

IN THE MATTER OF JOHN BARRY SHAW, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. A. Gaynor-Smith (in the Chair)  
Mr. J.N. Barnecutt  
Lady Bonham-Carter

Date Of Hearing: 7th November 1995

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## FINDINGS

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

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An application was duly made on behalf of the Solicitors Complaints Bureau by Andrew Christopher Graham Hopper of PO Box 7, Pontyclun, Mid Glamorgan on the 24th July 1995 that John Barry Shaw of \_\_\_\_\_, Saffron Walden, Essex 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;

- (i) been guilty of conduct unbefitting a solicitor in that he failed properly to account to a client for funds held on that client's behalf;
- (ii) in the alternative either:-
  - (a) been guilty of conduct unbefitting a solicitor in that he acted for a client in circumstances where his own interests were in conflict with those of the client and obtained for himself a substantial personal benefit or;
  - (b) been guilty of conduct unbefitting a solicitor in that he acted for two clients where the interests of those clients were substantially in conflict, providing a substantial benefit to one client to the prejudice of the other and;
  - (c) been guilty of conduct unbefitting a solicitor in that he misled third parties as to his status in the affairs of a certain company.

The application was heard at the Courtroom, No.60 Carey Street, London, WC2 on the 7th November 1995 when Andrew Christopher Graham Hopper solicitor of PO Box 7, Pontyclun, Mid Glamorgan appeared for the applicant and the respondent appeared in person.

The evidence before the Tribunal included the admissions of the respondent save that he wished to make it plain there was no intention on his part to make personal gain and a bundle of documents "JBF1".

At the conclusion of the hearing the Tribunal ORDERED that the respondent John Barry Shaw of \_\_\_\_\_, Saffron Walden, Essex solicitor, 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 £8,000.00.

The facts are set out in paragraphs 1 to 11 hereunder.

1. The respondent was admitted a solicitor on the 16th June 1980 (date of birth the 3rd July 1954).
2. At the material times the respondent practised initially in partnership under the style of Shaw Beards & Co. and later on his own account as Shaw & Co.
3. In 1983 the respondent held on behalf of Miss A. a sum representing the balance of her interests in the estate of her late mother. That sum was not less than £30,000 but the Tribunal was invited to concentrate on the sum of £25,000 initially invested by the respondent in a High Interest account at Save & Prosper.
4. For a period of time the capital in that account remained intact. The Tribunal had before it bank statements showing the amounts of interest credited to the account and withdrawn from it on a regular basis, the original capital remaining in the figure of £25,000.
5. In April 1984 £5,000 was withdrawn from the account. On the 1st October 1984 £4,927.57 was withdrawn and on the 13th November £5,000 was re-credited to the account, leaving the account depleted by the net sum of £4,927.57.
6. On the 15th November 1984 all of the remaining balance on the account, save £100 which was left after adjustments of interest, was withdrawn amounting to £19,272.43. The sum so withdrawn was immediately credited to an account at Waltham Abbey Building Society. £15,000 was withdrawn on the 10th January 1985. £4,000 was withdrawn on the 5th February 1985 and the account was closed by a further withdrawal of £379.79 on the 1st October 1985.
7. The major transactions on those accounts, excluding the withdrawal of £15,000 explained in detail below were unexplained and were the basis of the allegation against the respondent of a failure to account.
8. On the 12th February 1985 the respondent entered into a written agreement with C Travel Limited to purchase 40% of the issued share capital in C Travel Limited, a travel agency for the sum of £15,000. The £15,000 withdrawn from Miss A's funds was paid into an account in the name of A Limited at Lloyds Bank. A Limited

changed its name to C Travel (O S) Limited on the 8th February 1985 and share capital in the company was allotted to the respondent in consideration of his payment of that sum.

9. In 1988 the shares held by the respondent were transferred by him to a Mr. H without consideration. It followed that monies held by the respondent for his client Miss A were employed by him for the purchase of shares in an unlisted company which subsequently proved to be worthless.
10. The applicant told the Tribunal that it was his view that the most likely scenario was that Mr. B and the respondent entered some loose form of partnership and there was an element of benefit to the respondent. Correspondence which had taken place between the Association of British Travel Agents and the respondent revealed that it was not a mere nominee relationship. In correspondence the respondent had indicated that he was acting in a nominee capacity and held the shares beneficially for another client of his that was to say Mr. B.
11. The respondent agreed at that point that the position had been as the applicant had explained it.

