NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2013] NZLCDT 3

LCDT 011/10 and 002/11

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND AND NATIONAL STANDARDS COMMITTEES**
	Applicant
AND	**EVGENY ORLOV**
	Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr J Clarke

Ms J Gray

Ms C Rowe

HEARING at AUCKLAND on 10 December 2012 and 12 February 2013

APPEARANCES

Mr W Pyke for the applicant

Mr E Orlov in person

ORAL DECISION OF NEW ZEALAND LAWYERS
AND CONVEYANCERS TRIBUNAL
ON APPLICATION FOR PERMANENT STAY OR STRIKE OFF

[1] This application was predominately based on the lack of evidence provided by the respective Standards Committees (the National Standards Committee and the Auckland Standards Committee) and failure to particularise. Mr Orlov has taken us through extensively each charge and set of particulars in submissions which have lasted over a day. We have listened carefully to his submissions. Mr Orlov submits that even if all of the evidence were accepted as correct there is nothing on which charges could be sustained. Thus he says it is oppressive, indeed it is analogous to "the Spanish Inquisition" to force him to respond to the charges and to defend these proceedings.

[2] With the 31 pages containing 11 charges and particulars filed by the National Standards Committee in May 2011, and the 18 pages containing 13 charges and particulars filed by the Auckland Standards Committee in June 2010, (a number of which have been removed as a consequence of a decision of His Honour Justice Heath last year); with those sets of documents was filed 1,039 pages of evidence in 3 volumes.

[3] Mr Orlov has failed to comply with Rule 7 which requires him to file an answer to these charges in a specified time, namely 10 working days after service, in a particular form.

[4] Mr Orlov instead protests the Tribunal's jurisdiction and has filed a number of, I think six to date, Interlocutory applications, including the present strike out and permanent stay application. With this application he has filed a lengthy affidavit and 45 page synopsis of his argument.

[5] Initially Mr Orlov indicated that he did not seek a stay based on abuse of process or more particularly prejudice by delay. That was consistent with his early undertaking to me in February 2011, that because delay would arise from his

Judicial Review proceedings that he would not seek to rely on it in any subsequent application of this kind before us.

[6] Mr Orlov resiled from this today and in answer to Mr Pyke's submissions he now relies on delay in terms of three platforms to which I shall refer shortly.

[7] We wish to correct the comment in the preceding paragraphs. Mr Orlov says he is not complaining about the delay which has been occasioned since February 2011 or since between then, which is when he indicated a stay application was going to be made, and the 18 month period until the decision was subsequently released on 24 August 2012.

[8] The Standards Committee opposes strike out. Firstly on the basis the Tribunal has no jurisdiction to weigh evidence or indeed consider admissibility issues in advance of a substantive hearing.

[9] Secondly, they submit that the issue of threshold of seriousness has either (a) been disposed of already by Justice Heath's decision or (b) given the divergence of High Court opinion on this issue now, it does not exist, but that it is simply for the Tribunal to determine evidence put before it and tested on the balance of probabilities.

[10] Thirdly, the Standards Committee submit that any delay has not prejudiced Mr Orlov who has in the course of these proceedings demonstrated remarkable recall and facility around the facts in every charge.

[11] Further, as I have indicated, there is the issue of the Judicial Review, even if one only takes it from the period of its inception to the release of the decision that encompasses some 18 months of the period under consideration.

[12] We accept Mr Pyke's submissions that as a Statutory creature this Tribunal has no inherent jurisdiction and that strike out power is not prescribed in the legislation or regulations. It is conceded that the power to regulate tribunal process provides us with the ability to prevent abuse of our process and we consider we

should consider those grounds. We do not consider we ought at this preliminary stage to be weighing the evidence in the manner suggested by Mr Orlov. We consider the charges and particulars are of sufficient detail and clarity to fairly inform the practitioner of what he is accused. Those are supported already by voluminous documentation.

[13] In his submissions in reply Mr Orlov raises three arguments in support of abuse of process.

[14] Delay under a number of hearings: investigation, filing and getting to hearing.

[15] He further submits that another ground for considering abuse of process is the effect on his health which he says is getting worse because of the stress of these proceedings. In support of that he has produced a brief medical certificate which does not specifically address these matters in a manner which has previously been directed by the Tribunal and thus the evidence under this heading if it is indeed central does not greatly assist the Tribunal.

[16] His third ground for abuse of process is simply that there is no evidence. So that in turn circles back to his primary submissions about the Tribunal, simply, in dismissing these charges without actually having to hear the evidence as he regards it as so scant.

[17] We do not consider the delay can be said to have prejudiced Mr Orlov to the extent that he will not be able to have a fair hearing in respect of each of the charges that are to proceed. As I have indicated, he has filed lengthy affidavit evidence himself and lengthy submissions and synopsis of arguments and his perspective of the various proceedings in which he has been involved and out of which these charges arise. He has detailed recall and indeed delivers his position in his stand point to the Tribunal with significant vigour.

[18] As I have indicated, we do not consider there is sufficient evidence to bolster the health ground if I can put it that way and the third ground has already been rejected by us for the reasons outlined. For those reasons this application is dismissed.

DATED at AUCKLAND this 12th day of February 2013

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Judge D F Clarkson
Chairperson

Addendum to the decision

The Tribunal considers that Mr Orlov must cooperate with the Tribunal. His very basic obligation is to file his response in the proper form promptly. That is to be filed within 7 days of today's date. We refer for clarity in that regard remarks of the High Court in *Hart v Auckland Standards Committee 1 of the New Zealand Law Society*[1] in terms of the obligations on practitioners to cooperate with the process.

[1] *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* HC AK CIV-2012-404-5076 at [224]