

THE IDENTITY OF ANY BANK AND ANY OF THEIR EMPLOYEES ARE SUPPRESSED, AS RECORDED IN PARAGRAPH [6], PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006.

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2022] NZLCDT 52

LCDT 022/22

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**WAIKATO-BAY OF PLENTY
STANDARDS COMMITTEE 2**
Applicant

AND

**DUNCAN TAKENA STIRLING
(known as TAKENA STIRLING)**
Respondent

DEPUTY CHAIR

Dr JG Adams

MEMBERS OF TRIBUNAL

Ms N McMahon

Ms M Noble

HEARING 22 December 2022

HELD AT Remote hearing

DATE OF DECISION 22 December 2022

COUNSEL

Mr P Collins for the Standards Committee

No appearance by or for Mr D Stirling the Respondent Practitioner

DECISION OF THE TRIBUNAL ON
APPLICATION FOR INTERIM SUSPENSION

[1] Mr Stirling was given short notice of this hearing. He applied unsuccessfully for an adjournment. The application required urgency because the affidavit evidence on Charge 1 establishes that Mr Stirling deceived his bank or misappropriated funds advanced for a purported settlement by diverting funds to his own use. His bank has suffered net loss in the order of \$85,000 after the bank used \$15,000 held by Mr Stirling in another account to reduce the amount he misappropriated.

[2] The bank with whom he had his trust account has closed his trust account but, unless he is suspended from practice, he would be free to open another trust account elsewhere. The evidence for Charge 2, whilst not as clearly established as that for Charge 1, indicates that Mr Stirling's trust account dealings may have been irregular for some time. Mr Collins has been given to understand that Mr Stirling's practice may operate accounts with another bank.

[3] Mr Stirling gave the Law Society investigators to understand that he had intended to repay the money. He does not seem to appreciate that obtaining and using the advance for personal reasons is wrongful. We are concerned that this indicates he has lost his moral compass in relation to trust moneys. Accordingly, the public, and any bankers he may engage, are at risk.

[4] We are satisfied that it is necessary or desirable to make an order suspending him from practice having regard to the interests of the public and the financial interests of any bank he might engage. Mr Stirling has emailed to advise that he consents to the making of an order of interim suspension on a without prejudice basis. We approve his stance and, because the order is made on a without prejudice basis, we shall review the order as soon as practicable.

[5] Accordingly, by consent, and because we find the grounds are made out, we make an interim order under ss 155 and 245 of the Lawyers and Conveyancers Act 2006 suspending Mr Stirling from practice as a barrister or solicitor until the charge has been disposed of. We note that the order is, at this juncture, made without prejudice to Mr Stirling's position.

[6] We make a final order suppressing the identity of any bank and any of their employees. In support of that order, we also order that the Tribunal file may not be scrutinised or accessed by any non-party without specific order and, in any case, the suppression order relating to banks and bank employees shall prevail. These orders are made pursuant to s 240 of the Lawyers and Conveyancers Act 2006.

[7] No application has been made for name suppression by Mr Stirling. In any event, giving effect to the order of interim suspension right on Christmas would prove impracticable if Mr Stirling's name were suppressed.

[8] A teleconference to manage a review date for the interim suspension order, and to timetable the substantive charges to hearing, shall be arranged for a date after 16 January 2023. If Mr Stirling wishes to avail himself of the review opportunity, he should file affidavit evidence or submissions promptly.

DATED at AUCKLAND this 22nd day of December 2022

Dr JG Adams
Deputy Chairperson