

Appeal Lodged 10.7.95.
Order Filed 27.6.95

No. 6843/1995

IN THE MATTER OF WILLIAM DERMOT NOEL MCKINNEY-SHEEHAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. K.I.B. Yeaman (in the Chair)
Mr. D.J. Leverton
Lady L. Bonham-Carter

Date Of Hearing: 27th June 1995

FINDINGS

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

An application was duly made on behalf of the Solicitor Complaints Bureau by David Rowland Swift, solicitor of 19 Hamilton Square, Birkenhead, Merseyside on 27th March 1995 that William Dermot Noel McKinney-Sheehan, solicitor of 13 Silver Street, Newport, Pagnell (subsequently of _____, Wellingborough, Northamptonshire) 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 were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely that he had -

- (i) contrary to Rule 8 of the Solicitors' Accounts Rules 1991 drawn money out of client account other than as permitted by Rule 7 of the said Rules;
- (ii) utilised clients' funds for his own purposes;
- (iii) misappropriated clients' funds.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 27th June 1995 when Geoffrey Williams, solicitor and partner in the firm of Cartwrights Adams & Black of 36 West Bute Street, Cardiff appeared for the applicant (as agent for Mr. Swift) and the respondent appeared in person.

The evidence before the Tribunal included the admissions of the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent William Dermot Noel McKinney-Sheehan, solicitor of Flat _____ Wellingborough, Northamptonshire NN8 _____ (formerly of 13 Silver Street, Newport Pagnell, MK16 OEJ) be struck off the Roll of Solicitors and they further Ordered him to pay the costs of and incidental to the application and enquiry, to be taxed if not agreed.

The facts are set out in paragraphs 1 to 5 hereunder.

1. The respondent, born in 1951, was admitted a solicitor in 1979 and at all material times carried on practice on his own account under the style of McKinneys at 13 Silver Street, Newport Pagnell.
2. On 1st March 1995 the Adjudication & Appeals Committee of the Law Society resolved to intervene in the respondent's practice pursuant to the provisions of Section 35 and Part II of Schedule 1 of the Solicitors' Act 1974.
3. Upon due notice to the respondent, the Investigation Accountant of the Law Society carried out an inspection of the respondent's books of account. A copy of the Investigation Accountant's Report of 23rd February 1995 showed that there was a shortfall in clients' funds on 31st January 1995 in the total sum of £11,792.55.
4. The shortfall apparent on 31st January 1995 arose as a result of improper transfers from client to office bank account for the respondent's use and benefit totalling £11,778.71 and debit balances in the sum of £18.75.
5. It was noted that in the period between 31st January 1995 and 20th February 1995 a further sum of £489.78 was improperly transferred from client account to office account for the respondent's use and benefit. The respondent had been improperly treating residual balances, properly due to clients, as costs in order to fund transfers to the office account which was overdrawn although no bills were actually delivered to the clients concerned.

The submissions of the applicant

6. It was the respondent's understanding that the cash shortage of £11,797.46 had been repaid. Nothing had yet been paid out of the Compensation Fund although there was an application pending in the sum of £485.62. The intervention costs to date amounted to £5,855.03.
7. The applicant wished to draw to the Tribunal's attention improper transfers to office account in the estate of one Mrs. N. The respondent said that some four interim bills had been raised (between November 1991 and May 1993) and charged to the relevant

account in the clients' ledger with a corresponding transfer made from client to office bank account in respect thereof. Those interim bills totalled £11,560.00.

8. On 27th August 1993, a final bill for £11,579.63 was raised which the respondent said was intended to include the value of the four interim bills. Notwithstanding, on 27th August 1993 a transfer of £11,579.63 from client to office bank account was made thereby duplicating the previous transfer and causing an over transfer of £11,560.00. Although the respondent said that the over transfer was an error, it would be appreciated that the consequent shortage had been in existence for over seventeen months.
9. On 8th December 1994 a Remuneration Certificate was issued in connection with the N estate assessing a fair and reasonable charge of £2,250.00 plus VAT. The Certificate recorded the amount actually charged at £9,855.00 plus VAT (£11,579.63).
10. Between 21st November 1994 and 13th January 1995, improper transfers from client to office bank account, varying in amount between £9.50 and £125.34 and totalling £218.71, had been made on account of five clients. The respondent admitted that those transfers were improper as the bills raised had not been delivered to the clients concerned. The respondent said that those bills were in addition to the "primary" bills of costs raised and delivered to the clients in order to "bill off surpluses" so that the files could be "deaded".
11. There were further improper transfers to office bank account after the inspection date - some seven in all - totalling £489.78, the largest of which was the matter of Mr. & Mrs. M, who the respondent acted for in a conveyancing transaction. The matter was completed on 28th October 1994 and a payment to Mr. & Mrs. M on 7th November 1994 reduced the balance on the relevant client ledger account to Nil.
12. On 14th November 1994, £231.62 was received into client bank account in respect of an overpayment on the mortgage redemption. On 2nd February 1995 a bill of costs was raised for £231.63 including VAT and a transfer in like amount made to office bank account on 3rd February 1995. The respondent admitted that the bill of costs had not been delivered to the client. He agreed that the monies were due to the client and said that the raising of a bill and the subsequent transfer from client bank account had been errors.
13. It would not, however, have escaped the attention of the Tribunal that the bill of costs raised in the M matter totally matched the sums of money received back from the building society. They might take the view that this was too unusual to be a coincidence and represented a conscious effort on the part of the respondent to sweep up the client account balances and transfer them improperly into office account.
14. The Law Society had intervened in the respondent's practice. The respondent had not held a current Practising Certificate since March 1995. He was now working outside the law. The intervening agent had not noticed any undue problems in relation to the firm save the matters mentioned above, although it was too early as yet to say whether or not these were the only misappropriations.

