

IN THE MATTER OF HENRY AITCHISON - AND -
RESPONDENT 2, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A. H. Isaacs (in the Chair)
Mr. J.R.C. Clitheroe
Mrs. E. Pickering

Date Of Hearing: 17th October 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 Andrew Christopher Graham Hopper, solicitor of P.O. Box 7, Pontyclun, Mid Glamorgan on 30th May 1995 that Henry Aitchison, solicitor of Warkworth, Northumberland and RESPONDENT 2, solicitor, solicitors of Gosforth, Newcastle-upon-Tyne 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 against the respondents Henry Aitchison and RESPONDENT 2 were -

Against both respondents

- (a) that they failed to comply with the Solicitors' Accounts Rules 1991 in that they drew money from client account other than as permitted by Rule 7 and contrary to Rule 8 of the said Rules;

Against Mr. Aitchison alone

- (b) that he had been guilty of conduct unbefitting a solicitor in that he utilised clients' money for his own purposes.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 17th October 1995 when Andrew Christopher Graham Hopper, solicitor of P.O. Box 7, Pontyclun, Mid Glamorgan appeared for the applicant, Mr. Aitchison was not represented and did not appear and ~~RESPONDENT 2~~ appeared in person.

The evidence before the Tribunal included the admissions of Mr. Aitchison contained in a letter addressed by him on 4th October 1995 to the applicant as to both allegations, and the admission of ~~RESPONDENT 2~~ as to the first allegation.

At the conclusion of the hearing the Tribunal ORDERED that ~~RESPONDENT 2~~, solicitor of Stannington, Northumberland (formerly of Gosforth, Newcastle-upon-Tyne) be REPRIMANDED and they made no Order as to costs. The Tribunal further ORDERED that Henry Aitchison, solicitor of High Heaton, Newcastle-upon-Tyne (formerly of Warkworth, Northumberland) 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 20 hereunder.

1. Mr. Aitchison, born in 1947 was admitted a solicitor in 1971 and ~~RESPONDENT 2~~, born in 1958, was admitted a solicitor in 1982. The respondents, who were married to each other, had practised together in partnership under the style of Aitchisons in Newcastle-upon-Tyne. The respondents were at the time of the hearing separated.
2. Upon due notice, an investigation of the books of account of the practice was undertaken by an Investigation Accountant of the Solicitors Complaints Bureau. A copy of his report dated 17th September 1993 was before the Tribunal.
3. The Investigation Accountant reported that the firm's books of account did not comply with the Solicitors Accounts Rules as they contained a number of false entries apparently made at the instigation of Mr. Aitchison.
4. In view of the false entries, the Investigation Accountant did not consider it practicable to attempt to compute the total liabilities to clients, however the respondents agreed that a minimum cash shortage of £379,939.96p. existed on client bank account as the 30th September 1993.
5. The shortage arose in the following circumstances :-

1. Personal payments out of client bank account	£78,384.00
2. Clients' money improperly utilised by Mr. Aitchison for the benefit of other unconnected clients	£110,000.00
3. Improper transfers from client to office bank account in respect of bills of costs not delivered to clients	<u>£189,555.96</u>
	<u>£377,939.96</u>
6. In his letter of 24th October 1995, Mr. Aitchison said he had already admitted matters to be substantially true in form although they were, he believed, overstated in extent.

