

IN THE MATTER OF JAMES EDWARD WALKER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D.J. Leverton (in the Chair)
Mrs. E. Stanley
Mr. K.J. Griffin

Date Of Hearing: 11th July 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 Carlton Maurice Edwards, solicitor of Southfield House, 11 Liverpool Gardens, Worthing, West Sussex on 28th March 1995 that James Edward Walker, solicitor of Arundel, West Sussex 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 allegation was that the respondent had been guilty of conduct unbecoming a solicitor in that on the 4th November 1994 he was convicted before Southwark Crown Court of conspiracy to use false instruments and two counts of conspiracy to defraud for which on the 8th November 1994 he was sentenced to three years imprisonment on each count concurrent.

The matter had been listed for hearing on 14th June 1995. The respondent did not appear but in correspondence addressed to the Tribunal and to the applicant he indicated his intention to appeal against the charge of conspiracy, albeit out of time.

The Tribunal on that occasion had before it no documents relating to a formal application to appeal out of time and at the hearing on 14th June 1995 the Tribunal agreed that the matter might be adjourned for no more than twenty-eight days and if the respondent had not, at the conclusion of that period of time, made an application to appeal out of time, then the matter should proceed. In a letter addressed to the respondent by the Clerk dated 15th June 1995 the respondent was apprised of the Tribunal's decision and told that the adjournment was in order, and that he might file evidence that he had made application for leave to appeal out of time. If such evidence was not before the Tribunal on 11th July 1995 then the Tribunal would proceed to hear the matter.

The respondent had written two letters to the Clerk to the Tribunal respectively dated 5th July and 7th July. In the first of those letters the respondent enclosed a copy of a letter which he had written to a firm of solicitors apparently instructed by him. He said he could not satisfy the Tribunal's requirements and requested that the matter be further adjourned. He said the delay was not his fault and was completely out of his control. He was totally frustrated and extremely angry about what he considered to be delays or inaction by his solicitors.

In his letter of 7th July the respondent said he still had not heard from his solicitors. He said he was waiting for the documents which gave the reasons for the success of his co-defendant's appeal so that he could complete his. He could not proceed without them. He had written to another firm of solicitors asking them to exercise pressure.

He said that the interchange of correspondence meant that he had to seek an adjournment from the Tribunal. In the current position that request should be dealt with in his absence.

In the submission of the applicant the respondent had been given his opportunity to convince the Tribunal that he had sought to appeal against conviction out of time. No such evidence was before the Tribunal. The respondent had been convicted of serious offences involving dishonesty and it was in the public interest, as well as in the interests of the solicitors' profession, that the Tribunal deal with the matter expeditiously.

The Tribunal took the view that it had no evidence before it that the respondent had sought leave to appeal out of time and agreed that the Tribunal had a duty to deal with such a matter expeditiously. The Tribunal proceeded to a full hearing.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 11th July 1995 when Carlton Maurice Edwards, solicitor and partner in the firm of Messrs. Marsh Ferriman & Cheale of Southfield House, 11 Liverpool Gardens, West Sussex appeared for the applicant and the respondent did not appear and was not represented.

The evidence before the Tribunal included the Certificate of Conviction dated 10th March 1995 subject to notice pursuant to Rule 17(b) of the Solicitors' (Disciplinary Proceedings) Rules 1994 and the Civil Evidence Act 1968. The respondent had filed with the Tribunal an affidavit dated 26th May 1995 which is referred to hereunder as the respondent's affidavit.

At the conclusion of the hearing the Tribunal ORDERED that the respondent James Edward Walker, solicitor of . Arundel, West Sussex be STRUCK OFF the roll of Solicitors and they further Ordered him to pay the costs of and incidental to the application and enquiry, fixed in the sum of £675.00.

The facts are set out in paragraphs 1 to 4 hereunder.

