

IN THE MATTER OF ROBERT LEWIS DAY, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. K.I.B. Yeaman (in the Chair)
Mr. D.E. Fordham
Dame Simone Prendergast

Date Of Hearing: 16th February 1995

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Complaints Bureau by Roger Field, solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on 9th November 1994 that an Order be made by the Tribunal directing that as from a date to be specified in such Order no solicitor should, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Robert Lewis Day of Perry, Huntingdon PE18 a person who was or had been a clerk to a solicitor or that such other Order might be made as the Tribunal should think right.

The allegation was that the respondent had, in the opinion of the Law Society, occasioned or been a party to with or without the connivance of the solicitor to whom he was or had been a clerk, an act or default in relation to that solicitor's practice which involved conduct on his part of such a nature that in the opinion of the Law Society it would be undesirable for him to be employed by a solicitor in connection with his or her practice.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 16th February 1995 when Roger Field, solicitor and partner in the firm of Messrs. Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands appeared for the applicant and the respondent did not appear and was not represented.

The evidence before the Tribunal included a letter addressed by the respondent to the applicant dated 8th February 1995 in which he acknowledge receipt of the proceedings and did not contest the allegation.

At the conclusion of the hearing the Tribunal ORDERED that as from 16th February 1995 no solicitor should, except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Robert Lewis Day of Perry, Huntingdon PE18 a person who was or had been a clerk to a solicitor and the Tribunal further Ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £505.00 inclusive and the costs of the Investigation Accountant of the Law Society to be taxed if not agreed.

The facts are set out in paragraphs 1 to 3 hereunder.

1. The respondent, who was not a solicitor, was employed by Messrs. Warrens Boys & Archer, solicitors of 20 Hartford Road, Huntingdon, Cambridgeshire ("the firm").
2. The respondent was employed by the firm in connection with their practice as solicitors until he was dismissed on 16th February 1993. During his employment he was responsible, under the supervision of a partner, for the conduct of the professional business of clients of the firm in connection with residential conveyancing.
3. At various times during his employment and principally during 1991, the respondent misappropriated and/or misapplied funds held or received by the firm for and on behalf of their clients. The respondent's actions caused breaches of the Solicitors' Accounts Rules to occur. The Tribunal had before it a copy of the Report dated 28th April 1994 made by the Investigation Accountant of the Solicitors' Complaints Bureau. The Report said that after a comprehensive investigation by the partners of the firm they discovered that the respondent had retained certain cash sums that were paid to the practice. The total amount retained had been calculated at £2,563.73. The matter had not been reported to the police.

The submissions of the applicant

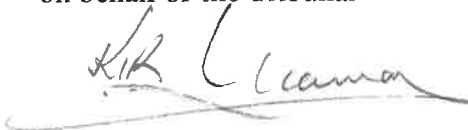
4. The facts spoke for themselves. The Solicitors Complaints Bureau had satisfied itself that the respondent had been given the appropriate level of supervision by the partners in the firm.
5. It was right that an Order controlling the employment of the respondent within the solicitors' profession should be made.

The submissions of the respondent (contained in his before-mentioned letter of 8th February 1995)

6. The respondent had been unable to arrange representation or obtain advice owing to his financial position and did not feel able to represent himself.
7. The respondent expressed his deep regret for his actions and apologised to the partners of the firm, he would repay the money taken as soon as he was able to do so.

The Tribunal FOUND the allegations to have been substantiated and made the Order sought together with an Order for costs.

DATED this 31st day of March 1995
on behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'K.I.B. Yeaman', written over a horizontal line.

K.I.B. Yeaman
Chairman

