

**BEFORE THE NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2014] NZLCDT 52

LCDT 017/14

BETWEEN

**WELLINGTON STANDARDS
COMMITTEE 2 OF THE NEW
ZEALAND LAW SOCIETY**

Applicant

AND

CHRISTOPHER VERRIER JONES

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr W Chapman

Ms M Scholtens QC

Mr M Gough

Ms P Walker

HEARING At the Tribunals Unit Wellington

DATE 14th August 2014

COUNSEL

Mr T Gilbert for Applicant

Mr R Fowler QC for Respondent

**REASONS FOR DECISION OF NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING
PENALTY AND COSTS**

[1] The Practitioner has pleaded guilty to a charge of misconduct which arose from his failures as supervisor of his Law firm's trust account in respect of the following particular breaches of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008:

- a. Failed to keep trust account records that clearly disclosed the position of money held on trust for other people;
- b. Failed to keep what records there were in such a manner as to enable those records to be conveniently and properly audited or inspected;
- c. Allowed his own interest in the trust account to become overdrawn by a small amount on three brief occasions;
- d. Used the trust account of the practice for his own private or household transactions;
- e. Debited client ledgers for fees without first rendering an invoice or obtaining permission as required by the regulations;
- f. Failed to promptly and accurately receipt trust money received by the practice;
- g. Failed to complete monthly trust account reconciliations as required by the regulations;
- h. Filed monthly and quarterly certificates with the Law Society under reg 17 of the Trust Account Regulations which he knew, or ought to have known, were false.

[2] The Tribunal heard submissions from Counsel as to Penalty on 14th August 2014. It then determined the following:

- a. That the practitioner be censured;
- b. That he pay a fine of \$7,500.00;
- c. That he pay the costs of the Law Society in the sum of \$6,500.00;
- d. That he refund to the Law Society the Tribunal's costs in respect of the charge of misconduct which are fixed at \$1,429.00;
- e. That he continue at his own cost to engage Mr Mark Philips to undertake a monthly review of his trust account and to countersign the monthly certificates as to their accuracy. The engagement is to continue for 2 years';
- f. That within 12 months he undertake the Trust Account Supervisor Refresher Course (Schedule 2 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008);
- g. That there be an order prohibiting publication of any detail relating to the domestic and family matters of the practitioner. (s 240 LCA)

[3] This judgment contains the reasons for the penalty imposed.

[4] The practitioner has admitted the underlying facts relating to the charge which in summary are:

- a. As a result of an investigation carried out by inspectors appointed by the Wellington Standards Committee 2, it was found that the practitioner's trust account records were in a state of complete disarray by June 2013;

- b. That the practitioner had failed to attend to his trust accounting obligations as a sole practitioner and Trust Account Supervisor since around October 2011;
- c. That the practitioner was out of his depth dealing with trust accounting issues by himself and had effectively given up trying to comply;
- d. That he continued to file monthly certificates with the Law Society certifying that he was compliant with his obligations and so his problems did not come to light earlier;
- e. Examples of his non-compliance included:
 - i. Failure to keep trust account records that clearly disclosed the position of money held on trust for other people;
 - ii. Failure to keep records in such a manner as to enable them to be conveniently audited or inspected;
 - iii. Allowing his own interest in the trust account (FIT) to become overdrawn for modest amounts and for short periods of time;
 - iv. Using the trust account of the practice for his own private or household transactions in that he drew on funds paid into his trust account received from his son's welfare benefit and also from a loan from his mother;
 - v. On occasions debiting client ledgers without first rendering an invoice or obtaining permission to do so;
 - vi. Failing to promptly and accurately receipt trust money received by the practice. There were 140 unreceipted deposits and receipts that were written generally only stated an amount. There was no reference to the payer or the client to be credited;

- vii. No receipts or payments had been posted to client's ledgers between March 2012 and June 2013 which involved approximately 120 conveyancing transactions;
- viii. Failing to complete monthly trust account reconciliations since October 2011;
- ix. Continuing to file monthly and quarterly certificates with the Law Society stating that he was complying with his trust account obligations and that he had reconciled the trust account.

[5] The investigator reported that, despite the disarray displayed in the trust account records, no client funds had been misappropriated. The overdrafts in the FIT were for modest amounts, short lived and not deliberate but occurred as a consequence of the practitioner's improper/short-cut method of calculating his month end FIT balance.

