

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2012] NZLCDT 36

LCDT 036/12

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

AND

IN THE MATTER OF

EDWARD ERROL JOHNSTON
of Auckland, Lawyer

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms J Gray

Ms C Rowe

HEARING at AUCKLAND on 10 December 2012

APPEARANCES

Mr M Hodge and Ms C Paterson for Standards Committee

**ORAL DECISION OF NEW ZEALAND LAWYERS AND
CONVEYANCERS TRIBUNAL**

Introduction

[1] Today we are considering an application for interim suspension in respect of Edward Errol Johnston. Mr Hodge and Ms Paterson appear in support of that application for the Standards Committee No. 2. Mr Johnston has been excused appearance today following a telephone conference on Friday last, in which he indicated he did not oppose the making of this order and having followed that up in writing to the Tribunal was excused from appearance today.

[2] Today's hearing therefore has only had to focus on whether the stringent test set out in s 245(2) has been met in respect of this latest matter faced by Mr Johnston.

[3] The Tribunal must be satisfied that it is necessary or desirable to suspend the practitioner having regard to the interests of the public or the financial interests of any person.

[4] The Standards Committee submission is that both in fact apply in this case, that there are specific financial interests of the clients of the practitioner from whom he has received \$500,000 and allegedly applied to his own purposes and in respect of which there is improper documentation alleged and much of that money still outstanding.

[5] In addition to that there are the interests of the public at large.

[6] There is no real dispute as to there being a prima facie case. In summary judgment proceedings seeking return of this money a settlement was arrived in which the practitioner entered into an acknowledgement of debt and took responsibility for repayment of the amount. He admitted that he had taken the funds and used them for his own purpose.

[7] In addition to that, as indicated, the practitioner does not oppose this order and indicated in the telephone conference that he accepts it is inevitable.

[8] The conduct is serious, a combination of a number of very serious circumstances, which are likely if the charges are established, to lead the Tribunal to the view that he would not be a fit and proper person to remain in practice.

[9] The factors under this heading are that there was no transparency concerning the use of these funds and the manner in which they were applied; a number of promises to repay the funds have been made by the practitioner and not kept; all but \$35,000 is outstanding; the client was a close and old friend of the practitioner and thus no doubt it took a good deal longer for this matter to emerge and be questioned; the practitioner is now bankrupt and the client therefore has to look to other means of recovery of these funds.

[10] A further aggravating feature in the Tribunal's view is Mr Johnston's disciplinary history but in particular that last year in April, he was before this Tribunal on a number of serious charges, including serious conflict of interest charges. The Tribunal was particularly lenient with Mr Johnston on that occasion allowing him to remain in practice.

[11] Mr Johnston at that time would have known, because these matters had arisen in 2009, that they were material to the matters being considered by the Tribunal then and he omitted from revealing any of this information to the Tribunal at the time it was considering his penalty. This is in our view a very serious omission which goes to the heart of the need for public protection.

[12] The means of supervision and inspection provided in our decision of May 2011 have clearly not provided sufficient protection and we are told from the bar that more recently there has been a distinct lack of engagement by the practitioner with the Law Society over various proposals which have arisen about the future running of his practise.

[13] And then there is of course his recent bankruptcy.

Orders

[14] All of these circumstances lead us to the view that the circumstances set out in s 245(2) of the Act are indeed met and there will be an order for suspension of the practitioner from practice pending determination of the charge.

DATED at AUCKLAND this 10th day of December 2012

Judge D F Clarkson
Chairperson