

IN THE MATTER OF WENDY PENNY, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A H Isaacs (in the Chair)
Mr. A G Ground
Mr. D E Marlow

Date Of Hearing: 16th April 1996

FINDINGS

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

An application was duly made on behalf of the Law Society by Roger Field solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on the 2nd May 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 a period and subject to such conditions that the Society might think fit to specify in the permission employ or remunerate in connection with the practice of a solicitor Wendy Penny formerly of the _____ Totnes, Devon (subsequently notified to be of _____ Totnes, Devon) a person who was or had been a clerk to a solicitor or that such order might be made as the Tribunal should think right.

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 she was or had been a clerk, an act or default in relation to the solicitor's practice which involved conduct on her part of such a nature that in the opinion of the Society it would be undesirable for her 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 the 16th April 1996 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 appeared in person.

The evidence before the Tribunal included the oral evidence of the respondent, of Mr P A Elliott and Mr C M Bittlestone.

At the conclusion of the hearing the Tribunal ORDERED that 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 Wendy Penny formerly of the Totnes, Devon TQ9 and subsequently of Totnes, Devon a person who was or had been a clerk to a solicitor and further ordered that she should 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 17 hereunder:-

1. The respondent, who was not a solicitor, was employed by Messrs. Hutchings, Hutchings & Plum solicitors of Hagley House, 38/40 The Terrace, Torquay hereinafter called ("the Firm"). The respondent had been employed by the Firm in connection with their practice as solicitors from 29th February 1988 until the 5th July 1993. She was responsible under the supervision of two partners, for the conduct of the professional business of clients of the Firm and her duties included dealing with contentious matters.
2. In April 1993 the Legal Aid Board (the LAB) commenced correspondence with the Firm in respect of what was described as "a questionable Green Form" which had been submitted for payment and which related to the Firm's client P L. and with her assistance a response was made to the LAB which in effect explained that the application to the LAB had been made in error. Subsequently the LAB wanted further explanation as the Green Form was purportedly signed some time before the actual form was printed and released to the Firm.
3. The Firm carried out an investigation which disclosed that a second Green Form had been submitted for payment in the name of Mrs OL, PL's cohabitee. Both matters had been dealt with by the respondent. Further investigation revealed that neither of the Green Forms had been signed by the clients, whose signatures had, it was said, been forged.
4. When confronted with the matter the respondent denied any impropriety but resigned and then originated an application to the Industrial Tribunal claiming unfair dismissal. The application was withdrawn when the Firm's evidence was shown to her which evidence included an affidavit sworn by Peter Smith of the Legal Aid Board and affidavits by PL and the person referred to as Mrs OL. The matters were drawn to the attention of the Solicitors Complaints Bureau (the Bureau) by letter from the Board on the 15th March 1994.

5. The LAB wrote to the Bureau on the 31st March 1994 enclosing copies of four affidavits which had been sworn in the context of the respondent's Industrial Tribunal application. PL in his affidavit deposed that he had not signed the relevant Green Form. He deposed further that the signature of Mrs OL had not been that of his cohabitee who was known as OR. OR in her affidavit deposed that she had not signed the Green Form and signed her name OR not as OL. She confirmed she had not sought legal advice from the Firm on the subject matter. She deposed further that the Green Form bearing the signature PL had not been signed by PL.
6. It also appeared that the Firm had acted for JD. In an application by JD to set aside a judgement against him an Affidavit was purported to have been sworn by JD before a solicitor, WCB, who himself had deposed that the signature appearing in the affidavit as that of the solicitor before whom the Affidavit was sworn was not his signature.
7. It appeared that a telephone attendance note which the respondent purported to have made on the 2nd October 1990 could not have been made on that date as it had been written on a piece of paper which consisted of part of a draft letter with the Firm's letter heading in a form which did not exist until at least a month after the purported date of the attendance note.
8. After certain correspondence had been addressed too the respondent, she wrote an undated letter to the Bureau which was received on the 1st September 1994. She said that she was suffering from stress and depression which she claimed had been caused by the Firm. She had withdrawn her unfair dismissal application by reason of illness. She had tried to recall the circumstances surrounding the Green Forms of PL and Mrs OL. She explained that she had been asked by a person on work experience to explain how the Green Form Scheme worked. She had picked up a litigation file on her desk and had scribbled out three Green Forms, one relating to PL - income support, one relating to Mrs OL - income support and one relating to Mrs OL - working. None of the forms had been signed or dated and she opined that the third probably remained in the file. She had no explanation how the first and second forms came to be signed and dated. The file had been passed to her colleague Mr P A Elliott for interim billing.
9. Mr Elliott's evidence was that he had been employed by the firm since 1981 and undertook work relating to the costing of files. He said that sometime during the latter part of 1992 he received a file into his office from the respondent headed "L (Mr P) re: Financial Affairs". He dealt with the costing of Green Form matters in a batch for the sake of convenience. He did not deal with the file immediately but when he did he ascertained that there appeared to have been more work done than could be claimed under the two Green Forms which appeared to have been available. He worked out what sums could be claimed under each form and completed the narrative part of the claim and the particulars requested for payment. He then signed the forms in the name of the firm. The date that he endorsed on them showed that the costing was undertaken on 15th December 1992.
10. The date 20th September 1990 which was shown at the foot of Mrs L's green form was endorsed by Mr Elliott on the assumption that Mrs OL had seen the respondent at the same time as PL whose form also bore that date.

