

IN THE MATTER OF JOHN DENNIS SIMS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A Gaynor-Smith (in the Chair)
Mr. J C Chesterton
Mrs C Pickering

Date Of Hearing: 28th 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 David Rowland Swift solicitor and partner in the firm of Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead on the 14th November 1994 that John Dennis Sims, solicitor, of Upton, Poole, Dorset BH16 might be required to answer the allegations set out in the statement which accompanies the application and that such Order might be made as the Tribunal should think right.

The allegations were that the respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars namely that he had:-

- (i) failed to comply with a professional undertaking;
- (ii) failed to notify the recipient of his undertaking of the happening of an event upon which the undertaking might have been dependent.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 28th February 1995 when David Rowland Swift solicitor and partner in the firm of Percy Hughes &

Roberts of 19 Hamilton Square, Birkenhead appeared for the applicant and the respondent did not appear and was not represented.

The evidence before the Tribunal included the oral evidence of Mrs Susan Caroline Elson as to due service of the proceedings and exhibit "JDS1".

At the conclusion of the hearing the Tribunal ORDERED that the respondent John Dennis Sims of Upton, Poole, Dorset, BH16 solicitor, be Struck Off the Roll of Solicitors and they further Ordered he pay the costs of and incidental to the application and enquiry fixed in the sum of £1,419.72 inclusive.

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

1. The respondent, born in 1941, was admitted a solicitor in 1970. At the material times he practised in partnership under the style of Sims & Roper. On the 18th January 1993 as a consequence of his bankruptcy the respondent ceased to practise and the firm of Sims & Roper ceased to function as from the 5th March 1993.
2. On the 26th April 1993 Messrs. Wallace & Partners solicitors of London complained to the Solicitors Complaints Bureau (The Bureau) on behalf of their clients, T Ltd. that the respondent was in breach of his professional undertaking. The undertaking was given on the 24th December 1992 and provided that T Ltd would loan a sum of £1,000,000 in respect of temporary bridging finance for a client of the respondent, such sum to be retained by the respondent and used solely for the acquisition of property, against an undertaking by the respondent to repay the sum with interest at the expiration of four months. The said sum was not repaid by the respondent.
3. On the 29th September 1993 the Bureau wrote to the respondent seeking an explanation. He replied on the 11th October 1993 suggesting that the matter was sub judice. On the 3rd December 1993 the Bureau wrote to the respondent pointing out that the matter of failure to comply with the undertaking was being considered as a question of conduct and that an explanation was appropriate. In fact the court proceedings had been dealt with on the 12th November 1993 when judgement was entered against the respondent's former partner. In his reply on the 22nd December 1993 the respondent indicated that the funds which would have discharged the undertaking were misappropriated by others with the consequence that the undertaking was not discharged.
4. On the 1st March 1994 Mr B of Bournemouth complained to the Bureau that the respondent was in breach of his professional undertaking. The undertaking was provided on the 26th March 1992 and by its terms Mr B loaned the sum of \$100,000 to the respondent in connection with a transaction in which the respondent was acting , but with which Mr B was not connected, against an undertaking from the respondent to pay to Mr B a sum of \$1,000,000 on or before the 26th April 1992. In addition the respondent undertook that if the transaction did not proceed he would repay the sum of \$100,000 on or before the 26th April 1992 from funds received from a development known as the Antigua Leisure Complex. The respondent did not pay the sum of \$1,000,000 on or before the 26th April 1992 nor did he give notice that the transaction had not proceeded or repay the sum of \$100,000. On the 28th October 1992, in a

letter to Mr B's solicitors, the respondent acknowledged his undertaking to repay \$100,000 before the 26th April 1992 and that he should not have parted with the funds provided by Mr B without adequate safeguards.

5. On the 8th February 1994, as a result of other information received, the Bureau wrote to the respondent seeking explanation. He replied on the 5th July indicating that he had not been in a position to comply with his undertaking and that police enquiries were in progress in connection with the recovery of the moneys involved.
6. Mr B attended the hearing and offered to give evidence. The Tribunal expressed its gratitude to Mr B for taking the trouble to attend and were pleased to accept his explanation of what had transpired, although they were content with the evidence before them and did not hear Mr B's evidence on oath.

The submissions of the applicant

7. The applicant was not in a position to say whether or not the proposed transactions mooted by the respondent were genuine. In the case of Mr B, it was an obvious one for suspicion. In the submission of the applicant the facts came exceedingly close to an "advance fees fraud" where very high returns were promised but the transaction contemplated never took place.
8. It was regrettable that judgement had been obtained against the respondent's former partner who was in no way implicated.

No submissions were made on behalf of the respondent.

The Tribunal FOUND the allegations to have been substantiated. The Tribunal Found the respondent's actions to have been extraordinary at best and the breaches of his undertakings were most grave. It is essential in many financial and business transactions that a solicitor's undertaking be relied upon. Any action by a solicitor which serves to undermine the safe reliance which a party can put upon a solicitor's undertaking seriously damages the good reputation of the solicitors' profession. Such behaviour will not be tolerated. The Tribunal Ordered that the respondent be Struck Off the Roll and further Ordered that he pay the costs of the application and enquiry.

DATED this 28th day of March 1995

on behalf of the Tribunal

Adrian Gaynor-Smith

Chairman
A Gaynor-Smith

