

IN THE MATTER OF KEVIN GRAY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. G B Marsh (in the Chair)
Mr. D J Leverton
Mr. G Saunders

Date Of Hearing: 19th 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 Gerald Malcolm Lynch solicitor of 16 Warrior Square, Southend on Sea, Essex, Solicitor on the 21st July 1995 that Kevin Gray of Wickham, Newcastle upon Tyne, Tyne & Wear, solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunals should think right.

The allegations were that the respondent had:-

- (i) dishonestly, alternatively improperly utilised clients' funds for his own benefit;
- (ii) acted in breach of Rules 7 and 8 of the Solicitors Accounts Rules 1991 in that he drew from clients account monies other than in accordance with the provisions of the Rules;
- (iii) acted in breach of his duty of good faith to his partners in that he brought them into breach of the Solicitors Accounts Rules;

- (iv) by virtue of each and all of the aforementioned been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 19th October 1995 when Gerald Malcolm Lynch solicitor and partner in the firm of Messrs Drysdales & Janes, 16 Warrior Square, Southend-on-Sea Essex solicitor appeared for the applicant and Neville Radcliffe a solicitor and partner in the firm of Messrs Browne Jacobson solicitors of 44 Castle Gate, Nottingham appeared for the respondent.

The evidence before the Tribunal included the admissions of the respondent save that he did not admit the dishonesty alleged in allegation number (i) and he admitted a shortfall on client account of £26,899. only (not an additional £50,400 alleged). The Tribunal also had exhibit "KG1", a bundle of testimonials in support of the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent be Struck Off the Roll of Solicitors and they further Ordered that he pay the costs of and incidental to the application and enquiry fixed in the sum of £944.45p inclusive together with the costs of the Investigation Accountant of the Law Society to be taxed if not agreed.

The facts are set out in paragraphs 1 to 3 hereunder:-

1. The respondent (40 years of age) was admitted as a solicitor in 1979. At all material times he was a partner in the firm of George Mills carrying on business at 46/47 The Galleries, Washington, Tyne & Wear. The respondent left the partnership of George Mills on the 2nd July 1994.
2. Following the receipt of information from the remaining partners of George Mills the Investigation Accountant of the Law Society inspected the books of account and reported on the 22nd May 1995. A copy of the Investigation Accountant's Report was before the Tribunal.
3. The following matters emerged from the report:-
 - (a) A cash shortage existed on clients account in the sum of £77,299.00. The shortage had been eliminated prior to the inspection but was due entirely to improper actions undertaken by the respondent.
 - (b) The respondent had caused improper "round sum" transfers to be made from client to office bank account in the sum of £50,400.
 - (c) The respondent caused improper transfers of costs from client to office bank account in the sum of £26,899 in respect of which, although bills had been drawn, no bills had been submitted to clients as by the Rules required.
 - (d) The respondent admitted that his activity had been improper and that he had personally benefited from the improper transfers through the increased level of funds in the office bank account.

- (e) The activities of the respondent had not been made known to his partners who had been completely unaware of the improper activities.

The submissions of the applicant

4. It had been the respondent's practice to increase the balance of the firm's office account, which he had done on sixty one occasions in sums ranging from £4,400 to £32,300 (a total sum of £961,900 having been involved). A telegraphic transfer was made from client account to office account and then a cheque was drawn on office account and paid into client account. The cheque, of course, took three days to clear and during that time the monies were available to office account and facilitated certain office drawings. Subsequently a further telegraphic transfer was made to meet the cheques drawn on office account. The transactions necessarily had to continue if the "system" was to succeed. In June and July 1995 the final two telegraphic transfers were made from client to office account, but the two cheques drawn on office account to be paid into client account were cancelled by the respondent's erstwhile partners who had found out what had been happening. The result of this action was that a shortfall existed on client account in the sum of £50,400.
5. Between December 1993 and May 1994 the respondent had made 116 transfers totalling £28,899 from client account to office account in respect of which bills had been drawn and recorded in the firm's books but the bills had never been sent to the clients concerned. The improper transfers increased the working capital of the firm. It was accepted that if the bills were legitimately for work done and had been properly drawn and submitted to the client then they would have been proper bills and the transfers would have been acceptable. The bills had not, however, been sent to the clients.
6. In the submission of the applicant the procedures referred to above over a period of time represented deliberate acts. The whole point of the transactions was to assist or benefit funds available to the firm in office account. That was a deliberate use of clients' money which in the submission of the applicant verged on dishonesty. Any solicitor knew that he could not transfer money out of client account without appropriate bills having been drawn. The respondent had taken that course of action on one hundred and sixteen occasions and that was an indication of dishonest practice.
7. In behaving as he did and because the respondent's partners were all equally answerable as a matter of professional conduct to the Tribunal, it was clear that the respondent had been in breach of his duty of good faith to his partners. In view of the respondent's activities the Bureau had decided not to pursue allegations against the respondent's erstwhile partners.