15. It was the submission of the applicant that these were improper and wilful transfers. The respondent had additionally allowed monies to languish in the office account for lengthy periods.

The submissions of the respondent

16. The respondent outlined the history of his practice. He had initially been located in Newport Pagnell, but for a period of time in the early 1990's moved to Milton Keynes city centre. From August 1994 he moved back to Newport Pagnell. He did not accept that in the matter of Mrs. N deceased, the remuneration certificate assessing a fair and reasonable charge of £2,250.00 plus VAT was the only remuneration certificate which was issued. He believed that there was at least one other remuneration certificate in existence in relation to this estate, but could not give the Tribunal any further details. He accepted that some £23,000.00 had been transferred out of this estate in respect of costs, but argued that he was entitled to more costs than the £2,250.00 permitted by the one remuneration certificate.
17. At Milton Keynes, there had been three fee earners in the practice. The respondent was out at court most of the time. All the fee earners were on cost targets. The respondent accepted that he was the only signatory to both accounts, but said that he was not responsible for all the bills raised. Profitability in the Milton Keynes office was poor and it was likely that the other fee earners artificially inflated their bills to help satisfy their targets. Although he would have seen and signed for the transfers in respect of the interim bills, he could not remember, when the time came to issue a final bill in the estate of Mrs. N, that interim bills had been issued and inadvertently allowed the over-charging to occur.
18. As for the improper transfers which occurred both before and after the inspection date, the respondent did not make the admissions as alleged by the Investigation Accountant in his Report. He simply said that he accepted the position, but would have to look into the matter further before he could make any comment.
19. The Tribunal should know that the practice kept no computerised accounts. It was the firm's practice in all conveyancing matters to treat disbursements other than land registry and local search fees, as expenses of the practice. The view was taken that it was not worth the book-keeper's time transferring these disbursements over. The respondent had spoken to his accountant about this and it was agreed that a bill would be issued to cover disbursements on conveyancing transactions as a means of removing them from the client account. The respondent appreciated that it was entirely wrong not to deliver bills to clients.
20. Before the intervention, the respondent had produced a written statement explaining that bills in relation to minor disbursements would be raised. Within a week of the intervention, cheques were sent to all those to whom monies were due. Moreover, before the end of February, the respondent had managed to raise monies to reimburse the N estate with interest. He had no idea of what the pending claim on the compensation fund related to.

21. As a result of the intervention, the respondent had lost his practice and his livelihood. He could not get a job in the law save at a very low salary. He therefore had to take employment outside the law as a contracts manager for £15,500.00 per year. With this he was trying to keep the bank staved off but they had recently made a formal demand upon him. He would be made insolvent if things did not improve shortly.
22. He appreciated that his accounting procedures were not in compliance with the Rules. He had run a cut-price conveyancing service and the billing of disbursements was a way of "deading" files. He agreed that the coincidence in the billing off of £231,63 in relation to the clients Mr. & Mrs. M was too strong to miss.
23. He disputed some of the facts in the Investigation Accountant's Report, but as he did not have access to the files, he was unable to properly challenge them. The Investigation Accountant's Report was not forwarded to him until some time after the intervention and the intervenors kept all his files. He apologised again to the Tribunal that his systems were at fault.

The Tribunal FOUND the allegations to have been substantiated, indeed they were not contested. The respondent was told the Tribunal that the overpayments, over-charging and misappropriations all occurred as a result of error. The respondent intimated that he was not able to gainsay the Investigation Accountant's Report because he had not had access to the files. The Tribunal did not accept this. He could have seen the files under supervision. He had ample time after being served with the papers to exercise his mind and clarify the issues, but he had not, even at this stage, properly dealt with the matters raised in the Investigation Accountant's Report. The respondent was a muddler. He had repaid the N estate admittedly, but had not convinced the Tribunal that the double billing had occurred without blame on his part. It was an unattractive argument to implicate his staff and to say he could not remember that several interim bills had been raised, when he signed the transfer for the final bill on the estate. The Tribunal were thoroughly dissatisfied with the respondent's attitude which was no doubt driven by financial pressures and flawed accounting procedures. The respondent had displayed an unprofessional attitude both before and after the Investigation Accountant's Report and had not taken all active steps to clarify the position consequent upon the intervention.

In all the circumstances, the respondent had demonstrated to the Tribunal that he is not fit to practice and accordingly the Tribunal made the Striking Off Order and further Ordered him to pay the costs of and incidental to the application and enquiry, to be taxed if not agreed.

DATED this 1st day of August 1995
on behalf of the Tribunal



K.I.B. Yeaman
Chairman



