

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2011] NZLCDT 8
LCDT 019/10

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 4 OF THE NEW
ZEALAND LAW SOCIETY**

Applicant

AND

**PATRICIA ANGELINE NILMA
THOMAN**

Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr S Grieve QC

Mr J Clarke

Mr P Radich

Mr W Smith

HEARING at AUCKLAND on 31 March 2011

APPEARANCES

Ms Meechan and Mr Treleaven for the Applicant

No appearance by or on behalf of the Respondent

**ORAL DECISION OF NEW ZEALAND LAWYERS
AND CONVEYANCERS TRIBUNAL**

[1] Patricia Thoman faces charges of misconduct in her professional capacity, in relation to three clients and her behaviour towards them. This is covered by the Law Practitioners Act 1982 (“LPA”). She is further charged with professional misconduct pursuant to section 241 of the Lawyers and Conveyancers Act 2006 (“LCA”), in relation to six clients, (two of whom are included in the three in relation to the earlier charges). The behaviour falls over the two statutory disciplinary regimes because it straddles the years 2007 to 2009 and thus the charges are framed in the way that they have been.

[2] We propose to summarise the behaviour complained of but we note that this is set out in more detail in submissions of Counsel for the Law Society and we propose annexing those submissions to the Tribunal’s decision, deleting references to the client’s name in order to provide more background information than is contained in this oral decision (Appendix A).

[3] The practitioner has not appeared today and indeed has taken no formal steps in relation to the proceedings other than participation in one of the telephone pre-trial conferences. She has, it would seem, treated the disciplinary process in the same disrespectful and cavalier manner in which she has treated her clients.

[4] The misconduct encompasses serious breaches of duties to seven clients by failing to carry out promised work, by failing to account for monies paid directly to the practitioner, much it would seem in cash. The practitioner has accepted clients directly rather than through a solicitor as is proper for a barrister. She has held herself out as being able to practise as a barrister at a time when she had no Practising Certificate and indeed has practised at a time when she did not hold a Practising Certificate. She has engaged in abusive behaviour to at least one client sending a disgraceful text message to him. She has lost or failed to return valuable client documents including passports. She has failed to respond to attempts to communicate with her. She has received money directly without any bill of costs being rendered.

[5] Thus it can be seen that the conduct is very much at the serious end of the scale of misconduct. It spanned, as we have indicated, over two years from May

2007 to October 2009. The practitioner did not hold a Practising Certificate after 1 July 2009. The clients whom she has so mistreated were from South America and were seeking her assistance in relation to their respective immigration status, bearing on their ability to live and work in New Zealand. As such they were in a particularly vulnerable situation and were entitled to rely on Ms Thoman as a professional not to abuse their trust. Some have lost money as a result of her inaction, others have had to leave New Zealand temporarily or permanently.

[6] We accept Counsel's submission that Ms Thoman has flagrantly abused the trust reposed in her by her clients. There is not a single instructing solicitor in evidence in relation to these seven clients, nor is there a single bill of costs. Only one client managed to retrieve his passport, others lost valuable documents such as marriage certificates which they had entrusted to her care, or as it turns out lack of care.

[7] The Society submits that this behaviour to clients is totally unacceptable to the profession as a whole and seeks that their disapproval be marked by the most serious sanction, striking off the roll of barristers and solicitors.

[8] We agree that it is clear from the evidence that Ms Thoman is not a fit and proper person to practise as a barrister or solicitor, we record that this is the unanimous view of five members of the Tribunal. Ms Thoman clearly has no appreciation of her professional obligations and we consider that since she has treated valuable clients with contempt and disregard she would be a risk to the public to continue as a lawyer unless she completely reviews and reforms her behaviour.

[9] In this case because the behaviour forming the misconduct falls under both Acts we have elected to order the strike-off under the LPA. We do this to avoid any argument which might be raised about the powers contained in section 242(1)(c) of the LCA arising out of the definition of "*lawyer*" in section 7.

[10] We comment that we consider a purposive interpretation ought to be adopted and having regard to the various descriptions contained in sections 7, 241 and 242(1)(i) of the LCA that "*lawyer*" must include "*former lawyer*", that is a practitioner no longer holding a Practising Certificate.