7. The Investigation Accountant's report contained details of the personal payments, the improper use of client's money for the benefit of other unconnected clients and the improper transfers.
8. As an example of a personal payment made out of client bank account, the largest was made in the estate of Mr. JS and was in the sum of £42,384.00. Mr. Aitchison acted for the executors in the estate of the deceased who died in 1993. On the 24th September 1993 the relevant client's ledger account was in credit for £51,819.18 when it was charged with a client account payment of £42,384.00 reducing the balance on the account to £9,435.18. The cheques had been lodged with Newcastle Law Courts in satisfaction of a personal debt of Mr. Aitchison.
9. The sum of £110,000.00 representing clients' money improperly utilised by Mr. Aitchison for the benefit of other unconnected clients arose in connection with two client matters.
10. Mr. Aitchison had acted for Mr. G. in connection with a proposed "buyout" for part of a business. On the 19th July 1993 the sum of £87,000.00 was received by the firm in respect of that matter but was allocated to the ledger account of "TH", an unconnected client.
11. On the 27th July 1993 a payment of from client bank account in the sum £110,000.00 to a firm in respect of the estate of Mr. TWS (in respect of which Mr. Aitchison had acted for the executors) was charged as £23,000.00 to the ledger account for Mrs. WS deceased and £87,000.00 to the ledger account for TH, both of whom were unconnected clients.
12. In six client matters Mr. Aitchison had instigated transfers of funds from client bank account to office bank account in respect of bills of costs which had not been delivered to the client.
13. The Investigation Accountant pointed out that a cash shortage had arisen prior to the inspection in the sum of £84,628.52 which had been rectified prior to the inspection.
14. The total shortfall at the date of the inspection admitted by Mr. Aitchison was £238,829.00.

The Submissions of the Respondent

15. It was clear that the responsibility for the creation of the shortfall on client account was solely that of Mr. Aitchison.
16. ~~RESPONDENT 2~~ status as a partner was not entirely clear. There had been a time when Mr. Aitchison had been a sole practitioner and had been joined by his wife in the practice. It appeared that ~~RESPONDENT 2~~ was a salaried partner and she herself confirmed during the course of addressing the Tribunal that she had received a salary together with other members of the firm's staff.
17. The applicant put the case against ~~RESPONDENT 2~~ on the basis of the strict liability of a partner for compliance with the Solicitors Accounts Rules.

18. In the submission of the applicant no-one had been under any misapprehension that the firm had not enjoyed good financial health. Nevertheless it provided a very high level of drawings and it was clear that the practice had provided a substantial income for the respondents and furnished them both with a reasonable lifestyle. The finances of the firm were in a parlous state and its heavily overdrawn position was certainly dangerous. The applicant asked the question, "Where did RESPONDENT 2 think the money was coming from?"
19. There had been a heavy price for the profession to pay and losses had been notified of £1.1 million. RESPONDENT 2 had asserted, and the applicant had no reason to doubt it, that some £800,000 of the total sum claimed was attributable to a claim made by one client which was a claim without merit. It was said, therefore, that the total of the claims which would actually lie against the Indemnity Fund was in the region of £300,000 which, of course, was broadly in line with the figures set out in Investigation Accountant's Report.
20. The applicant did not suggest that RESPONDENT 2 was complicit in any of the activities of Mr. Aitchison, which indeed was demonstrated by the limited allegation made against her.

The Submissions of Mr. Aitchison
(contained in his letter of the 4th October 1995)

21. He intended no disrespect by his non-attendance at the hearing, he was prevented from attending by his economic position. He had been adjudicated bankrupt.
22. He said he admitted matters to be substantially true in form although he believed they were overstated in extent.
23. He had always intended his actions to be a temporary matter, although he recognised his action to have completely wrong.
24. He said the improper actions were his and his alone, and no other person had been involved or consulted. In particular his wife had been totally unaware of his actions and there was no indication of what he had done that might have put her on notice.
25. He had co-operated with the Investigation Accountant.
26. He said that with hindsight he wished he had had the sense and courage to raise the matter with his wife believing that her honesty and good sense would have ensured that he would have taken another more honourable path - he wished to ensure that his iniquities were not allowed to bring further suffering to his wife who was much wronged and honourable.

The Submissions of RESPONDENT 2

27. RESPONDENT 2 apologised to the Tribunal. The matter had caused her great anxiety.
28. RESPONDENT 2 accepted that she was responsible as a salaried partner on the basis of strict liability for the breaches of the Accounts Rules which had occurred.

