

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 30

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

CHAIR

Dr J Adams

MEMBERS OF TRIBUNAL

Ms N McMahan

Ms M Noble

Ms R Vaai

Ms P Walker MNZM

HEARING 26 July 2023

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 27 July 2023

COUNSEL

Mr P Collins for the Standards Committee

Mr D Stirling, the Respondent Practitioner, in person

DECISION OF TRIBUNAL ON CHARGES AND PENALTY

[1] Mr Stirling is a sole practitioner, currently suspended. He admits the five charges of misconduct and the facts alleged in support of them. We find that the charges are in the most serious category. They involve: deception of his Bank and misappropriation of funds; persistent overdrawing of the trust account; discharging a mortgage (on 31 August 2022) without repaying the mortgage (until 9 September 2022); filing on a monthly basis false and misleading trust account compliance certificates (April to July 2022); and misappropriating funds from his overdrawn trust account in June, July and September 2022.¹ Taking a realistic view, he does not resist the inevitability of strike-off.

[2] The Fidelity Fund is likely to face a cost in the vicinity of \$90,000 because of Mr Stirling's misconduct.

[3] Despite the gravity of the situation, and our condemnation of Mr Stirling's misconduct, we think this decision needs to be balanced by recording some features that add credit to Mr Stirling.

[4] We accept that Mr Stirling is deeply remorseful for his wrong-doing. Once the situation came to light, he accepted responsibility. He has not advanced weak excuses or thin defences. The depth of whakamā he experiences, has been palpable in his conduct throughout, and in his demeanour at the hearing.

[5] Mr Stirling is conscious of the shame he has brought on his community and whānau. At the hearing, he specifically apologised to the Law Society, to the Bank, his former clients and his community. We take those apologies as genuine.

[6] Mr Stirling has contributed to his community. He has suffered significant loss of standing. He has resigned his position as a local body Councillor because of these

¹ Details of the charges appear in Mr Collins' written submissions and the schedule thereto. Given Mr Stirling's acquiescence there is no need to elaborate further in this decision.

offences. His social, family and living circumstances have changed drastically. The task of picking up his life has been difficult, humbling and miserable for Mr Stirling.

[7] Despite the gravity of the charges, we do not find him to be in an irremediable situation in the long run. The quality of his legal work was not in question. His capacity to contribute to his community via many skills he has, can still flourish. Although he could not expect to be in charge of a trust account, it is not unthinkable that he might be able to practise, subject to conditions, at some time in the future. That, of course, would depend on how he conducts himself in the medium future.

Outcome

[8] Each of the five charges is found against him as misconduct.

[9] Mr Stirling's name shall be struck off the roll of barristers and solicitors.

[10] The Standards Committee's reasonable costs amount to almost \$27,000. Mr Collins seeks a contribution. Although these costs fall on lawyers generally, we note Mr Stirling's compliance with the process, and his acceptance of responsibility throughout. He lacks funds but an order requiring some contribution is appropriate. We impose an order requiring him to pay \$5,000 costs to the Standards Committee.

[11] We also require Mr Stirling to reimburse New Zealand Law Society in respect of the Tribunal costs.

[12] An application for name suppression was withdrawn by Mr Stirling at the commencement of the hearing so we do not need to address this.

Summary of orders

1. Mr Stirling's name is struck off the roll of barristers and solicitors, pursuant to ss 242(1)(c) and 244 of the Lawyers and Conveyancers Act 2006 (the Act).
2. Mr Stirling to pay a contribution to the costs of the Standards Committee in the sum of \$5,000, pursuant to s 249 of the Act.

3. The New Zealand Law Society to pay the Tribunal costs in the sum of \$1,625, pursuant to s 257 of the Act.
4. Mr Stirling to reimburse the New Zealand Law Society in full, for the Tribunal costs, pursuant to s 249 of the Act.

DATED at AUCKLAND this 27th day of July 2023

Dr JG Adams
Deputy Chair