

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2014] NZLCDT 67

LCDT 004/14

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE No. 5 OF THE NEW
ZEALAND LAW SOCIETY**

Applicant

AND

MAHENDRA PATEL

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr C Lucas

Ms C Rowe

Mr W Smith

HEARINGS at Auckland

DATES OF HEARING 1 September 2014 and 11 November 2014

COUNSEL

Ms C Paterson for the Standards Committee on 1 September 2014

Mr M Hodge for the Standards Committee on 11 November 2014

No appearance of or for the Practitioner

**REASONS FOR THE DECISION OF THE NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING CHARGE AND
DECISION AS TO PENALTY**

Introduction

[1] The practitioner faced one charge of misconduct pursuant to s 7(1)(a)(ii) of the Lawyers and Conveyancers Act 2006 in that he wilfully or recklessly contravened the provisions of the Lawyers and Conveyancers Act 2006 (“the Act”), the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (“the Regulations”) and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (“the Rules”).

[2] The hearing of the charge occurred on 1 September 2014. It proceeded by way of formal proof after neither the practitioner nor Mark Flyger, a witness to be called by the practitioner, appeared at the hearing. The Tribunal delayed the commencement of the hearing to allow the practitioner and his intended witness to appear. No explanation has been given for their non appearance.

[3] On 8 September 2014, the practitioner advised the Tribunal by email that he had been hospitalised in New Zealand on the date of hearing. He did not provide any medical evidence about his hospitalisation. He did not enquire about the outcome of the hearing.

Background

[4] The practitioner was registered until 30 June 2012 to practise as a sole practitioner and maintained a trust account while operating the firm of Patel Law in Hamilton.

[5] Joan Lowe of the New Zealand Law Society (“NZLS”) carried out a number of inspections of the practitioner’s trust account between February 2011 and November

2012. She provided six reports to the New Zealand Law Society during that time. She noted numerous accounting errors and deficiencies with regard to the practitioner's maintenance of his trust account. Of particular concern to Ms Lowe was that the practitioner, when acting for family members, failed to hold funds exclusively for the clients from whom he had received them. He transferred funds between ledgers without appropriate authorities.

[6] Ms Lowe attended the hearing of the charge and responded to questions from the Tribunal. She noted the following major errors in the receipts:

- (a) Receipts written not banked.
- (b) Receipts written out of sequence.
- (c) Receipts written incorrectly.
- (d) Receipts not banked promptly.
- (e) Receipts incorrectly dated.
- (f) Bank deposits not receipted of which there were 25. The largest was for \$304,818.50.

[7] She told the Tribunal that the practitioner had no formal records. His ledger cards were not in order and were not up to date. In some instances ledgers were altered retrospectively.

[8] She said that she gave very detailed instructions of what she required but had great difficulty in getting the practitioner to respond. What initially commenced as a routine inspection of the trust account turned into a major undertaking. She summed up the position of the practitioner's trust account as being 'in a shambles'.

[9] The Tribunal has noted that the practitioner has admitted his failures in November 2011 and again in August 2012.¹

Decision

[10] The Tribunal finds that the charge has been proved conclusively.

[11] It accordingly finds the practitioner guilty of misconduct.

Hearing as to penalty

[12] The Tribunal convened a hearing on 11 November to consider penalty.

[13] The practitioner did not appear and offered no explanation for his non appearance. He had been given the courtesy of notice of date of hearing.

[14] Counsel for the Committee made the following submissions:

- (a) That the practitioner had fallen well below the required standards for the maintenance of a trust account such that this was a serious case of misconduct.
- (b) That whilst his conduct did not amount to dishonesty, his approach to the maintenance of his trust account has been exceptionally chaotic.
- (c) That his acceptance of instructions from multiple family related entities has led him to be in breach of almost every professional obligation that pertains to the maintenance of solicitors trust accounts thereby placing client funds at risk.
- (d) That his failures to comply with his obligations in respect of the operation of his trust account must be categorised as wilful given that he was aware of his obligations in relation to his trust account.

¹ See Bundle of Documents at pages 46, 47, 74 and 75.

