also reflect an element of deceit in the solicitor-client relationship. In that situation we consider misconduct would exist, as it strikes at the heart of required standards in solicitor-client relationships. That relationship requires a solicitor to have freedom from any personal interest in the

matter concerned, and to make full disclosure to a client, enabling an opportunity for informed consent.[10]

[57] Looking at the evidence, including Mr Webb's replies in cross-examination and our views on his credibility, we have reached the conclusion that it very likely Mr Webb consciously decided not to advise Milford & Dormer that the arrangement he was suggesting would be undertaken by his parents. Once they had moved in he maintained his position that he would not advise Milford & Dormer, as indeed would be expected where he had chosen to say nothing at the outset.

[58] We note in particular the following matters:

(a) Evidence was given by both Ms Stevens and Mr Webb that there had been a discussion between them at the time Mr Webb first contemplated the possibility of house-sitters for the estate property. The exact content of the discussion was disputed, but the important issue is that Mr Webb stated that he told Ms Stevens about the possibility of his parents house-sitting the estate property. That raises the question for us as to why that information was not included in the email of 28 July 2008 to Milford & Dormer. A raft of other pertinent information about house-sitting was included in the email but not that fact. Instead there was a reference to a list of vetted couples from whom a selection could be made;

(b) Mr Webb said in cross-examination that no final decision had been made by him as to who would occupy the property at that time of his email to Milford & Dormer on 28 July 2008. No mention was made of his parents, because they were just one option, albeit the favoured option, he said. The only reference to the house-sitters was a reference to available reliable retired couples on his books who were vetted. That conflicts with what Mr Webb said he conveyed to Ms Stevens about his parents house-sitting when he first raised it with her at the outset. It also does not sit comfortably with the evidence of

[10] Lawyers and Conveyancers Act 2006, section 4(b) notes that the obligation on lawyers to be independent in providing legal services is a fundamental obligation.

NZI having been notified by Mr Webb, on or before 31 July 2008, of details which fitted his parents being the house-sitters intended;[11]

(c) We consider there was a high probability that Mr Webb proposed to put his parents into the house from the outset, and that when he made his suggestion of house-sitters to Milford & Dormer on 28 July 2008, obtained their agreement, and notified NZI of the occupation arrangements, he was planning to accommodate his parents who were going to need alternative Nelson accommodation from around 23 August 2008. In those circumstances, when describing all the issues he did in his email of 28 July 2008 to Milford & Dormer, to leave out a piece of key information that it was his parents to take up the house-sitting, must be deliberate. This is especially so given the awareness every solicitor would have about such an obvious conflict of interest, and the need to properly manage that conflict;

(d) When he recommended the sale of chattels at valuation, it is unusual that Mr Webb did not also say that his parents proposed to acquire those chattels, because the chattels were situated in the house and useful to them as current occupiers of the house.[12] While the Chattels Charge which included this allegation as an element has been dismissed for the reasons given, the fact remains that it was proven that Mr Webb did not disclose his parents were the chattel buyers to Milford & Dormer. This also supports our view that Mr Webb made a deliberate decision to suppress information regarding the involvement of his parents as house-sitters. In the case of the chattels transaction, Milford & Dormer were advised of the chattels proposed to be sold, the price proposed, and, when the sale had been completed, the value received. Mr Webb told Ms Watson after the sale was completed that his parents were the buyers, but, when reporting the sale to Milford & Dormer, made no mention of that fact,

[11] NZI Cover Note detail dated 31 July 2008 – part of Exhibit W1 produced by Mr Webb, noted that a retired couple would move into the property from 23 August 2008, the date Mr Webb's parents were to move out of existing accommodation.
[12] See Transcript, pp 142, lines 7-12: Mr Webb's response in cross-examination.

nor that the house-sitters had acquired the chattels which remained in the estate property as a consequence;

(e) Mr Webb also claimed in his email of 28 July 2008 that rent-free arrangements were necessary to avoid a "tenancy" under the Residential Tenancies Act. While that is a doubtful interpretation according to the evidence of an experienced practitioner, Mr Farnsworth, that is not something we must decide. What is important for us is, if Mr Webb believed that, why would he not trust his parents to move out when required if in fact they had been paying *"tenants"*? This leaves us with some concern about Mr Webb's motivation in setting up the arrangement with his parents, and it certainly weighs against his claim of non-disclosure being a simple oversight. It supports a view that non-disclosure in the email was a deliberate decision, probably to avoid the risk of Milford & Dormer asking questions that may have affected the efficacy of Mr Webb's proposal to house his parents rent-free in the estate property a few weeks later;

