BEFORE THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2014] NZLCDT 50

LCDT 017/13

BETWEEN	**WAIKATO BAY OF PLENTY STANDARDS COMMITTEE No. 2 OF THE NEW ZEALAND LAW SOCIETY** Applicant
AND	**VINAY DEOBHAKTA** Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr C Lucas

Mr G McKenzie

Ms C Rowe

Mr W Smith

HEARING at AUCKLAND

DATE 8 August 2014

COUNSEL

Mr L Clancy for the Standards Committee

Respondent in person

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

Introduction

[1] Following a hearing in Auckland on 19 November 2013, the Tribunal found the practitioner guilty of misconduct in a reserved decision dated 18 December 2013.

[2] The charges arose from the practitioner's conduct between May 2009 and April 2010, while acting for a client who was being pursued by the Inland Revenue Department for unpaid tax.

[3] The Tribunal found that the practitioner had:

a. Failed to account for $4,000 in cash that the client had given the practitioner, along with a cheque for $21,000 payable to the Inland Revenue Department

b. Suggested to his client that the $21,000 cheque be diverted to another purpose of no real value to the client, which was a 'significant failure' of his duty to the client.

c. Misled his client by signing what purported to be a contingency agreement, which was in reality no such thing, at a time when the practitioner knew he was about to be made bankrupt, making the document worthless.

d. Sent 'extremely abusive' and 'obscene' text messages to his client after the client had instructed a new lawyer.

Preliminary Point

[4] At the commencement of the Penalty Hearing, the practitioner asked for an adjournment because he wished to obtain a transcript of the evidence given at the liability hearing. He said that the transcript would show that he said at the hearing that he did not recall receiving $4,000 in cash rather than having denied receiving it. He said that was an integral issue in the consideration of penalty.

[5] He wished as well to rely on an affidavit sworn by Donald Drummond on 6 August 2014 which he said was evidence by way of rebuttal of "alleged corruption in NZLS".

[6] Mr Clancy for the Standards Committee opposed the request for adjournment. He submitted that the practitioner had been aware of the Tribunal's decision since December 2013 and thus had time to exercise his right to appeal the decision and had not done so. He said that there was no prejudice to the practitioner in declining the request, because the issue of possible strike-off had been extant since May 2014 at a time when Mr Mabey,QC was representing him.

[7] Further the practitioner was by the request seeking to challenge a factual finding where the Tribunal had expressly stated that it preferred the evidence of the client to that of the practitioner.

[8] The Tribunal retired to consider its decision. It returned to decline the request. It determined that there was no prejudice to the practitioner because:

a. He had the decision of the Tribunal from 18 December 2013.

b. He had counsel as recently as May 2014 and was aware of the possibility of being struck off.

c. He was effectively seeking a re-hearing on a finding of fact in respect of which the time for doing so had well expired.

d. And finally, he had communicated to the case manager of the Tribunal on 30 July his wish to proceed with the hearing on the date allocated.

Penalty

[9] The Standards Committee seeks the following orders:

a. That the practitioners name be struck off the roll.

b. That he pay Abdul Zaheed $4,000 by way of compensation.

c. That he pay the costs of the New Zealand Law Society in investigating and prosecuting the charge in the sum of $25,903.92.

d. That he refund to the New Zealand Law Society the Tribunal's costs in respect of the charge of misconduct which are to be certified under s 257.