[11] However we strongly recommend that the inconsistencies in nomenclature be resolved by amendment of the legislation.

[12] Because the practitioner has not appeared today we have very little information about her personal circumstances. She has communicated with the Tribunal directly to the effect that she has recently had a baby, for this reason we have had to fix penalties in the absence of full information about her personal and financial situation.

[13] The orders that we make are these:-

- (i) There will be an order pursuant to sections 112(1)(a) and 113 of the LPA that the practitioner's name be struck from the roll of barristers and solicitors, the Tribunal having unanimously as a Tribunal of five found her not to be a fit and proper person to practise as a barrister or solicitor.
- (ii) There will be an Order of Censure of the practitioner to reflect the disapproval of the practitioner's behaviour pursuant to sections 242(1)(a) of the LCA and 112(2)(e) of the LPA.
- (iii) There will be an order granting costs in favour of the New Zealand Law Society of \$9,297.50 pursuant to section 242(1)(a) and section 156(1)(m) of the LCA and section 112(2)(g) of the LPA.
- (iv) There will be an order pursuant to section 257 of the LCA that the costs of the Tribunal, which are assessed and fixed by the Chair in the sum of \$3,000 are awarded against the Society.
- (v) There will be an order pursuant to section 249 of the LCA that the practitioner reimburse those costs to the New Zealand Law Society.
- (vi) There will be an order that the practitioner compensate her former clients in terms of the schedule which is also annexed to the decision (Appendix B).
- (vii) In the case of the \$750 relating to Mr S the compensation shall be payable to Ms P, whose name also is to be suppressed, in terms of Counsel's submissions.

These Compensation Orders are made pursuant to section 112(2)(f) and section 102(4)(e) of the LPA and section 242(1)(a) and section 156(1)(d) of the LCA.

- (viii) There will be an order suppressing the names of all clients and complainants.

DATED at AUCKLAND this 31st day of March 2011

Judge D F Clarkson
Chairperson

BEFORE THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

IN THE MATTER of the Lawyers and Conveyancers Act 2006
and the Law Practitioners Act 1982

AND

IN THE MATTER of **PATRICIA ANGELINE NILMA THOMAN**, of Auckland,
Barrister

SUBMISSIONS TO TRIBUNAL ON BEHALF OF NEW ZEALAND LAW SOCIETY

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MAY IT PLEASE THE TRIBUNAL:**1. INTRODUCTION**

1.1 The practitioner is facing charges for:

(a) Misconduct in her professional capacity pursuant to section 112(1)(a) of the Law Practitioners Act 1982 (“**LPA**”) in relation to the provision of legal services to the following clients:

- M;
- B;
- I;

(b) Misconduct pursuant to section 241 of the Lawyers and Conveyancers Act 2006 (“**LCA**”) in relation to the provision of legal services to following clients:

- M;
- B;
- P;
- D;
- G;
- B

1.2 The Practitioners' misconduct straddles the two statutory disciplinary regimes. The penalties which may be imposed in relation to the section 112(1)(a) charge are set out in section 112(2) of the LCA – refer section 352 of LCA. In relation to those charges under the LCA, section 242 of that Act sets out the orders which may be made by the Tribunal.

1.3 The practitioner has taken no steps to defend the charges despite being given ample opportunity to do so. This is consistent with the approach which

the practitioner has taken throughout of simply failing to engage in any meaningful way whatsoever in the disciplinary process.

1.4 The penalties which the Society is asking the Tribunal to impose on the practitioner reflect the seriousness and frequency of the misconduct. The practitioner's conduct in the period spanning from approximately May 2007 through to October 2009 falls so far short of the profession's expectations and, more importantly, the expectations of the public that the most severe sanctions ought to be imposed.