[6] The investigator found that there was no suggestion of overcharging of fees and that clients were aware of the amount of fees and that they would be debited.

[7] The practitioner cooperated fully with the task of bringing his trust account into order which was a major undertaking extending over many months. He did most of the work himself and had the assistance of Mark Phillips who helped and oversaw the work that was required.

[8] Mr Gilbert for the Committee addressed the principles relevant to strike-off by reference to *Hart v Auckland Standards Committee* ¹ and submitted that the practitioner's failings in respect of his trust account were significant and comprehensive which continued for a long period. This time continued because of his repeated certifications as to compliance.

¹ [2013] NZHC 83, [2013] 3 NZLR 103.

[9] The Trust Accounting regulations exist to protect the public such that a robust and transparent regulatory framework is needed to protect the funds of the public. In that respect the practitioner failed repeatedly.

[10] He submitted that such a complete failure to comply with the regulations over such a long period would entitle the Tribunal to conclude that he was not a fit and proper person, and thus should be struck off.

[11] Mr Gilbert did acknowledge that the following factors weighed in the practitioner's favour including:

- a. That prior to the breakup of his marriage with his wife who was his trust accountant, there was no difficulty;
- b. His otherwise clean disciplinary record of many years in practice and lack of any suggestion that his work as a lawyer is substandard;
- c. His exemplary response to the investigative and disciplinary process including his efforts to make good his previous shortcomings.

[12] The fact that no clients had suffered a loss, and (aside from the false certificates filed) there was no element of dishonesty. Mr Gilbert referred to decisions of the Tribunal in *Wellington Standards Committee v Manktelow*². *In the Matter of "D"*³, and *Auckland Standards Committee 4 v Appleby*⁴. These cases have similarities to the present case which resulted in penalties short of strike-off.

[13] Mr Gilbert submitted that if the Tribunal favoured a disposition short of strike-off, then a period of suspension was necessary as a deterrent aspect so that all practitioners would recognise that failures of the magnitude of the practitioner's misconduct would have serious consequences.

² [2012] NZLCDT 30.

³ [2013] NZLCDT 46.

⁴ [2014] NZLCDT 34.

[14] His submission was that if there was no period of suspension then a message would be sent to the profession and the public that offending of the kind portrayed in this matter would be excused provided the practitioner accepted fault when it is eventually discovered and retrospectively patched up.

[15] He argued for a period of suspension of between 6 and 12 months along with other orders.

[16] Mr Fowler on behalf of the Practitioner emphasised the points that Mr Gilbert has acknowledged in paragraph 11. He referred to the intense personal family difficulties suffered by the practitioner which came to a climax in October 2011. It is not necessary for the Tribunal to detail those difficulties. Suffice it to say that they are accepted and have been taken into account by the Tribunal in reaching its decision.

[17] Mr Fowler urged the Tribunal to take into account as well that the practitioner is deeply remorseful and has understood the consequences of burying his head in the sand where he lost control of his trust account. He submits that the practitioner is determined not to repeat that conduct, has sought external help and will continue to do so should problems arise again.

[18] He acknowledges on behalf of the practitioner that his conduct is of a type that could lead to striking-off. He submits however that striking-off is unnecessary and disproportionate having regard to the particular facts already referred to.

[19] Mr Fowler submits that the facts in this case appear to be very similar to those in *D* and *Appleby* where those practitioners avoided suspension.

[20] The Tribunal has had regard to its decisions in those cases and has decided that the practitioner here can avoid suspension. It has balanced the aggravating factors of the length of time that the offending occurred and the falsity of the certificates against the following factors that mitigate in his favour;

- a. There was no dishonesty beyond the signing of the certificates;

- b. There was no loss of funds to clients;
- c. The intense personal family difficulties he suffered;
- d. His immediate acceptance of responsibility and full cooperation with the investigation and the disciplinary process;
- e. His otherwise good record over the years he has been in practice.

[21] The Tribunal has considered the practitioner's remorse, the steps he has taken to ensure there is no repeat of his conduct and that he is unlikely to offend again in the future.

[22] It has taken into account the need to protect the public and to protect the reputation of the profession. It has decided that suspension of the practitioner is not required to meet those objectives.

[23] The Tribunal has accordingly imposed the penalty and costs set out in paragraph 2 of this decision.

DATED at AUCKLAND this 5th day of September 2014

BJ Kendall
Chairperson