

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

[2014] NZLCDT 66

LCDT 20/14

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE No. 2**

Applicant

AND

MIRIAM HOLLINS

Respondent

AND

VIRTUAL LAW LIMITED

Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman

Ms C Rowe

Mr W Smith

Mr I Williams

HEARING at Auckland

DATE OF HEARING 12 November 2014

APPEARANCES

Mr R McCoubrey for the Standards Committee

Mr C Pidgeon QC for the Practitioner

**DECISION OF NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**
(ON PENALTY)

Introduction

[1] Following pre-trial negotiations between counsel, the practitioner admitted on behalf of herself and as sole director of the incorporated firm operated by her, the alternative of negligence framed in the charge against her and filed in this Tribunal on 15 May 2014. The alternative charges of misconduct and unsatisfactory conduct were withdrawn by leave.

[2] The charges involved two main areas of concern:

1. Non-compliance with the Trust Account Regulations;¹ and
2. Receiving advances from a client without independent advice having been provided to that client.

[3] The significant background to the offending related to serious problems the practitioner has experienced in her personal life and particularly with her health over the past four years, at a chronic level over the last year. The Tribunal has been provided with medical evidence of this but having regard to the practitioner's privacy it is not necessary for the purposes of this decision to detail specific medical issues. Suffice it to say these have seriously impacted on Ms Hollins ability to run her practice in a manner which was at the standard required of her professional obligations.

[4] The Trust Account Regulations breaches related to transfers to her personal ledger from funds which had been advanced by a client; withdrawal from the trust account without having first issued a dated fees invoice; failure to keep up trust account records and monthly reconciliations; a brief period when the trust account

¹ Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

was overdrawn; cashing trust account cheques; and issuing an invoice where work had not been completed.

[5] The advances from client occurred within the context of that client being a close family friend who was keen to assist the practitioner whilst she was experiencing a period of extreme financial distress. We accept the practitioner's evidence that she had remonstrated with the client to obtain independent legal advice. The client spoke to a lawyer friend, however he was an overseas qualified practitioner who was not able to provide the advice in a formal sense which is required in these circumstances.

[6] It is clear the practitioner ought to have insisted on the independent advice occurring and it is likely that, had her health been stronger, she would have been in a position to facilitate and ensure this happened. Having said that, there is no issue about these advances in any sense relating to the practitioner's honesty. The client has sworn an affidavit in support of the practitioner which makes it clear that not only did he advance the funds to her of his own free will and to assist her, but also that the practitioner had "made it very clear to me that I should get independent legal advice". He had not wanted to pay for that legal advice and instead signed a written acknowledgement authorising the transfer of the funds for the practitioner's personal use.

Penalty

[7] In relation to penalty, the practitioner accepted through her counsel, Mr Pidgeon QC, the submissions of the Standards Committee as to the proper orders which ought to be made to reflect her acknowledged conduct. The only area of dispute was the issue of whether a s 242(1)(g) order ought to be made prohibiting her from practising on her own account. It was submitted, on a pragmatic basis, that she was unable to practise on her own account having surrendered her practising certificate and would need in any event, to make application to the Practise Approval Committee. In this sense it was submitted that the order was unnecessary.

[8] In response, Mr McCoubrey, for the Standards Committee, submitted that if the Tribunal considered this a proper order to be made, having regard to the practitioner's conduct, then it ought to make the order pursuant to s 242, rather than

delegate oversight of this aspect of the lawyer's practice to a Law Society Committee.

[9] Having retired to consider this, the only difference in approach between the two counsel, we considered that a principled approach to the matter required the Tribunal to make the order given that it considered such to be proper.

[10] As to the period of suspension the Standards Committee sought a period of nine to 12 months, but taking into account that the practitioner voluntarily ceased practice in early March of this year. The practitioner for her part accepted that this was a proper range and was relatively comfortable with the 12 months which the Tribunal indicated appeared to be proper by comparison with recent decisions.

[11] The factors in assessing the period of suspension are as follows:

- [a] This practitioner, apart from a brief period when she was not able to be contacted because of extreme financial distress causing her to be temporarily homeless and not able to be contacted by telephone or cell phone, following which she was suspended on an interim basis, Ms Hollins has cooperated with the investigation and Tribunal processes. She has taken the advice of the Law Society inspector in a number of ways and accepts that she ought not to practice on her own account in the near future. Ms Hollins has instructed counsel and acted in a responsible manner.
- [b] There are no elements of dishonesty or personal gain other than in the context of a close family friend advancing her funds on an agreed basis between them.
- [c] Furthermore, she has no previous disciplinary history.
- [d] She has sought medical help and will receive ongoing support. This has occurred of her own volition.
- [e] The full acceptance of the wrongness of her acts by the practitioner.

[12] In all the circumstances we considered a suspension period of 12 months, but taking account of the period of time she has been voluntarily out of practice, as a proper sanction to reflect the seriousness of the breaches of her professional obligations. We take account of the fact that those breaches having occurred at a time of high distress and impaired judgment and ill health of the practitioner.

[13] The Trust Account Regulations are a crucial underpinning of the relationship of trust pursuant to which a lawyer holds funds on behalf of a client. The proper observance of these Regulations is imperative for the maintenance of the public confidence in the profession.

[14] The second matter of insisting and ensuring that a client receives independent advice in circumstances where there is to be a financial obligation is absolutely crucial to ensure protection of the public and maintenance of the reputation of the profession.

[15] Because of the seriousness of these matters and taking into account the principles enunciated in penalty decisions in relation to suspension – such as *Daniels*,² we consider that nothing less than suspension is a proper response and indeed this was conceded by the practitioner herself.

[16] For the above reasons we imposed the orders referred to in the oral decision of 12 November, which is to be read together with this decision and is attached hereto.

[17] The s 257 Tribunal costs to be reimbursed by the New Zealand Law Society are certified at \$2,112.

DATED at AUCKLAND this 14th day of November 2014

Judge D F Clarkson
Chair

² *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850.