1.5 The Society seeks the following orders:

- (a) Strike off – section 242(c) LCA and/or section 112(2)(a) LPA;
- (b) Censure – section 242(1)(a), section 156(1)(b) LCA and/or section 112(2)(e) LPA;
- (c) A costs order in favour of the NZLS for costs – section 242(1)(a), section 156(1)(n) LCA and/or section 112(2)(g) LPA;
- (d) An order pursuant to section 249 LCA that Ms Thoman reimburse the hearing costs the NZLS has to pay under section 257 LCA;
- (e) Compensation orders – section 242(1)(a), section 156(1)(d) LCA or for the section 112 charges section 112(2)(f), 106(4)(e) LPA. See attached schedule of levels of compensation sought in relation to each complainant.

1.6 The Society also submits that there should be no restriction in relation to the publication of the findings of the Tribunal provided that such publication should not extend to the names of the individual complainants. Indeed, the Society seeks orders prohibiting the publication of the names of the complainants – refer sections 250(1)(c) LCA and/or section 111(2)(d) of the LPA.

2. ANALYSIS OF CONDUCT GIVING RISE TO CHARGES

2.1 The charges against the practitioner arise from the manner in which she handled the affairs of seven South American clients all of whom were seeking advice and assistance in relation to immigration matters.

2.2 The hallmark of the practitioner's conduct in each case was a flagrant abuse of the trust placed in her by these seven individuals. These people, all of whom were in a vulnerable position in terms of their immigration status, were entitled to expect a high level of integrity and professionalism from the practitioner.

M [Heyns: paras 4 – 11, pp 13 – 14 and 23 – 30]

2.3 Mr M is Brazilian. He first engaged Ms Thoman in May 2007 to assist in applying for New Zealand citizenship. At her request, Mr M provided his passport, birth certificate and marriage certificate to Ms Thoman in order that she might progress his application. Ms Thoman lost all these documents – they were allegedly stolen from her car.

2.4 Mr M paid a significant amount of money directly to the practitioner (\$1,920) for work she never did. He has also been forced to incur significant costs to replace the documents lost by the practitioner - \$2,100 [refer p 25].

2.5 The contemptuous disdain that the practitioner showed Mr M is reflected in the text she sent him in July 2009 when he had the temerity to ask the practitioner to explain why he still did not have residency and to account for the money he had paid [refer p 29].

B [Heyns: paras 12 – 18, p 15 and pp 40 -58]

2.6 Ms B was from Uruguay. She paid the practitioner \$2,250 in fees for immigration work which was never done.

2.7 When the practitioner was pressed by Ms B for details of when the work was going to be done and what her immigration position was, she received a long line of excuses from the practitioner including being ill with food poisoning, having to move out of her office and being on leave due to a family bereavement.

2.8 Again, the practitioner completely abused the trust reposed in her, by not only failing to do the work, but by failing to account for money which is significant to anyone, let alone a person seeking to immigrate to New Zealand and establish a life here.

I [Heyns: paras 19 – 25, pp 15 – 16 and 59 – 69]

- 2.9 Mr I gave the practitioner his personal documents in order that she could undertake the work necessary to advance his application for permanent residency. The practitioner did not undertake the work she was retained to do. Mr I ultimately had to instruct another agent to act for him, but despite requests to do so, Ms Thoman never returned the documents which had been provided to her (although her assistant returned Mr I's passport), nor did she ever explain why she had not carried out the work she was retained to do.

P [Heyns: paras 26 – 31, pp 16 – 17 and 70 – 96]

- 2.10 In August 2009, Ms P paid the practitioner \$700. The practitioner was to apply on Ms P's behalf for residency. At that point she was in New Zealand on the basis of a work permit which was due to expire in September 2009. In anticipation of that permit expiring, the practitioner was also retained by Ms P to apply for a second work permit. Ms P provided the practitioner with her passport.
- 2.11 The practitioner did not advance either the application for permanent residency or the application for a new work permit with the result that Ms P was not entitled to and did not work in New Zealand after 18 September 2009.
- 2.12 Despite requests from Ms P for the return of her passport and personal papers, the practitioner failed to do so. The practitioner also failed to account for the \$700 that had been paid to her.
- 2.13 Ms P made several attempts both by email and telephone calls to make contact with the practitioner who failed repeatedly to return either emails or phone messages.
- 2.14 To say that the practitioner let Ms P down [**refer page 84**] is an understatement. Because of the practitioner's failure to do the work she was retained to do her and her failure to maintain proper communications with her client, Ms P was put in an invidious position and furthermore suffered real financial hardship as a result of the practitioner's default.