- (e) That the NZLS had intervened on a previous occasion in 2007 when Ms Lowe had reconciled the account. He had been given many opportunities from February 2011 to engage with Ms Lowe and reconcile the trust account again. He failed to do so or failed to carry out the work that Ms Lowe had set out for him to do to reconcile his trust account accurately;
- (f) That the errors in his trust account dated back to September 2007 being the last occasion that the account had been reconciled by the inspectorate;
- (g) That since then he had been inadequately maintaining his trust account and had been the subject of three complaints about his conduct that were upheld as unsatisfactory by the Law Society;
- (h) That while there has been no proven dishonesty, the practitioner's conduct is such that it is a flagrant breach of the obligations on a solicitor operating a trust account, and wilfully so;
- (i) That the practitioner's acknowledged health problems having contributed to his inadequate maintenance of his trust account cannot excuse his conduct especially when he continued to accept instructions, operate the trust account and accept client money. He had an obligation to seek competent assistance to ensure compliance with his own professional obligations.

Discussion

[15] Counsel for the Committee informed the Tribunal that the New Zealand Law Society had intervened in the practitioner's trust account in April 2005 at a time when he ceased practice and had failed to wind up his trust account. He had also been the subject of three previous findings of unsatisfactory conduct being:

- (a) Lack of communication, lack of progress, inaccurate work and incompetence in his handling of a judicial review claim for which he was censured, ordered to pay compensation, fined and ordered to pay costs;
- (b) Among other things, the holding of money in his trust account that was not lodged on term deposit thus costing the complainant interest from the bank. He was censured, fined and ordered to pay costs;
- (c) His failure to account for fees paid by a complainant in advance for a matter which had not been progressed by the practitioner. He was censured, ordered to refund the client's funds, fined and ordered to pay costs.

[16] The Tribunal finds that the above matters are relevant to the question of penalty and should be taken into account in reaching its decision.

[17] Counsel has referred to the relevant authorities in respect of the purpose of disciplinary proceedings and has referred to the maintenance of appropriate standards, of conduct² and as well the predominant purpose of advancing the public interest which includes the protection of the public, maintenance of professional standards, the imposition of sanctions on a practitioner for breach of duty.³

[18] Counsel for the Committee submitted that having regard to the matters set out in paragraph 14, the Tribunal ought to make the following orders in respect of penalty:

- (a) Censure of the practitioner;
- (b) Suspension for a period of 12 months;
- (c) An order that the practitioner not practise on his own account unless authorised by the Tribunal to do so;

² *Z v Complaints Assessment Committee* [2009] 1 NZLR 1 at [97].

³ *Auckland Standards Committee 1 v Fendall* [2012] NZHC 1825 at [36].

- (d) An order for the payment of the Costs of the Law Society in the usual way.

[19] The Tribunal has discussed with counsel the orders that the Committee has sought. It has considered the comments of the English Court of Appeal in *Bolton v Law Society*⁴. The Court held at page 491 – 492:

“If a solicitor is not shown to have acted dishonestly, but is shown have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking-off order will not necessarily follow in such a case, but it may well....Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension.”

[20] Counsel has accepted that what has been said by the Court could well have been written with this practitioner in mind, when account is taken of the fact that the practitioner has shown disregard for the gravity of what has gone before. There is the additional concern that there can be no confidence that he would change his ways for the future.

[21] Counsel has submitted that ultimately it is a matter for the decision of the Tribunal.

[22] He submitted that an extended period of suspension could be appropriate after assessing the seriousness of the conduct and the practitioner's repeated failings.

[23] The Tribunal retired to consider the appropriate penalty. It records that the proven misconduct of the practitioner has come very close to the threshold for a striking-off order. The Tribunal has reached the conclusion that a lengthy period of suspension will give the practitioner the opportunity to reflect on his conduct. It reflects the seriousness of his breaches of his professional obligations. It will serve to maintain the public's confidence in the provision of legal services. (s 3(1)(a) of the Act).

⁴ [1994] 2 All ER 486.

[24] Accordingly the Tribunal makes the following orders.

- (a) Suspension for a period of 3 years effective from 11 November 2014;
- (b) That the practitioner is not to practise on his own account unless authorised by the Tribunal to do so;
- (c) That he pay the costs of the Law Society in the Sum of \$22,373.12 plus GST;
- (d) That he refund to the New Zealand Law Society the s 257 costs of the Tribunal which are fixed at \$4,723.00.

DATED at AUCKLAND this 18th day of November 2014

BJ Kendall
Chair