

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2015] NZLCDT 42

LCDT 046/14

UNDER

the Lawyers and Conveyancers Act
2006

IN THE MATTER

of disciplinary proceedings under
Part 7 of the Act

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 3**

Applicant

AND

YOON BOO LEE

Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr C Lucas

Mr P Shaw

Mr T Simmonds

Mr W Smith

ON THE PAPERS

DATE OF DECISION 25 November 2015

COUNSEL

Mr R McCoubrey for the Standards Committee

Mr Lee in Person

PENALTY DECISION

[1] In our decision of 8 October 2015 we provided reasons for a finding of unsatisfactory conduct against Mr Lee. Mr Lee and counsel for the Standards Committee, Mr McCoubrey, agreed that penalty could be considered on the papers and filed written submissions. These have been considered by the Tribunal and our decision is as follows.

[2] The Standards Committee having regard to the findings of the Tribunal sought penalty orders of a Censure, fine in the region of \$2,000 to \$3,000 and reimbursement of both the Standards Committee costs and the Tribunal costs.

[3] Mr Lee opposes those orders. In his submissions he contends that his behaviour was “de minimis”. He refers us to two further decisions which have been released since the liability hearing. These decisions, one of the Real Estate Agents Disciplinary Tribunal and one of the High Court, both relate back to the District Court proceedings and the underlying transaction, which gave rise to the conduct in respect of which Mr Lee has been found guilty.

[4] We accept, from the content of those decisions, that Mr Lee has been further vindicated in his view about the merits of the District Court proceedings and has achieved considerable success for his client. Indeed, we accepted in our decision of October¹ that Mr Lee had been frustrated by this litigation and well motivated by his wish to assist his client.

[5] None of those comments, nor his subsequent success for his client detract from the fact that the Judge made an order against Mr Lee which he defied.

[6] We reiterate our comments in paragraph [32] of our decision² and adopt it as a censure in the following terms.

¹ See *Auckland Standards Committee 3 v Yoon Boo Lee* [2015] NZLCDT 33 at [24] to [26].

² See above n 1 at [32].

Censure

[7] Mr Lee, it is not for you as a legal practitioner and officer of the Court to second-guess an order of the Court. If you disagree with the order, the proper process is to appeal it or seek judicial review. Failing either of those courses, you are obliged to comply with any order made against you and your first duty is to the Court. You breached that obligation in this instance as set out in our liability decision.

Fine

[8] We have found this behaviour to be at the level of Unsatisfactory Conduct but, given the contextual matters referred to in our liability decision, propose to impose a fine of only \$2,000.

Costs

[9] We consider that Mr Lee is on somewhat stronger grounds in his submissions as to his liability for costs in these proceedings. Mr Lee submits that since a finding of Unsatisfactory Conduct was the outcome, that the matter could have been dealt with by the Standards Committee, rather than incurring the costs of bringing it before the Tribunal. We do not accept that submission entirely. First, the Standards Committee was faced with a referral from a District Court Judge about a practitioner who had breached her order. That is a serious matter and the Standards Committee is perfectly entitled to take the view that it ought to come before the Tribunal for determination as to the level of culpability in the particular circumstances.

[10] Secondly, the Tribunal has on a number of other occasions imposed costs orders against practitioners following a finding of unsatisfactory conduct, thus precedent and consistency support the submission of the Standards Committee.

[11] The Standards Committee pleaded the charges in the alternative and, as it transpired, the Tribunal found the lesser charge proved. We consider that there ought to be some discount for the measure of success Mr Lee enjoyed in having the charge of Misconduct declined. For this reason we propose to order that he pay 50% of the Standards Committee costs.

[12] As to the Tribunal costs, we consider that it is proper that these be reimbursed in full by the practitioner to the New Zealand Law Society against whom an order for payment will lie.

[13] Those s 257 costs are certified at \$3,914.

Summary of Orders

1. Censure.
2. Fine of \$2,000.
3. Costs pursuant to s 249 of 50% of the Standards Committee fees, namely \$5,535.
4. Section 257 costs of the Tribunal of \$3,914, to be paid by the New Zealand Law Society.
5. The practitioner to reimburse the New Zealand Law Society for the s 257 Tribunal costs.

DATED at AUCKLAND this 25th day of November 2015

Judge D F Clarkson
Chair