

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2013] NZLCDT 24
LCDT 015/12

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

AND

IN THE MATTER

of **SARAH ASTRID
SAUNDERSON-WARNER**
of Dunedin, Lawyer

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr M Gough

Dr I McAndrew

Mr P Radich

Ms S Sage

On the Papers

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

Introduction

[1] The Tribunal released a reserved decision in relation to charges, dismissing one and in respect of the other, finding the practitioner guilty of unsatisfactory conduct. This decision was released on 24 April 2013 and submissions were sought concerning penalty. Counsel have now filed those submissions and have agreed that such can be considered on the papers. Having regard to the fact that this is not a misconduct finding but rather the lesser category of unsatisfactory conduct, and having regard to the parties' consent, the Tribunal has considered the matter on the papers and reached the following decision.

Submissions

[2] The Standards Committee's primary submission as to penalty was, quite properly in the view of the Tribunal, directed towards "making good" the default to the client. It was submitted that Ms Saunderson-Warner ought to be required to apologise to the complainant and pay by way of compensation the amount of the debt that the client was seeking to pursue through the services of her firm. In addition the fees invoice ought to be written off (we understand this has already occurred).

[3] The Standards Committee also sought a censure and modest fine together with costs. The costs in this matter were considerable because the matter was conducted on a defended basis. It was necessary for the complainant to be flown to Dunedin for the hearing. The costs of the Standards Committee are \$14,782.

[4] On behalf of the practitioner, the Tribunal was reminded that there was a dissenting view of one of the Tribunal members. They were also referred to the practitioner's good standing in the profession and the fact that her individual conduct had "... never been the subject of an adverse disciplinary finding" previously. We were referred to a previous Standards Committee decision which involved Ms

Saunderson-Warner's firm but both parties concluded that this finding was not relevant for the purposes of considering Ms Saunderson-Warner's personal disciplinary background.

[5] Ms Saunderson-Warner, through her counsel, accepted that an apology and compensation would be appropriate remedies, together with a modest fine. However formal censure was resisted, as was the payment of a full award of costs.

[6] It was submitted that costs ought to follow the event and, since there was mixed success for each party, that a reduction in the award of costs was proper. In addition it was submitted that had there been a more flexible approach by the Standards Committee as to the level of the charge, then a defended hearing might well have been avoidable.

Decision

[7] Although we note that the practitioner was successful in having one of the charges dismissed and another reduced to unsatisfactory conduct, the majority of four members were not impressed with her overall approach to the complainants in this matter. Her defensiveness and lack of clarity, particularly concerning the discussion she had held with her young employed solicitor was of some concern to the Tribunal. We consider this diminishes her argument that the matter could have been resolved prior to hearing.

[8] In addition to that the Tribunal costs are also significant, given that the hearing was conducted in Dunedin which meant significant travel costs on the part of the Tribunal despite the matter being concluded inside one day. The Tribunal costs are \$7260.

[9] We consider that the offending was serious enough to merit a formal Censure of the practitioner. The complainants were treated poorly, and this reflects on the profession as a whole.

[10] The Tribunal considers that there is merit in the argument that the costs ought to reflect the mixed success of the parties in this matter and we consider that an award of 50 percent of costs against the practitioner is a proper one in the

circumstances. Similarly, we consider that for the purposes of consistency, any award of reimbursement of the Tribunal costs ought also to reflect the outcome and ought to be shared by the parties in a similar manner.

Orders

- [a] The practitioner is to provide a written apology to the complainant, pursuant to s 156(1)(c).
- [b] There will be an order censuring the practitioner, pursuant to s 156(1)(b).
- [c] There will be an order that the practitioner compensate the complainant in the sum of \$514 pursuant to s 156(1)(d). We note the practitioner's assurance that she has already cancelled the outstanding invoice owed by the complainant.
- [d] There will be an order that the practitioner pay one-half of the actual costs of the Standards Committee in this matter, namely \$7391, pursuant to s 249.
- [e] Pursuant to s 257 the New Zealand Law Society is to pay the costs of the Tribunal in respect of the hearing, namely \$7360.
- [f] Pursuant to s 249 the practitioner is to reimburse the New Zealand Law Society in the sum of \$3680.

DATED at AUCKLAND this 17th day of June 2013

Judge D F Clarkson
Chair