(f) Mr Webb told the Standards Committee[13] during the initial investigation following a complaint from Milford & Dormer, that he had sent an email to Milford & Dormer, outlining the involvement of his parents as the proposed house-sitters. He initially maintained that position at the hearing of the charges before this Tribunal, before accepting that he "*might have been mistaken".*[14] Later, in an affidavit filed in this matter, Mr Webb stated that he had advised someone at Milford & Dormer about his parents' involvement during a telephone call.[15] Under cross-examination he initially fabricated some further facts relating to that alleged telephone call,[16] before finally admitting that the disclosure had not occurred.[17] The way Mr Webb has reacted to the allegations of non-disclosure, with a number of

[13] Affidavit of Catherine Knight (dated 9 June 2010), Exhibits "A" and "B".
[14] Transcript, pp 161, lines 1-27.
[15] Affidavit of Stephen Webb (dated 20 May 2010), at para 18.
[16] Transcript, pp 86, lines 22-30.
[17] Transcript, pp 161, lines 28-34; pp 162, lines 1-34, pp 163, lines 1-34, and pp 164, lines 1-27.

> untruths, leaves us with a concern about his credibility and gives support to a view that his non-disclosure was more than a simple oversight.

[59] Mr Webb said that his failure to advise Milford & Dormer in his email of 28 July 2008 that it was his parents who were going to house-sit was because he had not finally decided if it was to be them – they were just one of his options although he did accept they were his preferred option. We find that implausible. His discussion with Ms Stevens and NZI are contrary to that position. He also said it was just an oversight that Milford & Dormer were not notified about the identity of the house-sitters once they had moved in, and later, when they bought the chattels. Evidence was given that Milford & Dormer had no idea about this matter until advised by Ms Stevens in January 2009. Mr Webb has maintained his non-disclosure approach throughout the entire period.

[60] The suppression of parental involvement was ongoing. Mr Webb did not say anything to Milford & Dormer from the outset, beginning with his email of 28 July 2008, despite the evidence that it was probable he had already formed a view that his parents would undertake the house-sitting at that time. After that he could have advised that his parents were the house-sitters at any time, but he did not, despite some particular occurrences which could reasonably be expected to have involved such advice to Milford & Dormer. For example, when Mr Webb had received Milford & Dormers' agreement to the house-sitting arrangement; after he had confirmed with NZI the new occupation arrangements which were to involve his parents; when his parents actually moved in; at the time of proposing the chattels sale to Milford & Dormer; and after settling the chattels sale and advising Milford & Dormer of that fact. At no time was there any mention of parental involvement.

[61] Mr Webb said that in retrospect he had been careless in omitting to notify his parent's involvement to the client, and acknowledged that he was at fault in that regard, but denied it amounted to misconduct. We agree that simple oversight or carelessness in those circumstances would not be misconduct, but consider there has been a deliberate decision not to disclose, at any time, his parents' involvement, and in the circumstances that goes to the heart of the solicitor-client relationship. Mr Webb changed his position during the hearing, and accepted that it was correct

that he had failed to advise Milford & Dormer that it was his parents who were to house-sit, something he had previously denied. The untruths, enhanced as they were by fabrications of circumstances surrounding the making of the non-existent telephone call to Milford & Dormer, indicate to us that Mr Webb was conscious of his decision not to make any disclosure, and understood it to be a key issue in assessing his culpability.

[62] If, as Mr Webb claims, he was simply careless and now acknowledges that fault, the lengths he has gone to in the course of the investigation and during the hearing of the charges by this Tribunal, trying to hide the fact of non-disclosure, leave us with a clear impression that Mr Webb knew he had deliberately hidden the fact of his parents' involvement. His evidence, including responses in cross-examination, indicates that Mr Webb has attempted to manufacture a position very different from the truth.

[63] In our view, Mr Webb has allowed his personal interest in finding accommodation for his parents to interfere with his professional judgment. While it is not dishonesty in the fraudulent sense of the word, it is deceitful and does represent an unacceptable form of dishonesty in the solicitor-client relationship. It is a course of behaviour having the serious nature envisaged by section 7(1)(a)(i) of the Lawyers and Conveyancers Act 2006. While there is no dishonesty in the sense that it involves fraud, it is conduct that meets the misconduct threshold under section 7(1)(a)(i), and as established by extensive case law.[18]

[64] There has been a continuing failure to fully advise and inform Milford & Dormer, Mr Webb's client in this case, of a key feature of his proposal. The Complaints Committee has suggested that the whole scheme was designed from the outset by Mr Webb to take advantage of overseas solicitors unfamiliar with practices and procedures in New Zealand, with a view to giving his parents a material benefit.

