

IN THE MATTER OF ANTHONY PATRICK REES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. K.I.B. Yeaman (in the Chair)
Mrs. E. Stanley
Mr. D.E. Marlow

Date Of Hearing: 2nd November 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 Roger Field solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on the 1st August 1995 that Anthony Patrick Rees solicitor of Penylan, Cardiff, South Glamorgan, CF2 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 been guilty of conduct unbecoming a solicitor in each of the following circumstances, namely that he had:-

- (i) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (ii) drawn money from a client account other than as permitted by Rule 7 of the said Rules contrary to Rule 8 of the said Rules;
- (iii) utilised clients' funds for improper purposes.

The application was heard at the Courtroom, No.60 Carey Street, London, WC2 on the 2nd November 1995 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 was represented by Christopher Green solicitor and partner in the firm of Messrs. Claude Hornby & Co. of 35-36 Great Marlborough Street, London, W1.

The evidence before the Tribunal included the admission by the respondent of the facts, although he did not accept that he had been dishonest, and exhibit "APR1", a bundle of documents submitted by the respondent which included a number of testimonials in his support.

At the conclusion of the hearing 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 fixed in the sum of £1,034.00 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 17 hereunder.

1. The respondent, born in 1958, was admitted a solicitor in 1986. At the material times he practised in partnership under the style of Gordon Williams at 2 Cathedral Road, Cardiff, South Glamorgan. He resigned from that partnership on the 1st May 1995.
2. Upon due notice to the respondent, the Investigation Accountant of the Solicitors Complaints Bureau (the Bureau) inspected the books of account of Messrs. Gordon Williams. The report of the Investigation Accountant dated the 16th June 1995 was before the Tribunal and revealed the following matters.
3. When the respondent and his partners were notified that the Monitoring Unit of the Law Society would visit the firm on the 11th May 1995, the respondent revealed to his partners that the inspection was likely to uncover significant client account shortages.
4. The Investigation Accountant found that the firm's books of account were not in compliance with the Solicitors Accounts Rules 1991 as they contained false entries made at the instigation of the respondent.
5. A list of liabilities to clients as at the 30th April 1995 was produced for inspection. The items were in agreement with the balances shown in the clients ledger however the partners agreed that the clients ledger was incomplete and that individual client ledger accounts with debit balances had been concealed. A comparison of the total liabilities to clients after adjustments for items not shown by the books, with cash held on client bank and building society accounts at that date, after allowances for uncleared items, showed the following position:-

Liabilities to clients after adjustments for unposted items	£796,478.47
Cash Available	<u>666,903.16</u>
Cash shortage	<u>£129,575.31</u>

6. The cash shortage had arisen when between the 12th May 1994 and the 19th April 1995 overpayments varying in amount between £940.00 and £72,005.06 and totalling £129,575.31 had arisen in respect of eight clients. The improper payments totalled £127,346.65 and debit balances totalled £2,228.66.
7. The respondent had acted for Mr.M. and Mrs C (who was in fact Mr.M's wife), in respect of the purchase of a property at Cardiff. The relevant account in the clients' ledger designated as that of Mr.M. showed the receipt by telegraphic transfer in the sum of £20,000 on 15th June 1994. There was no such receipt into client bank account. The client ledger thereafter showed the payment of a deposit of £4,000 to the vendors' solicitors on the 15th June 1994 but the payment had been debited to client bank account on the 19th May 1994 when no funds had been available. On the 23rd May 1994 completion took place when £52,000 was paid to the vendors solicitors. The payment was not entered into the books of account and the retrospective posting of it to the relevant account in the client's ledger would have had the effect of increasing the overpayment to £56,000.00.
8. On the 23rd June 1994 the relevant account was charged with a payment £14,217.50 thereby increasing the overpayment to £70,217.50.
9. Between the 23rd June 1994 and the 19th April 1995 seven receipts and payments increased the overpayment to £72,005.06, by the 19th April 1995 which remained the position at the date of the inspection.
10. The respondent had also acted for Mr and Miss B. in a property transaction. On the 11th November 1994 an account in the client's ledger in the name of Mr and Miss B. showed a credit balance of £43,649.93 when it was charged with a telegraphic transfer of £25,000 to EM thus reducing the balance thereon to £18,649.93. The client's ledger was further charged on the 7th December 1994 with £2,500 in respect of the deposit on the purchase of a property on behalf of Mr and Miss B thereby reducing the balance to £16,149.93. Completion of the purchase took place on the 16th December 1994 when client bank account was charged with a payment of £22,511.75 which was not entered in the books of account. The respondent had agreed with the Investigation Accountant that the payment of £25,000 to EM was improper as it did not relate to the affairs of Mr. and Miss B. but had been made in connection with the affairs of Mr.M.
11. The respondent had explained to the Investigation Accountant that he had been the victim of an elaborate deception.
12. Some explanation was given of this deception on behalf of the respondent at the hearing. The respondent had been in a strained financial position having been called upon to make a substantial payment upon joining the partnership and making a subsequent payment to meet a tax liability of the firm.
13. The client, Mr.M., had approached the respondent suggesting that if they were to join in a venture for the acquisition of good quality pictures and prints, for which it was said there would be ready market, there would be opportunity to make considerable profit. The respondent invested some £22,000, which money he had borrowed in addition to the borrowing to make capital contributions to the firm.

