

IN THE MATTER OF ALAN LEWIS BENSTOCK, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Miss T Cullen
Mrs V Murray-Chandra

Date of Hearing: 8th December 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by Ian Ryan, solicitor and partner in the firm of Finers Stephens Innocent, 179 Great Portland Street, London, W1W 5LS on 6th January 2009 that Alan Lewis Benstock 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.

On 17th November 2009 the Applicant made a supplementary statement containing a further allegation. The allegations set out below are those contained in the original and supplementary statements.

The allegations against the Respondent were:

- (i) that he deliberately and improperly withdrew controlled trust monies from client account in breach of Rule 22 of the Solicitors Accounts Rules 1998 (the 1998 Rules);
- (ii) that he deliberately and improperly utilised controlled trust monies that should have been in client account for his own benefit;

- (iii) that he had been convicted of nine offences of theft and sentenced to 22 months imprisonment and was thereby in breach of Rule 1.01, 1.02 and 1.06 of the Solicitors Code of Conduct 2007.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 8th December 2009 when the Applicant appeared in person and the Respondent did not appear and was not represented.

The evidence before the Tribunal

The evidence before the Tribunal included the copy indictment and certificate of conviction.

Preliminary matter

At the opening of the hearing the Applicant invited the Tribunal to proceed on the basis only of allegation (iii) with allegations (i) and (ii) permitted to lie on the file. The Tribunal consented.

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

The Tribunal Orders that the Respondent, Alan Lewis Benstock, 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 £19,040.03

The facts are set out in paragraphs 1-5 hereunder:

1. The Respondent, born in 1958, was admitted as a solicitor in 1982 and his name remained on the Roll of Solicitors but he did not hold a current practising certificate.
2. At the material times the Respondent practised in partnership under the style of the Lister Croft partnership at Wakefield, West Yorkshire. The Respondent had been expelled from that partnership on 28th September 2006.
3. The Respondent had pleaded guilty to nine counts of theft at Leeds Crown Court on 21st September 2009 when sentencing was adjourned until 26th October 2009. On that date Her Honour Judge Belcher imposed concurrent sentences of 22 months imprisonment on each count.
4. The Respondent's pleas of guilty to counts 4 to 12 on the indictment related to allegations which were the subject of an SRA Investigation Officer's Report leading to allegations (i) and (ii).
5. Counts 1 to 3 on the indictment were not proceeded with and left to lie on file. Counts 4 to 12 related to the Respondent's conduct of the LCC Trust from which he stole choses in action, credit balances (belonging to LCC Trust) of £6,250, £5,750, £2,500, £16,250, £4,000, £1,5,00, £2,500, £4,300 and £450 on different dates in March 2006 and August 2006 and in the intervening period.

The submissions of the Applicant

6. The Tribunal was invited to give due weight to the sentencing remarks of Her Honour Judge Belcher on 26th October 2009 and in particular when she said:

"It may be to your credit that you have accepted or injected capital into a firm, but it appears that you have done so again failing to recognise that the firm was obviously in financial difficulty. I can understand why you have tried to keep that firm afloat, and tried to maintain your family's lifestyle. I can understand anybody doing that, but not when they then resort to serious acts of theft from deceased clients who trusted them, trusted their honesty and integrity to administer their wills after their deaths."

The Learned Judge went on to say that it was plain that the Respondent was a man who was living beyond his means but she did not treat him as someone who was motivated by greed. The course of offending was carried out over a period of four and a half months and that was an aggravating factor. The target of the Respondent's offending was the estates of the deceased. The Learned Judge further said that she did not treat this as if there had been any planning.

7. Such behaviour on the part of a solicitor in stealing money from a Charitable Trust serves to bring the solicitors' profession into disgrace. The Respondent had dealt with the files and had been an executor where there were discretionary charitable beneficiaries. He had opened the LCC Trust (which was not registered as a charity) and had opened an outside bank account and transferred money to that bank account and had taken the money from it for himself.
8. The Respondent had been entirely uncooperative and unhelpful so far as the SRA's investigation and the Applicant himself had been concerned. He had not taken any part in the disciplinary proceedings.
9. The Applicant sought the costs of and incidental to the application and enquiry and provided the Tribunal with a schedule of his costs. These costs did not reflect the fact that the Respondent had obtained injunctive relief in 1998 preventing The Law Society from bringing disciplinary proceedings against him. The order had been couched as a permanent order although it had been intended to be an interim order. The Law Society had been compelled to instruct solicitors to go to the High Court to get the injunction order changed.
10. The Tribunal was invited also to note that the Respondent had been appointed a deputy coroner.

The Findings of the Tribunal

11. The Tribunal found the allegations to have been substantiated. A solicitor who was convicted of theft as he was in the particular circumstances of this case, clearly had not met the required standards of probity, integrity and trustworthiness required of a member of that profession and it was both appropriate and proportionate in order to protect the public and maintain the good reputation of the solicitors' profession that the Respondent be struck off the Roll.

12. The Tribunal considered that it was right that the Respondent should meet the Applicant's costs. The Tribunal considered that the costs sought by the Applicant were entirely reasonable and it Ordered the Respondent to pay those costs in the fixed sum of £19,040.03.

DATED this 11th day of February 2010
on behalf of the Tribunal

A H Isaacs
Chairman