

SOUTHLAND DISTRICT LAW SOCIETY : MAURICE HENRY COUGHLAN

TRIBUNAL DECISION

TRIBUNAL:

Mr L H Chisholm (Chair)
Mrs E Collins
Mr J A Faire
Mr S G Lockhart, QC
Mr G S Tuohy, QC
Mr W M Wilson

Maurice Henry Coughlan, you have pleaded guilty to one charge
- that:

"Between 25 May 1988 and 27 September 1988, MAURICE HENRY COUGHLAN whilst acting as solicitor for himself and for the _____, failed to comply with his undertaking to provide a registrable first mortgage security to the _____ to secure a personal loan of \$147,000, and failed to register such security despite having received and disbursed the funds to prior mortgages".

This charge arose from the acceptance of a loan offer by you in February 1988 from the _____. You were offered, and accepted, a loan of \$147,000. That mortgage, in terms of the loan offer and acceptance and undertaking later given by you - to which I shall refer in a moment - required a first mortgage. At the time the loan offer was accepted there were two mortgages against the title - a first mortgage

in favour of the _____ and a second mortgage in favour of the _____.

Mr Coughlan, you would have realised at the time that you gave your undertaking that it was necessary for both of those mortgages to be discharged if the undertaking was to be honoured. In fact, the first mortgage in favour of the _____ was discharged. The problem revolved around the second mortgage in favour of the _____.

Before you gave your undertaking on which this charge is based, you had corresponded and negotiated with the _____ and, as a result of that correspondence - which has been provided to us - you were obliged to make a payment of \$60,000 to the _____ if you were to secure a release of that mortgage. It was after that negotiation and correspondence that you gave your undertaking, which was expressed, in a letter dated 23 May 1988, in these terms:

"We have obtained or have arranged to obtain from the proceeds of settlement all discharges of mortgage, Memoranda of Priority and other documents of title to be available on the draw-down date, which will be the date of settlement of this loan".

Unfortunately, Mr Coughlan, on receipt of the funds you didn't take the steps necessary to secure a release of the

_____ 's mortgage. As you have accepted by pleading guilty to this charge, the undertaking was breached. The evidence before us shows that in the end result, the _____ has suffered a loss to the extent of \$135,094.

This Tribunal has said on previous occasions - and we say again - that undertakings are to be complied with "to their letter". The whole profession depends upon undertakings being performed. On this occasion, you were involved in a matter where you were personally able to gain a benefit by not complying with an undertaking. The consequences are sad as far as you are concerned.

We've been told about your alcoholic problems extending over a period of years, but only really recognised by yourself in recent times. We've also had the benefit of reference by you to medical reports as to your present position. Mr Coughlan, you have indicated to us - and we accept - that you regret what has happened. But at the end of the day, this Tribunal has to step back and consider the breach of an undertaking on this occasion. This was a serious breach; it had serious consequences; it related to a matter in which you were personally involved - the mortgage advance was, of course, to

you personally.

The Tribunal has heard from Mr Gendall that the Southland Society does not seek a striking off Order. But, having anxiously considered the matter, the Tribunal has concluded that, by reason of your conduct, you are not a fit and proper person to practice as a barrister and solicitor, and it makes an Order pursuant to section 112(2)(a) that your name be struck off the roll. I can say, Mr Coughlan, that that is a unanimous decision.

The Tribunal also imposes a censure, and orders that you pay costs to the Southland Society in the sum of \$4,614, and to the New Zealand Law Society in the sum of \$1,084.

Mr Coughlan, you have indicated that you wish to address us with regard to name suppression, and you are invited to do so now.