11. Mr Elliott recognised the writing on the Green Form to be that of the respondent. He did not know PL or Mrs OL and there appeared to be no reason why the forms should not be presented for payment. The forms were so presented together with a number of others of 8th February 1993. The cost claim in relation to Mrs OL was paid on 25th February by the LAB but Mr Elliott had become aware that, as a result of a spot check, neither of those forms could have been signed on the 20th September 1990.
12. Mr Bittlestone told the Tribunal that although the letter from the LAB had been addressed to his senior partner he had been asked to deal with the matter. He in turn had asked Mrs Penny to prepare a draft letter by way of response to the Board. A detailed letter was sent to the Board on the 8th June 1993 which was based on her draft. The Board responded to that letter on 25th June 1993.
13. Mr Bittlestone and his partner were concerned to note the contents of the LAB's letter of 25th June and certain suspicions were aroused. Arrangements were made for Mr Bittlestone together with his senior partner to meet PL. As a result of what had come to light at that meeting and Mr Elliott's input, a meeting was called with the respondent. At that meeting the respondent confirmed that she had completed both forms and they had been signed on the 20th September 1990 by the persons stated on them. The circumstances concerning the partners' meeting with PL and matters arising from the Board's letter of the 25th June were discussed. The respondent confirmed that she had been in control of the file throughout and the only other person who had actively dealt with the papers had been Mr Elliott when he costed the Green Forms. The partners were not satisfied with the respondent's explanations and she was invited to tender her resignation with immediate effect. She did so by way of letter. The respondent denied any impropriety on her part. On the matter of the affidavit of JD she said that her client had explained to her that he had been sworn to the document but as the name of the solicitor had not appeared she had asked JD for the details and had completed the document and filed it at court.
14. The respondent said she believed the Firm wished to dispense with her services. The Firm should not have levelled dishonesty at her and that had been a device to avoid paying her redundancy money.
15. The respondent in her letter to the Bureau also said that she had worked under relentless pressure and she had been forced to resign. She described the Firm's professional relationship with PL and recollected seeing him towards the end of 1990 when Green Form assistance was discussed but not given. When she had been shown subsequently the two Green Forms completed, signed and dated she had expressed surprise and concern especially since she had not seen Mrs OL and as the writing on the forms was her writing. She claimed that she had advised the litigation partners that she had passed over the file to Mr Elliott for interim billing on a private basis.
16. On the 5th October 1994 the Conduct Committee of the Adjudication and Appeals Committee resolved that an application should be made to the Solicitors Disciplinary Tribunal for an Order pursuant to Section 43(2) of the Solicitors Act 1974.

17. The respondent appealed against the Resolution. On the 8th March 1995 the Conduct Appeals Committee of the Adjudication and Appeals committee resolved to dismiss the appeal.

The Submissions of the applicant

18. It appeared that the respondent had behaved on more than one occasion in a way which was not entirely honest and truthful. The fact that she had offered a number of conflicting explanations served only to endorse that view. In the circumstances it was right that an order restricting the respondent's employment within the solicitor's profession should be made.

The submissions of the respondent

19. At the material time the respondent had been subjected to severe personal difficulties of which her employers had been aware. Her marriage had broken up and she had been at risk of losing her home.
20. The respondent could have had no motive for acting untruthfully. There could have been no possible explanation. She was, of course, aware that work undertaken by her on behalf of her employers had to be funded and was aware that monies had to be taken on account unless a client was legally aided. There was no question that if the respondent had behaved as had been alleged, she would have derived absolutely no personal benefit.
21. The respondent's experience lay mainly in the field of conveyancing. Upon the collapse of the property market she had been transferred to litigation work. She had been willing to be a litigation clerk but it was not an area in which she had great experience. In addition to that she was expected to maintain a very heavy workload. She had indeed expressed concern to the partners about the pressures to which she had been subjected.
22. The respondent had no recollection other than seeing Mrs OL. She certainly did see PL but believed she might have been confused and seen Mrs OL over lunch. She believed that she had got in difficulty as the house had been in joint names and there was a need for Mrs OL to be separately advised.
23. The respondent explained that PL had never been a Green Form client but she had difficulty in remembering the precise details.
24. In addition to her matrimonial difficulties and the worries about the possible loss of her home the subsequent remortgage of her house required substantial monthly payments. The respondent had been suffering from stress and had problems with her health.
25. The respondent accepted that she submitted various hypotheses as to what had happened but she could not accept that she had forged anyone's signature.
26. The respondent had been studying on a course leading to an Institute of Legal Executives qualification.

27. The pressure on the respondent had been made even greater because she believed that the firm had been trying to sack her. At one point personal injury files were taken away from her. She raised an objection and the files were then left with her. She believed that the firm were well aware of her difficult personal circumstances and the firm took advantage of her. She said that after the break-up of her marriage the matrimonial home was to be sold and the firm were acting on the sale. On her dismissal the firm declined to act and the sale was lost. The respondent whilst under considerable pressure had resigned from the firm. She believed that the pressures to which she had been subjected had meant that she had been constructively dismissed byt because of the stress she was in for she had withdrawn her application to the Industrial Tribunal.

The Tribunal were satisfied that the application should be granted. The explanations given as to what had happened could not be reconciled. In the circumstances the Tribunal considered it right that the respondent's future employment within the solicitors' profession should be controlled and they made the order sought. They also believed that it was appropriate that the respondent should pay the costs of and incidental to the application and enquiry to be taxed if not agreed.

DATED this 7th day of June 1996

on behalf of the Tribunal



A H Isaacs
Chairman

Findings filed with the
Law Society on the 12th
day of June 1996