

IN THE MATTER OF RICHARD EDWARD BUXTON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss N Lucking (in the chair)
Mrs E Stanley
Mrs N Chavda

Date of Hearing: 19th May 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Inderjit Singh Johal, a Barrister employed by the Law Society at the Solicitors Regulation Authority of Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire CV32 5AE on 26th September 2008 that Richard Edward Buxton, solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that:-

1. He misappropriated clients' funds contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007, which for the avoidance of doubt was an allegation of dishonesty.
2. He utilised clients' funds for his own benefit contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007, which for the avoidance of doubt was an allegation of dishonesty.

3. He withdrew money from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998.
4. He failed to produce to the Investigation Officers, statements and other documents relating to his firm's accounts, in breach of Rule 34 of the Solicitors Accounts Rules 1998.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 19th May 2009 when Inderjit Singh Johal appeared as the Applicant and the Respondent did not appear and was not represented.

The Tribunal had before it a letter from the Respondent dated 29th April 2009 together with attached statement from the Respondent dated 28th April 2009. The Respondent confirmed in the letter that he did not intend to appear before the Tribunal due to the state of his health. The Tribunal also had a letter dated 16th May 2009 from the Respondent confirming he had been served with a Schedule of Costs and giving details of his financial position. The Tribunal was satisfied that the Respondent was aware of the hearing and ordered the matter should proceed in the absence of the Respondent.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Orders that the Respondent, RICHARD EDWARD BUXTON, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,884.68.

The facts are set out in paragraphs 1 – 9 hereunder:-

1. The Respondent was born in 1953 and was admitted to the Roll on 1st April 1977. At all material times he practised as the sole director of Buxtons Solicitors Limited (trading as Mulcare Jenkins) at 5a Muster Green, Haywards Heath, West Sussex, RH16 4AP. Buxtons Solicitors Limited ('Buxtons') went into administration on 2nd July 2008 and was sold as a going concern. Since that date the Respondent had not practised as a solicitor.
2. Mr Miller, a non-executive director of Buxtons resigned his post on 28th May 2008. Mr Miller was a signatory to Buxtons' accounts. Mr Miller and the Respondent had mutual Powers of Attorney to operate each other's business and when necessary they provided holiday and emergency cover to each other. There is no criticism of Mr Miller's conduct in this application.
3. The Forensic Investigation Unit of the Law Society ("the FIU") carried out an investigation into Buxtons on 13th June 2008. The FIU report dated 26th June 2008 was before the Tribunal.
4. The FIU Report highlighted the following:-
 - (a) That the Respondent was the sole executor of the estate of Mr T deceased. Mr T's Will stated that the residue of his estate was to be held on trust "to pay or transfer to in such shares or in such amounts as my trustees in their absolute

discretion think fit among such Charity or Charities as my trustees shall select”.

- (b) On 17th March 2008 the Respondent set up a company in the British Virgin Islands (“BVI”) called the British Children’s Society Limited (BCS). The Respondent set up the company as a ‘charity’. BSC Limited was registered in the BVI and incorporated as a BVI company. The Respondent was a sole director of the company.
 - (c) The Respondent opened a Swiss bank account at Bank Sarasin & Co Limited for BCS. On 22nd April 2008 he transferred the sum of £211,370 from the funds held on behalf of Mr T’s estate to that bank account.
 - (d) Between 25th April 2008 and 22nd May 2008 the Respondent instigated improper payments totalling £47,017.77 from the funds transferred to BCS out of the residue of the estate, that were either paid to him in cash or transferred to his personal bank account.
 - (e) The Respondent claimed that the money was used to defer travel costs, personal and business expenses and as a personal loan. He also informed the Forensic Investigators that the money was used to pay his employees’ salaries, pay his personal credit card bills and to buy a Mercedes car.
 - (f) On 20th May 2008 the Respondent requested the bank to transfer a further 100,000 Euros from the funds in the BCS account to his personal account. This request was countermanded by the Respondent on 22nd May 2008 after his staff raised concerns about the transfers with him.
 - (g) The Respondent secured the return of all the capital funds which were transferred to the BCS Swiss bank account to his firm’s client account by 19th June 2008. This was by requesting Bank Sarasin to remit all the monies in the BCS accounts back to his firm and by making up the shortfall from his personal resources. The Respondent, to date, had not accounted for the loss of interest to the estate.
 - (h) At Buxtons the Respondent maintained an office VAT account and an office loan account. This was in addition to his office and client account. The Investigators requested the Respondent to produce statements for the two accounts. The Respondent failed to produce the statement for his VAT account and office loan account.
5. On 13th June 2008 the Respondent was interviewed by the Forensic Investigators and a copy of the interview was within the FIU report. The Respondent stated that BCS was a registered charity in the BVI and that it had general charitable objects. He said that he set up the Swiss account in order to obviate the need to deal with any taxation aspects in the UK and it allowed him quite a lot of discretion and the ability to run the charity effectively without too many bureaucratic entanglements. The Respondent admitted responsibility for the improper payments from the BCS account. He claimed that parts of the monies were taken as loans although there was no loan documentation to support his claim.