1. The respondent, born in 1946, was admitted a solicitor in 1972. At the material times he practised as a solicitor on his own account at Theale House, 3 & 5 High Street, Theale, Reading, Berkshire and at 65 Queen Street, London EC4. In the respondent's affidavit he said that at the material times he was in partnership trading under the style and title of Messrs.. Brain & Brain at Tower House, Southampton Street, London WC2.
2. The respondent had conspired with Paul Samrai in respect of fraudulent applications to the Home Office for right of abode and indefinite leave to remain on behalf of citizens and residents of Hong Kong. The respondent was involved with a company, Opportunities UK Limited, which was originally set up as a lawful consultancy service to proposed immigrants from Hong Kong prior to transfer of sovereignty of the colony in 1997. The fraudulent applications fell into three groups -
 - (a) Cases where applicants had resided in the United Kingdom for five years, but were unable to prove five years residence;
 - (b) Those where clients fell short of the five year residential period by a few months up to a year;
 - (c) Clients who had not resided in the United Kingdom at all or only for short periods in which cases all supporting documents to the Home Office would have been forgeries.
3. The respondent was instrumental in obtaining duplicate passports, countersigning applications containing false information as to addresses and length of residence and giving false certificates as to personal knowledge of applicants and as to the veracity of copy documents.
4. On 4th November 1994 the respondent was convicted before Southwark Crown Court of conspiracy to use false instruments and two counts of conspiracy to defraud, for which on the 8th November 1994 he was sentenced to three years imprisonment on each count concurrent.

The submissions of the applicant

5. The applicant referred the Tribunal to the sentencing remarks of His Honour Judge Butler QC at the Southwark Crown Court given on Tuesday 8th November 1994.
6. The Learned Judge said that both the respondent and his co-defendant had agreed to participate in a thoroughly reprehensible deception of the Home Office involving large scale fraud and forgery of a sophisticated kind. The Learned Judge accepted that the respondent allowed himself to be drawn into the criminal scheme and in no way devised it himself, but he considered that he knew full well that the scheme could not succeed unless he abused his position as a solicitor of the Supreme Court, which was what he chose to do. He said that his culpability was less than that of his co-defendant.

The submissions of the respondent (contained in his affidavit)

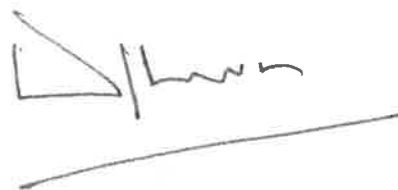
7. The respondent said that he denied the allegation of conspiracy in that he did not criminally conspire with his co-defendant or with anyone else. The trial Judge in his summing up had expressed sympathy but it had not been possible within the Rules to go behind the jury verdict. The Learned Judge said that the respondent was entitled to be believed. The Judge's summing up was couched in sentiments which were predominantly in the respondent's favour.
8. The respondent said that his appeal was based on merit and formed the basis of his submissions to the Tribunal and set out in his affidavit those details.
9. The respondent denied everything in the applicant's affidavit save the allegation that he had falsely certified as to his personal knowledge of passport applicants for periods exceeding two years. He had certified copy documents in the absence of originals for comparison purposes. As to those admissions, false certifications were limited to his counter-signature in cases where he had known the applicants personally, albeit for less than two years and in cases where the applicants were entitled to duplicate or replacement passports notwithstanding the inaccuracy of the length of time he had known the applicants. The certification of copy documents as true copies of originals (in the physical absence of the originals for comparison purposes) took place in circumstances where the respondent held an honest and reasonable belief that the originals were held by his personal assistant (and office Manager) in an office adjacent to his own.
10. The respondent, regardless of his appeal, had already suffered a substantial penalty. The Crown had not alleged personal advantage or financial gain.
11. The respondent said he had already suffered substantial loss of liberty and grave financial hardship.

The Tribunal FOUND the allegation to have been substantiated. It was clear that the respondent had been convicted of serious criminal offences involving dishonesty. He was at the time of the hearing serving the custodial sentence imposed upon him. The Tribunal would not look behind the conviction. Clearly, for a solicitor to be convicted in respect of such serious matters was conduct unbefitting and it was right that the respondent should be struck off the Roll and that it was right that he should pay the costs of and incidental to the application and enquiry.

DATED this 9th day of October 1995

on behalf of the Tribunal

D.J. Leverton
Chairman



10th
October 95