#### **The Submissions of the Applicant**

12. The respondent had put his case that, although the transaction had taken place, it was not a transaction which involved any personal gain for the respondent. It was asserted by the applicant that the respondent had with a view to gain for himself utilised Miss A's funds for the purposes of acquiring shares in an unlisted company. The respondent maintained that the transaction was a loan arrangement between Miss A and Mr. B, the shares were held in the respondent's name simply to increase Miss A's security. At the time Mr. B was to the respondent's knowledge an undischarged bankrupt.
13. No document existed to demonstrate the terms upon which the "loan" was negotiated. The respondent's explanations given to the Solicitors Complaints Bureau failed to explain the terms of the loan.
14. At the time of the C Travel transaction Miss A was 57 years of age and the money in the hands of the respondent represented her sole asset. It had been intended that the fund be used to generate income, as initially it did. In the submission of the applicant the actions of the respondent, as he maintained them to be, namely the creation of a loan to Mr. B, demonstrated a conflict of interest of the most extreme kind.
15. The respondent would say that he took security for the money, however he was aware of the bankrupt status of Mr. B and title to the property concerned was not acquired until 1986 when the loan transaction had been carried out in 1985. The deeds belonged to Mr. B's wife and both Mr. B and his wife had indicated that the deeds had been left with the respondent for safekeeping and not as security. In the submission of the applicant the facts placed before the Tribunal represented an extremely unhappy story revealing a gross abuse of trust. What had been revealed had been a disgraceful course of conduct.

### **The Submissions of the Respondent**

16. He deeply regretted the circumstances of the matter.
17. He wished to place the facts of the matter within a historical context. The events had taken place in 1985. The respondent had been admitted a solicitor in 1980 and at the time he was therefore a solicitor with only five years experience.
18. In 1985 Mr. B had gone to the respondent with a proposal. The respondent had acted for Mr. B for some three years and for Miss A for about the same length of time.
19. Shares in the company were put into the respondent's name and he was made a director. Mr. B had not been able to get backers as quickly as he had hoped and it was then that things went disastrously wrong. Mr. B had been a friend of the respondent as well as a client, and the respondent had control of a number of other matters on his behalf.
20. The respondent believed that he had been authorised to hold Mrs. B's deeds as security for Miss A. The deeds had been passed to the intervening solicitor following the Law Society's intervention into the respondent's practice when the respondent himself had been suspended from practice by the Tribunal after the activities of a clerk employed by him had come to light and an allegation had been substantiated against him that he had not exercised proper supervision.
21. The respondent had not practised since 1991: he had been employed by a former client as company secretary and legal advisor. He had been made redundant only shortly before the hearing and at the time of the hearing he was unemployed. He did not hold a practising certificate.
22. The respondent had entered into an insolvency voluntary arrangement with his creditors. Because he had lost his employment he was unlikely to be able to pay the agreed fixed sums of money and he might well have to go into bankruptcy.
23. The respondent was separated from his wife. They had two children, one of whom lived with the respondent and the other lived with his wife. The respondent had just applied for state benefits.
24. The respondent told the Tribunal he appreciated that his actions had been disgraceful and expressed the hope that if any good at all were to come out of the matter his experience might be used to assist future solicitors. He considered that his own training had been inadequate.
25. The matter before the Tribunal had come to light at the time of the Law Society's intervention into the respondent's practice. The police had investigated the matter but the Crown Prosecution Service had decided that no action should be taken.

The Tribunal FOUND allegation (i) to have been substantiated and also Found allegations (ii)(b) and (c) to have been substantiated.

On the 24th May 1990 the Tribunal FOUND the following allegations to have been substantiated against the respondent. The allegations were that the respondent had:-

- (i) failed to comply with the Solicitors Accounts Rules 1986 in that he failed notwithstanding Rule 11 of the said Rules to maintain properly written up books of account;
- (ii) failed to comply with the said Rules in that he drew money from client account other than as permitted by Rule 7 of the said Rules and contrary to Rule 8 of the said Rules;
- (iv) been guilty of conduct unbefitting a solicitor in that he failed to exercise control and supervision over his clerk as to permit the clerk to utilise clients' monies for his own purposes.

On that occasion the Tribunal said the respondent had been naive to a remarkable extreme but it was clear from matters before the Tribunal that a confidence trickster had taken in and defrauded experienced professional people before he struck up his relationship with the respondent. They went on to say that a solicitor who ran a tight administration in his practice was unlikely to suffer at the hands of such a confidence trickster. If due and proper attention were given to the meticulous keeping of accounts and such accounts were being kept up to date, bank statements regularly checked and frequent reconciliations made then unauthorised transfers would have become immediately apparent to the practitioner, making dishonest action far less attractive to a miscreant.

The Tribunal went on to say that a solicitor cannot adopt a laissez faire attitude. He was absolutely responsible for matters undertaken by employees on his behalf, and he had a duty to ensure that his employees undertook matters conscientiously and competently. It was clear that the respondent had suffered a great deal and there had been considerable loss of client's money. The Tribunal accepted that before the respondent had the misfortune to be involved with his former clerk, Mr. Stefano, the respondent had proved a straightforward solicitor, working at a level of competency which appeared not have evoked any complaint.

The Tribunal Found the respondent's behaviour in the matters to have been disgraceful and despicable. A betrayal of trust as this could not be tolerated. The Tribunal ORDERED that the respondent be Struck Off the Roll of Solicitors and further Ordered that he pay the costs of and incidental to the application and enquiry.

DATED this 11th day of January 1996

on behalf of the Tribunal

*Adrian Gaynor-Smith*

Adrian Gaynor-Smith  
Chairman