29. However she was not culpable in the respect of misuse of clients' monies. Mr. Aitchison, her senior partner and husband, had run the practice which had formerly been his alone, in an autocratic fashion - which ~~RESPONDENT 2~~ found entirely acceptable in the context of her assumption as to his honesty. ~~RESPONDENT 2~~ had been articed to Mr. Aitchison who was her senior in years and although she had come to see him as domineering, she had deferred to his greater experience.
30. ~~RESPONDENT 2~~ had at no time been aware of any financial difficulties. The firm engaged a full time experienced cashier and engaged Chartered Accountants of repute who reported as was required to the Law Society on an annual basis.
31. The financial structure of the practice was the sole province of Mr. Aitchison to which ~~RESPONDENT 2~~ had not been privy.
32. ~~RESPONDENT 2~~ had been aware that the firm had from time to time utilised substantial overdraft facilities from its bankers, but because of the large scale commercial work undertaken by Mr. Aitchison she had believed that to be a temporary measure.
33. The respondent had not been alerted to any suspicion of any members of staff, no client had complained and the atmosphere in the office had been relaxed and friendly.
34. ~~RESPONDENT 2~~ personal circumstances had been very painful. She had spent what she described as "every waking hour" dealing with the problems. In addition she had been involved in a road accident in which the other driver had been seriously injured. Mr. Aitchison had been arrested in 1994 on criminal charges. ~~RESPONDENT 2~~ had been subjected to considerable pressure from the firm's bankers to pursue persons owing money to the practice.
35. Although the substantial overdraft granted to the firm from time to time had not been secured, the firm's bankers had when the difficulties came to light required a charge on the respondents' home which in due course ~~RESPONDENT 2~~ had to vacate and the bank sold as mortgagee in possession.
36. Subsequently it had come to the attention of ~~RESPONDENT 2~~ that Mr. Aitchison had been intercepting her mail. That had prevented her from sorting out such matters as she could. At that point their marriage failed.
37. ~~RESPONDENT 2~~ had found the matters before the Tribunal almost intolerable, she had come from an honest and straightforward background, her father being a senior police officer.
38. At the time of the hearing ~~RESPONDENT 2~~ was working as a self employed locum solicitor. It was hoped that she might remain as a permanent member of staff where she was employed, but no formal arrangements had been made pending the outcome of the disciplinary proceedings.

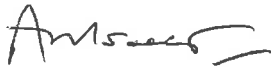
The Tribunal FOUND the allegations made against both respondents and against Mr. Aitchison alone to have been substantiated, indeed they were not contested. It was absolutely clear that Mr. Aitchison had taken sole responsibility for the financial affairs and accounting procedures of the firm and had been solely responsible for the misuse of clients' monies. His behaviour had been entirely reprehensible and there was no question in the mind of the Tribunal that he must be Struck Off the Roll of Solicitors.

Further it was felt that he should bear the entire responsibility for the costs of and incidental to this application and enquiry.

RESPONDENT 2 very properly accepted responsibility for compliance with the Solicitors Accounts Rules. The provision that a salaried partner (even one who has no control and possibly no knowledge of the firm's accounts) is strictly liable for breaches of the Solicitors Accounts Rules is explicit. The Tribunal accepted that RESPONDENT 2 was wholly unaware of the situation which had arisen. She did not see the accounts, no member of staff or client had given her any cause for anxiety, and it appeared that unqualified accountant's certificates had been correctly submitted to the Law Society. The Tribunal noted a number of letters written by other solicitors in support of RESPONDENT 2, a letter from the firm's accountants and a copy of a report following the police investigation. The Tribunal considered it appropriate that RESPONDENT 2 be reprimanded and no Order for costs was made in respect of her.

DATED this 20th day of November 1995

on behalf of the Tribunal



A.H.
~~M~~. Isaacs
Chairman

Findings filed with the
Law Society on the 22nd
day of November 1995