

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2015] NZLCDT 28

LCDT 041/14

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE 2**

Applicant

**AND**

**BRITON TREVOR SALTER**

First Respondent

**AND**

**SALTA PROPERTY LAW LIMITED**

Second Respondent

**CHAIR**

Judge BJ Kendall (retired)

**MEMBERS OF TRIBUNAL**

Mr W Chapman

Ms C Rowe

Mr W Smith

Mr I Williams

**HEARING** at Specialist Courts and Tribunals Centre, Auckland

**DATE** 4 August 2015

**DATE OF DECISION** 20 August 2015

**COUNSEL**

Mr R McCoubrey for the Applicant

Mr B Henry for the Respondents

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

[1] The respondents faced a charge being:

- (a) Charge One - Misconduct within the meaning of s 7(1)(a)(i) and/or s 7(1)(a)(ii) of the Lawyers and Conveyancers Act 2006 ("the Act") by reason of the following particulars:
- (i) On 9 March 2012, the applicant found that the second respondent had breached s 110(2) of the Act, in that it had control over money received but failed to pay it into a separate or general trust account of the second respondent;
  - (ii) The second respondent was ordered to rectify the erroneous method of conducting its practice by ceasing to use the trust account of another practice for the purpose of transactional work;
  - (iii) On 25 November 2013 the applicant found that the second respondent was in breach of the order made on 2 March 2012 and the second respondent was again ordered to cease using the trust account of another practice for the purposes of transactional work;
  - (iv) Between 9 March 2012 and 5 February 2014 the second respondent used the trust account of another practice for in excess of 250 transactions, such conduct by both respondents being in breach of s 110 of the Act and/or in breach of the order of the applicant dated 9 March 2012;
  - (v) The conduct of the first respondent was in breach of regs 12(3) and 16(b)(i) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 and was contrary to his obligations as a lawyer by

failing to comply with the orders of the applicant without good cause.<sup>1</sup>

- (b) Charge Two - is a charge of misconduct within the meaning of s 7(1)(a)(i) and/or s 7(1)(a)(ii) of the Act against the first respondent. The particulars alleged against him are:
- (i) The particulars of charge one are repeated;
  - (ii) The applicant did on 9 March 2012 order the first respondent to take advice from a senior lawyer as to the management of his practice;
  - (iii) The first respondent failed to do so, which is conduct in breach of the applicant's order of 9 March 2012;
  - (iv) By so being in breach of the order, the first respondent has acted contrary to his obligations as a lawyer.<sup>2</sup>

[2] The first respondent admitted both charges before the Tribunal at the hearing on 4 August 2015 and did not dispute the facts as presented in the charges.

[3] The applicant sought to withdraw the charge against the second respondent and the Tribunal has granted leave accordingly.

[4] The Tribunal heard submissions from counsel for the applicant and for the respondents. It reserved its decision as to the penalties to be imposed.

[5] Counsel for the first respondent submitted that a financial penalty only should be imposed on the practitioner for the following reasons:

### **Charge One**

- (a) His offending in relation to charge one was technical in nature because he was required to complete the Trust Account Supervisor Course. It was

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<sup>1</sup> Section 4 of the Act and r 2 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

<sup>2</sup> See footnote 1.

not until February 2014 that he received his Trust Account Supervisor certificate. He did engage Ms C L in her capacity as a Trust Account Supervisor as an employee of Salta Property Law to conduct transactions through the trust account of another practice. He says that he has now realised that such a course was not permitted for an incorporated firm being in breach of s 110(2) of the Act;

- (b) His conduct did not cause a problem for the public;
- (c) The monies had been under control and there was no dishonesty on his part;
- (d) Since February 2014 when he obtained his Trust Account Supervisor certificate his 'house has been in order';
- (e) He has apologised to the Society and the Tribunal for the problems he has caused by not having his Trust Account Supervisor certificate in place.<sup>3</sup>

## **Charge Two**

- (a) The first respondent said that he was told he must take advice from a senior lawyer. He had one telephone conversation with him but did not thereafter receive any written correspondence said to be sent to him from the senior practitioner;
- (b) Counsel submitted that the practitioner appointed to advise should have taken steps to go to the first respondent's office to check that the practice was operating as expected of it;
- (c) The first respondent now fully accepts that it was his obligation to follow up on the direction to accept the advice ordered.

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<sup>3</sup> Paragraph [6] of first respondent's affidavit of 10 July 2015.

[6] Counsel for the applicant has submitted that the offending in respect of charge one is not technical in nature:

- (a) The first respondent was ordered in March 2012 not to practise in the way described. He continued to practise as previously despite the prohibition. He was ordered a second time in November 2013 not to practise in that way. He nevertheless continued to practise without change. Counsel drew the Tribunal's attention to the statement of Gilbert J in *Hong v Auckland Standards Committee* <sup>3</sup> where he said "..... practitioners must respect disciplinary orders and the authority of the Standards Committee and Tribunal must be respected";
- (b) While no monies were lost to the public, the first respondent effectively lost control of the funds relating to each transaction by reason of the fact that they were in the trust account of another practice. In consequence there was a potential raft of risks;
- (c) In respect of charge two he submitted that the first respondent's breach of the order to take advice from a senior practitioner was flagrant in that he effectively ignored the order of March 2012 when it was incumbent on him to get back in touch with the senior practitioner after the first contact.

[7] Counsel has drawn the Tribunal's attention to the first respondent's prior disciplinary record involving unsatisfactory conduct in 2010 and in 2014 in addition to the breaches of 2012 and 2013 which were subject to the orders of the Standards Committee on each occasion.

[8] The Tribunal finds that the first respondent's conduct in respect of charge one did not amount to a technical breach. He was twice brought to account but continued to practise in the way in which he had been ordered not to.

[9] The Tribunal further finds in respect of charge two that the first respondent's breaches of the relevant rules and of the orders made by the applicant are the more

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<sup>4</sup> *Hong v Auckland Standards Committee* 3 [2014] NZHC 2871 at [39].

serious of the two charges especially having regard to his obligations as a lawyer, his age and the fact that he has been practising since 1976.

[10] Save for the mitigatory factors, including those we outline in the next paragraph, it was considered that the practitioner's misconduct sits above the lower end of the scale of seriousness and would warrant a period of suspension.

[11] The Tribunal has decided against that course after taking into account that the first respondent has quite properly admitted the charges, has now made his practice compliant and has apologised to the applicant and the Tribunal.

[12] The Tribunal's decision now is that the first respondent:

1. Is censured.
2. Is fined \$5,000.00 in respect of each charge.
3. Is to pay the costs of the Law Society which are fixed at \$9,853.81.
4. Is to refund to the Law Society the s 257 costs of the Tribunal which are certified in the sum of \$3,259.00.

[13] The Tribunal now records the formal censure of the first respondent in the following terms: *Mr Salter - you have admitted two charges of misconduct where this Tribunal has found your conduct to be flagrant. Were it not for mitigating factors, that conduct would have led to your suspension from practise for a period of time. We have found that charge two is the more serious matter in that you have disobeyed disciplinary orders and shown disrespect for the decisions of the Standards Committee. You have failed in your fundamental obligation as a lawyer to uphold the rule of law and particularly in this matter to comply with the orders of the Standards Committee made in March 2012 and November 2013. You are deserving of censure.*

**DATED** at AUCKLAND this 20<sup>th</sup> day of August 2015

BJ Kendall  
Chairperson