NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2013] NZLCDT 4

LCDT 028/12

IN THE MATTER of the Lawyers and Conveyancers Act 2006

AND

IN THE MATTER of **PETER DALLISON,** of Wellington, Company Director

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr G McKenzie

Ms C Rowe

Mr P Shaw

Mr B Stanaway

DATE OF HEARING 8 February 2013

APPEARANCES

Mr M Treleaven for the Standards Committee

Mr J Morrison for the Practitioner

RESERVED DECISION OF NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL GIVING REASONS AS TO PENALTIES IMPOSED UPON THE PRACTITIONER ON 8 FEBRUARY 2013

Introduction

[1] The penalty hearing in respect of the charges admitted by Mr Dallison was held on 8 February 2013. Present at the hearing was the complainant Mr B. By previous arrangement with counsel the practitioner was not present, however consented to his name being struck from the Roll of Barristers and Solicitors.

Charges

[2] The charge was framed in the form of three alternative charges. Firstly, *"misconduct pursuant to s.241(a) of the Lawyers and Conveyancers Act 2006 ("LCA")."* Secondly, *"unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct pursuant to s.241(b) of the LCA*". Or alternatively, thirdly "*incompetence in his professional capacity of such a degree as to reflect on his fitness to practise or as to bring his profession into disrepute pursuant to s.241(c) of the LCA".*

[3] Mr Dallison admitted the most serious charge, that of misconduct.

Background

[4] The factual background to the charges is set out in the submissions of the Nelson Standards Committee of the New Zealand Law Society and we simply quote from those submissions at paragraph 7:

> "a. Mr Dallison was the solicitor for Mr B and Mr W and prior to 2009 had acted for them in buying and selling several properties.
>
> b. In October 2009 Mr Dallison agreed to act as solicitor for those clients in purchasing a property in Auckland which they intended to renovate and sell for a profit. Although the Lawyers and Conveyancers Act 2006 ("LCA") and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 ("LCCCR") were then in force, Mr Dallison did not provide them with any letter of engagement or other information required by the LCCCR.

c. While acting as solicitor for Mr B and Mr W, Mr Dallison entered into an arrangement with them to advance, through Dalpeko Holdings Limited ("DHL"), a company of which he and his wife were shareholders and directors, $50,000.00 which he told his clients was being lent to them by his wife. He did this on the basis that no interest would be payable on the loan but that Mr Dallison and his wife were to receive 50% of the profit which the clients hoped to make from renovating and selling the property. The clients received no independent advice in relation to this proposed arrangement in respect of the loan.

...

e. In making the loan on those terms, there was a risk of a conflict between Mr Dallison's interests and the interests of his clients. The making of that arrangement also meant that Mr Dallison and his company had entered into financial, business and property transactions in a relationship with his clients when there was a possibility of the relationship of confidence and trust between lawyer and client being abused.

f. After clients had settled the purchase of the property on 20 November 2009 they began work on the renovations. During the course of those renovations they obtained a further loan of $23,000.00, through DHL, to assist with the cost of renovations. That loan was provided on the same terms as the initial loan of $50,000.00. On that basis the Tribunal should infer that at that time Mr Dallison still expected to receive 50% of the profit from the sale of the property. He was still involved in a business relationship with his clients with real potential for a conflict of interest and for the relationship of confidence and trust between lawyer and client to be compromised.

g. The clients put the Auckland property on the market in about February 2010. It did not readily sell. The clients had to arrange a loan from Mr B's parents so they could meet the mortgage payments. In his reply Mr Dallison denies knowledge "at any material time of an alleged loan of $23,081.00 (or any other amount) from Mr B's mother". Mr B says that he did not tell Mr Dallison at the time the loan was arranged but did tell him about it subsequently. ...

h. The clients continued to find it difficult to sell the property. In August 2010 Mr B discussed with Mr Dallison the fact that, if the houses did not sell, it could be rented out as "a short term fix". Mr Dallison indicated to the clients that he would not agree to that and he needed to be repaid his loan. ..."

[5] The Standards Committee submitted to the Tribunal that at that point in August 2010 Mr Dallison ought to have been aware of the difficulties faced by his clients given the deterioration in the real estate market and the significant debts incurred in relation to the project. It was submitted that the potential for conflict between the solicitor's obligations to his client and his own interests as lender had increased, but notwithstanding that, Mr Dallison did not advise the complainant to obtain

independent advice. The property was agreed to be sold on 16 September 2010 for the sum of $479,000. Mr Dallison was aware the property had been purchased in November 2009 for $441,000 using borrowings of $400,000 from the client's bank and a further $73,000 which had been advanced through Mr Dallison, as well as the funds borrowed by Mr B from his mother to meet mortgage commitments, thus Mr Dallison should have been aware that his clients would suffer significant losses.