[10] The applicant has submitted that the practitioner should be struck off for the following reasons:

a. His failure to account for $4,000 cash received from his client was a serious transgression aggravated by the fact that at the time of receiving instructions he did not hold a practising certificate.

b. He did not have an instructing solicitor at the time of receiving instructions and did not pay the money into a trust account.

c. His request to use, for an unrelated purpose, $21,000 that the client had paid to him to be available to reduce a tax liability is a relevant consideration in determining whether the practitioner is a fit and proper person to practise as a lawyer. The Tribunal had found this request to be a significant failure in his duty to his client.

d. That the Tribunal had found that the practitioner had provided the "Contingency" agreement knowing it to be worthless, given that he was about to be made bankrupt and given that he, the practitioner, regarded the document as requiring that certain "aims" be sought rather than any particular outcomes achieved.

e. That the practitioner's actions in respect of the agreement were dishonest, or very close to dishonesty, such that they should be treated extremely seriously by the Tribunal and therefore justify strike-off having regard to the decisions in *Hart*[1]and *Dorbu*[2].

f. That he admitted sending extremely abusive and obscene text messages to his client which was conduct that must bring the profession into disrepute.

g. That taken as a whole, the practitioner's conduct was so serious as to undermine the reputation and standards of the legal profession. It established that he is not a fit and proper person to practise as a lawyer.

h. That the public interest, including the protection of the public, and the need to maintain professional standards, require that he be prohibited from practice.

[11] Mr Deobhakta made a plea to the Tribunal that he should not be struck off. He accepted all that Mr Clancy had said referring to the text messages and the way in which the cheques were handled.

[12] He was less accepting of the view taken by the Tribunal in respect of the "Contingency" agreement and the payment of the $4,000. He made reference to what he described as his client's change of mind regarding instructions, the poorly

[1] *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] NZHC 83.
[2] *Dorbu v New Zealand Law Society* [NZAR] 481 (HC) **Tab 2.**

worded document and a lack of justification for requiring him to refund any money to his now former client.

[13] He addressed the Tribunal about his record as a successful practitioner for 19 years; and about his work with young offenders; and his involvement with Te Whanau Apanui based in Opotiki. The Tribunal heard from Rosina Hauiti of that organisation as to his involvement with it, and of its continuing support for him as he addresses issues of anger which he said affected his behaviour. In that context he was submitting that his conduct at the time was out of character. He instanced that his anger prevented him from reading the Tribunals decision of December 2013.

[14] He told the Tribunal that his mental health had suffered at the time because he was facing bankruptcy, and because of his involvement in the immigration issue about which he had become obsessed and this disciplinary matter.

[15] He said that he has now engaged in therapy to deal with his anger. He has sought assistance from therapist Sue Harris a registered psychotherapist and counsellor. He also said that he has support from senior parts of the profession and judiciary who could provide him with supervision for a suitable period of time. He pleaded for a period of suspension rather than strike-off.

Discussion

[16] Mr Deobhakta has not provided any evidence or reports from those he has put forward as support for him in his search for suspension rather than strike-off.

[17] The Tribunal has reached the conclusion that it should order that Mr Deobhakta be struck off the roll. In doing so it adopts the submissions that Counsel has made and which are summarised in paragraph 10 above. The Tribunal also finds that there are matters that aggravate the situation. Mr Deobhakta shows lack of remorse for his behaviour preferring to say that he made mistakes in respect of the cheques. He displays lack of insight into his conduct again preferring to put forward matters of justification in respect of the agreement. There are no matters of mitigation which persuade the Tribunal away from its decision to strike the practitioner off the roll.

[18] The Tribunal comments that the counselling/therapy and professional support which the practitioner has referred to are matters of rehabilitation. When supported by report and evidence they could have relevance to eventual reinstatement.

Decision

[19] The orders of the Tribunal are:

a. That the practitioner's name be struck off the roll, pursuant to s 242(1)(c).

b. That the practitioner pay Abdul Zaheed $4,000 by way of compensation, pursuant to s 156(1)(d).

c. That the practitioner pay the costs of the New Zealand Law Society in the sum of $25,903.62, pursuant to s 249.

d. The New Zealand Law Society to pay the Tribunal costs which are certified at $6,346, pursuant to s 257.

e. That the practitioner refund to the New Zealand Law Society the Tribunal costs which have been certified at $6,346, pursuant to s 249.

DATED at AUCKLAND this 27th day of August 2014

BJ Kendall
Chairperson