

IN THE MATTER OF JOHN MARIOT BOUTWOOD, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. R.B. Bamford (in the Chair)
Mrs. E. Stanley
Mr. R.P.L. McMurtrie

Date of Hearing: 21st March 1995

FINDINGS

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

An application was duly made on behalf of the Law Society by Carlton Maurice Edwards, solicitor of Southfield House, 11 Liverpool Gardens, Worthing, West Sussex on 13th January 1995 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 John Marriott Boutwood of Harrogate, North Yorkshire 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 application was heard at the Court Room, No. 60 Carey Street, London WC2 on 21st March 1995 when Carlton Maurice Edwards, solicitor and partner in the firm of Messrs. Marsh Ferriman & Cheale of Southfield House, 11-Liverpool Gardens, Worthing, West Sussex appeared for the applicant and the respondent did not appear and was not represented.

The allegation was that the respondent, having been a clerk to a solicitor but not being a solicitor, 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 evidence before the Tribunal included exhibit "JMB 2", a letter addressed by the respondent to the applicant dated 17th March 1995 confirming that the respondent would not appear at the hearing and none of the statements were in dispute.

At the conclusion of the hearing the Tribunal ORDERED that as from 21st March 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 John Marriott Boutwood of Harrogate, North Yorkshire 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 £548.70 inclusive.

The facts are set out in paragraphs 1 to 6 hereunder.

1. The respondent who was not a solicitor was from 1st June 1985 until 31st May 1993 employed as a cashier by Messrs. Barber Robinson, solicitors of Harrogate, North Yorkshire.
2. The respondent without authority from his employers improperly transferred monies totalling £26,929.72 from client to office account, such transfers being discovered during the annual audit of the solicitors' accounts for the year ended 31st December 1992.
3. A cash shortage had been found on client account which rose in the following way -

(i)	unallocated transfers from client to office bank account	£20,050.00
(ii)	Book difference - surplus (identified)	(866.55)
(iii)	Debit balances - due to book-keeping omissions	7,748.15
(iv)	Bank charges incorrectly debited to client account	12.00
(v)	Book difference - surplus (unidentified)	<u>(13.88)</u>
		<u>£26,929.72</u>
4. The partners in Messrs. Barber Robinson told the Investigation Accountant of the Solicitors Complaints Bureau (the Bureau) that they had been unaware of the shortages until they had been brought to their attention by the reporting accountants. They said that their cashier had apparently falsified the bank reconciliations in order to conceal his own errors and omissions and he had subsequently been dismissed and replaced.

5. The partners reported to the Bureau that a thorough investigation by their auditors revealed no mismanagement of clients' account other than the unauthorised transfers and said they were satisfied that the respondent had derived no personal gain.
6. On 17th August 1994 the Adjudication & Appeals Committee of the Solicitors Complaints Bureau resolved that application should be made to the Tribunal for an Order pursuant to Section 43(2) of the Solicitors' Act 1974 in respect of the respondent.

The submissions of the applicant

7. The covering up by a solicitor's cashier of shortages on client account amounted to serious misconduct. The respondent's employers had been caused inconvenience and financial loss. It was right that his employment within the legal profession should be controlled.

The submissions of the respondent (contained in his before-mentioned letter of 17th March 1995)

8. The respondent had not worked since leaving Messrs. Barber Robinson and he did not intend to in the future. Any work he might do would be likely to be voluntary charity work.

The Tribunal FOUND the allegation to have been substantiated, indeed it was not contested. In the circumstances it was right that the Order sought should be made and that the respondent should bear the costs of and incidental to the application and enquiry. The applicant has asked the Tribunal to Order that the respondent pay the Investigation Accountant's costs which totalled £3,729.00. The Tribunal considered that to be a very large sum of money for a man in the circumstances of the respondent. This, together with the fact that the respondent's employers' auditors had confirmed otherwise clear accounts, prompted the Tribunal to decline to Order him to pay these costs.

DATED this 24th day of April 1995

on behalf of the Tribunal



R.B. Bamford
Chairman

Findings filed with the
Law Society on the 25th
day of May 1995.