D

- 2.15 Mr D was Brazilian. He retained the practitioner in December 2008 to assist in his application for residency. The sum of \$750 was paid to the practitioner on his behalf by his friend, Ms P.
- 2.16 Having decided to return to Brazil and not pursue his application, Mr D requested the return of the monies that he had paid to the practitioner. His requests fell on deaf ears, as did the repeated entreaties by Ms P for the return of the money she had paid. Ms P received a long line of completely implausible and dishonest responses from the practitioner, including an assertion that the funds were tied up in a trust account or that she required confirmation from Mr D that the money should be paid to Ms P [**refer page 99**].
- 2.17 Whilst the complainant in this case is, technically, Mr D, the compensation order which the Society is seeking in relation to this element of the charge should be made in favour of Ms P.

G [Heyns: para 40 – 44, pp 18 – 19 and 111 – 128]

- 2.18 Ms G and her partner retained the practitioner in September 2009 to act for them in their applications for work visas. The practitioner was paid \$800 in respect of her fees and \$400, being the fees charged by the Department on the application.
- 2.19 Not only did the practitioner fail to do the work she was retained to do, she appears to have stolen the \$400 which ought to have been paid to the Department in fees – refer page 112.
- 2.20 Again, the practitioner failed to respond to the numerous attempts made by Ms G to find out what was going on and get some explanation of why the \$400 which had been paid to the practitioner had not been paid to the Department. The practitioner did not reply at all to those attempts, leaving Ms G and her partner in the position of having to make fresh applications in November 2009.

B [Heyns: paras 45 – 50, pp 19 – 20 and 129 – 139]

- 2.21 On 20 October 2009, the practitioner visited Mr B and his partner at their home. The practitioner was retained to apply for a work permit for Mr B and was paid \$750 to do so. At the same time Mr B gave the practitioner the necessary personal documentation, including his passport.
- 2.22 The practitioner did not do the work she was engaged to do. She has not accounted to Mr B for the \$750 and she has failed to return his passport to him, leaving him in a position where his work permit was about to expire but with no ability to actually separately advance his application in the absence of his passport.

Intervention

- 2.23 The Society intervened in the practitioner's practice in September 2009. Mr Mark Manhire, a practitioner who had himself raised concerns in relation to the practitioner [**refer p 143 – Exhibit H2**] went through the boxes of files that were delivered to the Society by the practitioner. None of the complainants' files or personal documents/passports were located.

3. CONCLUSION

- 3.1 It is clear from a review of the facts giving rise to these charges that the practitioner paid no regard whatsoever to the Rules of Professional Conduct and the Conduct and Client Care Rules. She has repeatedly failed to observe rules which are intended to provide protection and safeguards to clients, particularly clients in the vulnerable position that all seven of the complainants were in.
- 3.2 In not a single case is there any instructing solicitor involved in the equation, nor is there a single written fee ever rendered to any of the complainants. Put colloquially, the practitioner has "fleeced" seven innocent people and treated them with a disdain and contempt which reflects badly on her and, if not responded to with the severest of punishments, will reflect badly on the profession as a whole.

- 3.3 The practitioner is simply not fit to practise. She has shown no remorse whatsoever at any stage of the disciplinary process and indeed, has treated that process with the same contempt that she has shown her clients.
- 3.4 In the circumstances, the Society submits that the penalties sought are appropriate and that anything short of an order striking off the practitioner will not satisfy the important role which this Tribunal has to protect the unsuspecting public from unscrupulous and unprincipled practitioners such as Ms Thoman.

Dated at Auckland this 30th day of March 2011

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C M Meechan
Counsel for the New Zealand Law Society

Compensation Schedule

Complainant	Total
Mr M	\$4,020.00
Ms B	\$2,250.00
Mr I	Nil
Ms P	\$700.00
Mr D	\$750.00
Ms G	\$1,200.00
Mr B	\$750.00
Total compensation to all complainants	\$9,670.00