[65] If there was evidence that satisfied us that Mr Webb had simply put a scheme together to take advantage of a client, who would accept advice of non-rental arrangements being in the estate's best interests, principally for the benefit of his parents, and had developed a rationale to justify putting the proposal to his client,

[18] See paras [29]-[32] above.

we would consider the facts charged to constitute serious misconduct involving fraud. As it is, we consider there has been misconduct, but not involving fraud. We see Mr Webb as being opportunistic, accommodating his parents' needs at the same time as he provided something he saw as having value to the estate. He appears to have decided not to tell his client that it was his parents who were going to take up the house-sitting arrangement, probably because he saw it as inconvenient to run the risk of matters becoming more complicated or being delayed by having to independently demonstrate that the arrangements were reasonable, notwithstanding the benefit to his parents, or even to lose control of the arrangements, by being required to cease acting because of the conflict situation.

[66] The problem for Mr Webb is that he has deliberately not disclosed his parents' involvement, and non-disclosure of such a personal interest is a significant lapse when undertaken deliberately. It keeps a client uninformed and involves deceit.

[67] Mr Webb was also required to disclose his parents' involvement by specific requirements of the Rules of Conduct and Client Care ("Rules"), and he did not comply with those Rules.

[68] These Rules are applicable for conduct from 1 August 2008, being the date the Lawyers and Conveyancers Act 2006 came into force. The duties to ensure independence, avoid compromise, and to make disclosure of parental involvement to his client, were continuing. None of them was observed by Mr Webb. In the circumstances, that constitutes a wilful breach of the Rules and is misconduct under section 7(1)(a)(ii) of the Act. Parental involvement in these circumstances is such a clear conflict of interest that we do not accept non-disclosure was an oversight. Mr Webb has been quite deliberate in his decision to say nothing to Milford & Dormer throughout the course of the arrangements.

[69] There has been a failure by Mr Webb to comply with the Rules, specifically the principle of independence and freedom from conflicting loyalties in Rule 5.1, and the requirements of Rule 5.6, relating to disclosure and avoidance of compromise. In respect of non-disclosure prior to 1 August 2008, when the Rules of Professional Conduct for Barristers and Solicitors ("Code") applied, the non-disclosure falls under Rule 1.03. That rule required Mr Webb to disclose the fact that it was his parents who

would benefit from the rent-free house-sitting arrangement when he sent the email of 28 July 2008.

[70] We find that Mr Webb's conduct in not advising Milford & Dormer of the involvement of his parents as house-sitters represents more than simple oversight or carelessness. It is a deliberate departure from required standards that involves an element of dishonesty or deceit in the client-solicitor relationship, which means that this conduct must be treated as misconduct. His failure to comply with the Rules or the Code is also a matter amounting to misconduct in the circumstances. By not making full disclosure, and seeking informed consent, Mr Webb has promoted his personal interest in arranging housing for his parents in beneficial circumstances over his professional responsibilities. He has compounded the situation of having a personal interest in the matter by decisions amounting to deceit. His failure to disclose also reflects adversely on the integrity of the profession.[19]

Decision

[71] On Charge 1 alleging misconduct, the Email Charge, while we consider the conduct unsatisfactory and careless, we do not consider that conduct amounts to misconduct. Accordingly this charge is dismissed for the reasons noted earlier.

[72] On Charge 2 alleging misconduct, the Non-disclosure Charge, we find that Mr Webb has made a deliberate decision not to advise his client, Milford & Dormer, that his parents were to benefit from the rent-free house-sitting arrangement. That was a continuing disclosure obligation which was never fulfilled, despite the opportunity to do so at any time, and indeed when matters were occurring that might have been reasonably expected to result in disclosure of the involvement of Mr Webb's parents. That was a deliberate departure from acceptable standards that involved an element of deceit. Mr Webb also breached the Code and the Rules. The breaches were wilful in our view. We find this charge of misconduct proven.

[19] As well as protection of consumers of legal services, the maintenance of public confidence in the provision of legal services is a key purpose of the disciplinary regime applicable to lawyers – see Lawyers and Conveyancers Act 2006, section 3(1).

[73] On Charge 3 alleging misconduct, the Chattels Charge, for the reasons noted earlier we find this charge is not made out. Accordingly this charge is dismissed.

[74] Mr Webb was granted interim name suppression pending this determination. In light of our findings that interim suppression will lapse seven days from the date of this decision.

[75] The Standards Committee is to file submissions on penalty and costs within 14 days of the date of this decision, and to serve a copy on Mr Webb. Mr Webb is to file and serve his response within 14 days after such service on him by the Standards Committee. The Tribunal will deal with penalty and costs on the papers unless either party indicates that it wishes to appear and have the matters dealt with at a hearing, in which case a suitable date will be allocated for such hearing. Parties should indicate whether their preference is to appear or to have matters dealt with on the papers, in their submissions on penalty and costs. For the purposes of section 257 of the Lawyers and Conveyancers Act 2006, costs to date are $20,715.

DATED at WELLINGTON this 14th day of February 2011

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D J Mackenzie
Chair