6. The Respondent also admitted that £2000 was paid into his office account to pay expenses and £18,000 was used to discharge credit card debts, and the remainder of the monies was used to purchase a car. He claimed that he was in dire financial straights both professionally and personally, that he had no other avenues to borrow from and that it was his honest intention to repay the monies he had transferred.
7. In reply to a specific question about whether the Respondent's actions were honest, he replied..... "It would have obviously been better with a bit of hindsight not to have made loans especially in this type of situation...whether it's dishonest or honest I am going to leave that for others to judge...but it wasn't my deliberate dishonest intention to ever not repay the monies..."
8. The Respondent produced a signed statement dated 12th June 2008 which was appended to and referred to in the FIU report and which set out the disposal and transfer of funds.
9. The Respondent in a letter to the SRA dated 3rd July 2008 stated that he was on bail and facing the possibility of criminal charges. He also admitted that the withdrawals of money from BCS Limited were done partly to ensure that his firm could carry on trading and that his actions were inappropriate and that he would "pay the appropriate penalty both in the SDT and the Courts".

The Submissions of the Applicant

10. The Applicant confirmed the Respondent had been made bankrupt on 12th September 2008 after petitioning for his own bankruptcy.
11. The Applicant referred the Tribunal to the statement provided by the Respondent dated 28th April 2009 in which it was clear the Respondent was not disputing the allegations against him. He accepted that his conduct in relation to the estate of Mr T deceased was dishonest and stated in his witness statement: "I am truly sorry for my dishonesty". The Applicant submitted that it was quite clear the Respondent admitted dishonesty and was aware his conduct had been dishonest. The Applicant confirmed the Respondent was still on bail at the moment and he expected to be charged with two counts of fraud.
12. The Applicant submitted that in relation to the charity BCS, there were no clear aims and purposes, no category of beneficiaries who would benefit and the Respondent had not made any distributions to charities from the BCS account. The money had been used solely for his own purposes.
13. The Applicant further submitted that the Respondent as an executor of Mr T deceased's Will had breached his fiduciary duties as a trustee and had clearly utilised client funds for his own benefit knowing this to be wrong. The Applicant referred the Tribunal to the case of *Twinsectra v Yardley and others* [2002] UKHL 12 which sets out the test for dishonesty.
14. The Applicant also wished to pursue a claim for his costs and provided the Tribunal with a schedule of costs in the total sum of £3,769.35. This had been served on the

Respondent and the Tribunal was referred to the Respondent's letter dated 16th May 2009 where he had indicated he was an undischarged bankrupt receiving £80 per week benefit as he was unable to work at present due to severe depression. The Respondent had made observations regarding the amount of costs and asked the Tribunal to exercise its discretion not to order enforcement of costs against him. The Applicant did not agree with the comments made by the Respondent although he did draw the Tribunal's attention to the case of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) whereby the Tribunal could undertake a means enquiry into the Respondent's financial situation. However as the Respondent had not appeared before the Tribunal, the Applicant submitted the Tribunal could only consider the contents of the Respondent's letter dated 16th May 2009 and asked the Tribunal to summarily assess the costs in the Applicant's favour.

The Findings of the Tribunal

15. The Tribunal had considered carefully all the documentation before it and the submissions of the Applicant. The Tribunal had taken into account the written evidence of the Respondent and noted the Respondent had stated in his statement dated 28th April 2009 "I am truly sorry for my dishonesty". The Respondent had also accepted that the transfers from Mr T deceased's estate to pay for the Respondent's debts, business expenses and a car had been dishonest.
16. The Tribunal was extremely concerned that this was a case where the Respondent had been placed in a position of trust and had abused his position as a trustee of the estate by using the estate's funds for his own personal benefit. This was not acceptable behaviour and it was quite clear that the public needed to be protected from the Respondent who should no longer be allowed to practise as a member of the profession. The Tribunal was also extremely concerned to note that the Respondent had appeared before the Tribunal on two previous occasions, one of which related to allegations where the Respondent had failed to act in the affairs of his client with due diligence. In the circumstances, the Tribunal ordered that the Respondent be struck off the Roll of Solicitors.
17. In relation to the question of costs, the Tribunal had considered the written submissions of the Respondent and also considered the case of Merrick v the Law Society. It was quite clear that as the Respondent had now been struck off, his future earning capacity had been curtailed, in any event he was now on benefits and unable to work due to severe depression. However, given that the Respondent had appeared before the Tribunal on two previous occasions, the Tribunal felt that some award of costs should be made and accordingly assessed the Applicant's costs in the sum of £1,884.68.

18. The Tribunal ordered that the Respondent, RICHARD EDWARD BUXTON, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,884.68.

Dated this 29th day of September 2009
On behalf of the Tribunal

N Lucking
Chairman