[6] There was no agreement between Mr Dallison and his clients as to what would happen in respect of a situation of loss. That situation would have been addressed had the client's been referred to an independent solicitor at the outset when the loan from Mr Dallison's sources was proposed. It was accepted by Mr Dallison that failure to refer his clients for independent advice was a significant breach in his fiduciary relationship to them. Indeed it was this recognition which was reflected in his acceptance of the charge of misconduct.

[7] On settlement of the sale without prior notice or discussion with his client Mr Dallison simply deducted the $73,000 which had been advanced by Dalpeko Holdings Limited together with his own costs in relation to sale and repayment of the bank's mortgage.

[8] At that point a dispute arose between he and his clients (formerly friends) as to the appropriateness of that deduction given that it meant there would be insufficient funds for Mr B to repay his mother.

[9] Mr Dallison merely paid the credit balance available from the proceeds of the sale. At that point further demand was made by both Mr B and his mother (later through her lawyer also).

[10] On 18 February 2011 Mr Dallison wrote to Mr B's mother denying any liability to her directly on his part but acknowledging that:

> "At the time of the sale it was agreed that a further $15,000 would be paid to B which M and I intend to honour."
>
> ...
>
> "The $15,000 payment is in recognition of the hardship he has suffered and how he wishes to disburse this money is entirely over to him."

...

> "For your information the Utawhai property was first advertised two weeks ago and although we have not had an offer on it as yet there has been some genuine interest."

Strike Off

[11] This was sought by the Standards Committee on the basis that Mr Dallison was no longer a fit and proper person to be a Barrister and Solicitor.

[12] Through his counsel Mr Dallison indicated that he had accepted that he was unsuited to the practise of law and for that reason had himself sought to be removed from the Roll. The New Zealand Law Society declined to allow this to occur on a voluntary basis while these charges were outstanding.

[13] Little more needs to be said about the order striking off Mr Dallison given his consent, except that he has previously been found guilty of two misconduct charges; the most recent before this Tribunal in 2011, resulting in his suspension from practise for a short period. That was for an almost identical set of circumstances to the present offending, although in fact it occurred after the offending which is currently under consideration. The Tribunal, unanimously agrees that Mr Dallison is not a fit and proper person to be a legal practitioner.

Compensation

[14] An order was sought by the Standards Committee for a compensation to the client for the loss suffered by him pursuant to s 156(1)(d) of the LCA and s 242(1)(a). Although the quantum of the award was a matter for some discussion, it was not strongly resisted by counsel for Mr Dallison who accepted that at least $12,500 would represent a proper award and did not propose to quibble with the $15,000 award sought.

[15] The submissions advanced by Mr Morrison were largely concerned with the practitioner's financial circumstances which we shall address under the heading of costs.

[16] Section 156(1)(d) requires only two matters to be established, namely that a person has suffered loss and secondly, that loss is by reason of an act or omission of a practitioner. Where these two factors are established there is power to make an order awarding compensation up to the sum of $25,000.

[17] We are satisfied that the losses incurred by Mr B are indeed by reason of the act and omissions of Mr Dallison and accordingly that we have jurisdiction to award the sum of $15,000 which has been sought.

Costs

[18] The Standards Committee seeks that Mr Dallison be ordered to pay their costs in the sum of $11,149.

[19] Mr Dallison was cooperative in that as soon as the charges were laid he promptly indicated that he would admit to a charge of misconduct. This has been helpful in keeping the fees incurred to a minimum. The submissions of counsel on behalf of the practitioner, was that he now is without income or assets. However Mr Morrison amended, on the day of the hearing, his submissions in order to ask that the Tribunal disregard the statement of financial means which had been provided because counsel considered it to be unreliable. This arose because the Standards Committee counsel had advised of the marketing of certain property which was connected with the practitioner, apparently with extremely high returns being sought.

[20] Because the statement of means was clearly sloppy, incomplete and lacking in frankness, the Tribunal was not left with clear information about the practitioner's means. In the absence of reliable information we propose, given the material produced at the hearing by the Standards Committee, to take the view that he has sufficient means to meet any order of costs made.

Summary of Orders

[a] By consent there is an order pursuant to s 242(1)(c) striking the name of Peter Robert Dallison from the Roll of Barristers and Solicitors.

[b] Pursuant to s 242(1)(a) and s 156(1)(d) Mr Dallison is ordered to pay the sum of $15,000 by way of compensation to Mr B.

[c] Pursuant to s 249 the costs of the New Zealand Law Society in the sum of $11,149 are awarded against Mr Dallison.

[d] Pursuant to s 257 the costs of the Tribunal in the sum of $2,450 are awarded against the New Zealand Law Society.

[e] Pursuant to s 249 the s 257 Tribunal costs are ordered to be reimbursed by Mr Dallison to the New Zealand Law Society.

DATED at AUCKLAND this 5th day of March 2013

Judge D F Clarkson
Chair