14. In due course Mr.M. represented to the respondent that he had bought and sold the pictures but had not been paid in respect of the sale. The respondent had lost the money which he had borrowed. Mr.M. indicated that he was engaged in other deals and prevailed upon the respondent to provide two banker's drafts in the sum of £12,000 and £25,500 which he said he would use only to demonstrate his credit worthiness and would not cash them. The respondent arranged for clients' money to be used for the drawing of those drafts and in due course after the respondent had placed extreme pressure on Mr.M. The draft for £25,000 was returned but Mr.M utilised £12,000.
15. Subsequently the respondent was confronted by a letter from Mr.M's wife stating that she had found out about his use of clients' monies and that she would report the respondent to the Law Society unless he did what she required.
16. Mrs.M moved into the property that she was buying before completion and the respondent was compelled to give an undertaking to the vendor's solicitor that monies would be forthcoming upon completion. He gave that undertaking under duress.
17. A further payment of £25,000 was made to Mr.M by the respondent in connection apparently with another commercial transaction. In that case a prospective purchaser of goods had lodged money with the firm to be held to the order of the purchaser following delivery of the goods. The goods were never delivered although in the meanwhile the respondent had released £25,000 to Mr.M. The purchaser pressed for the return of his monies and the respondent returned those monies using the account of Mr. and Miss B.

The Submissions of the Applicant

18. The facts were admitted. The allegations before the Tribunal arose from the contents of the Investigation Accountant's Report. The respondent had created debit balances and made improper payments and had attempted to cover up his activities.
19. The respondent claimed that he had been a victim of deception by the person to whom the money had been paid. In the submission of the applicant that was not relevant. It was clear that the respondent made wholly improper payments which resulted in a shortfall on client account.
20. In the submission of the applicant the respondent did not act honestly. The case was put by the applicant to the Tribunal upon the level of extreme seriousness. The Tribunal was invited to take the view that the respondent had adopted a measured approach to concealing what had occurred.
21. There had been no recovery and it was likely that the Solicitors Indemnity Fund would indemnify the respondent's former partners against the loss, or a substantial part of it.

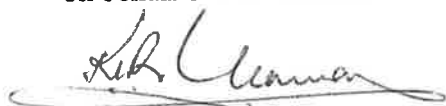
The Submissions of the Respondent

22. The respondent had appeared before the Tribunal to mark his genuine remorse for what had happened. The respondent had worked hard to become a solicitor and was proud of his professional status. He wanted always to perform to a very high standard.
23. The respondent's fall from grace was marked by his meeting Mr.M when he became subject to that client's evil and malign influence.
24. Mr.M was a fraudster, a confidence trickster who went to the respondent as a client. Mr.M was the subject of a police enquiry and another complaint of deception or fraud had been made in respect of him. Mr.M already had a criminal record.
25. It might be said that the respondent's behaviour appeared both naive and foolish but it was well known that fraudsters often were extraordinarily persuasive and had a charisma which their victims found themselves powerless to resist.
26. While the respondent was in the grip of the confidence trickster, he made tremendous efforts to secure the return of monies paid. He constantly approached Mr.M and indeed telephoned him many times in one day. Throughout the respondent really believed that Mr.M would return the monies.
27. Because he had been duped, there was no conception on the respondent's part that he had been dishonest.
28. The respondent had disclosed the difficulties to his partners when they became aware of the pending visit of the Law Society's Monitoring Unit. He made full disclosure at the meeting with the Investigation Accountant. He accepted that he had acted wrongly but he had always been frank. The respondent was genuinely remorseful.
29. After resigning from his partnership the respondent had been unemployed and in receipt of state benefit. His wife earned a salary and he was dependant upon her. The respondent's health suffered and the attention of the Tribunal was drawn to a medical certificate placed before them.
30. The respondent found himself in a position of massive debt. During the week following the disciplinary hearing, a hearing was to take place in Cardiff following the institution of bankruptcy proceedings against the respondent by his former partners. A declaration that the respondent was bankrupt was inevitable.
31. The respondent had been proud of his professional status. He had lost his position and his partnership and he deeply regretted the embarrassment and loss caused to his partners. He was deeply concerned that another blow would fall upon the reputation of the solicitors' profession. It was possible that an investigation into the activities of the respondent might be made by the police.
32. Hope was expressed that the Tribunal might in the exceptional circumstances of this case be able to exercise leniency and make an Order other than the imposition of the ultimate sanction.

The Tribunal FOUND the allegations to have been substantiated. The Tribunal had heard the respondent's argument that he had not been dishonest and they had taken into account the testimonial letters submitted in his support. There was no doubt that the respondent had behaved in a way which was naive and stupid. The Tribunal found it hard to consider that a solicitor who had utilised clients' funds, knowing full well what he was doing, for an improper purpose, had not acted with a degree of dishonesty. Whilst the persuasiveness and irresistibility of a confidence trickster is well known, the overriding principle must be that monies held by a solicitor in his client account are sacrosanct and may not be used for any purpose which is not authorised by the client whose money it is or dealt with by the Solicitors Account Rules. It was right that the respondent should be Struck Off the Roll of Solicitors and he should also pay the costs of and incidental to the application and enquiry.

DATED this 20th day of December 1995

on behalf of the Tribunal



K.I.B. Yeaman
Chairman