The submissions of the respondent

8. The respondent admitted improper use of client monies but said that he had not been dishonest. The Tribunal was invited to pay considerable attention to the bundle of testimonials handed up in support of the respondent. He had been a highly respectable solicitor practising in the North East of England. The respondent had acted in a number of high profile cases which made his appearance before the Tribunal an even

more difficult proposition that it might otherwise have been. The respondent was a competent and well regarded solicitor of undoubted integrity. He was a well qualified specialist in litigation, and a member of the Law Society's Personal Injury Panel. He bitterly regretted the situation in which he found himself - the biggest pity was that the respondent had joined the firm in which he found himself and that he did not leave it long ago. The respondent had made attempts to try to get the practice right and in so doing had breached the Solicitors Accounts Rules.

9. It was accepted that the allegations appeared serious on their face. The breaches of the Solicitors Accounts Rules should not have occurred. However the Tribunal was asked to bear in mind that there had been no profit to the respondent, no loss to any one else and the deficiencies which had been found on client account had all been made good. The respondent himself had injected £40,000 capital into the firm before these matters came to the notice of the Bureau.
10. The respondent had realised that the firm's practice affairs had been in a mess.
11. The respondent said that he had a senior partner who was a difficult man, hardly ever attending the office and who was subject to violent moods and fits of temper. It was at the request of the firm's accountants that the respondent became the managing partner.
12. The other partners in the firm had no idea what was happening indeed they had not wanted to know. The respondent found himself going round in ever decreasing circles and plunging further and further into difficulty.
13. When he became managing partner he inherited a position of great financial difficulty. That was in 1991. The practice had been badly hit by the conveyancing recession as it had relied heavily upon conveyancing for its income. The respondent had joined the firm to develop the litigation side. Clearly he had been successful in turning the practice around in so far as the income was concerned because when the problems before the Tribunal came to light eighty to ninety percent of the fee income of the firm was derived from litigation.
14. The senior partner had (without notification to the respondent) withdrawn capital from the firm which he had replaced with a bank overdraft. He had made arrangements with the firm's bankers that the account could be overdrawn to a certain limit. An account was opened and money was placed on deposit. Office account was fed from that deposit account on a "drip feed" basis.
15. The respondent had worked as a locum solicitor since the problems arose. He was not a dishonest man. Whilst under extreme pressure, the respondent had behaved in an improper way but not in a dishonest way.
16. It was hoped that the Tribunal would be able to deal with the respondent in a way which would not deprive him of his ability to practise.

The Tribunal FIND all of the allegations to have been substantiated. If a solicitor deliberately uses clients' monies knowing that he is not entitled to them then that action is dishonest. The Tribunal accept that the dishonesty is tempered somewhat by the

intention, demonstrated by the writing of cheques, to put matters right immediately. It is possible to distinguish such an action from the action of a solicitor who deliberately takes money to spend, for instance, on his own high living. However to use clients' monies to assist with the cash flow of the practice knowing precisely that that is what he is doing is dishonesty on the part of a solicitor. Similarly to transfer monies from client to office account following the preparation of what could only be described as "dummy" bills is not a straightforward course of action and must be described as dishonest.

The Tribunal was concerned that the respondent's erstwhile partners left all financial matters entirely to him, appeared to take no interest and did not want to know what was going on. The Tribunal takes the view that it is absolutely clear under the provisions of the Solicitors Accounts Rules that all partners are liable for the proper keeping of accounts. The Tribunal is ready to recognise that the culpability of one partner might be of a very high level, but the other partners should not be able to escape their absolute liability for compliance with the Solicitors Accounts Rules and their responsibility for the fair and proper handling of clients' money.

The shortages had been put right and the Tribunal noted that there had been no loss to clients and no claims had been made upon the Law Society's Compensation Fund. Despite those mitigating factors, the Tribunal has to remind itself that the respondent adopted a deliberate course of action which was dishonest. In such circumstances it was right that he should be Struck Off the Roll of Solicitors and that he should pay the costs of and incidental to the application and enquiry.

DATED this 15th day of November 1995

on behalf of the Tribunal


G B Marsh
Chairman

*Findings filed with the
Law Society on the
day of 19*

