

IN THE MATTER OF GARY STEPHEN ORAM, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A.H. Isaacs (in the Chair)

Mr. R.B. Bamford

Dame Simone Prendergast

Date Of Hearing: 7th December 1995

FINDINGS

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

An application was duly made on behalf of the Law Society by David Rowland Swift solicitor of 19 Hamilton Square, Birkenhead on 9th August 1995 that an Order be made by the Tribunal directing that as from a date to be specified in the Order no solicitor should, except with permission of the Law Society for such 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, Gary Stephen Oram of _____, Hythe, Kent currently residing in _____ Brixton, London, SW2 a person who is or was a clerk to a solicitor within the meaning of the Solicitors Act 1974 or that such Order might be made as the Tribunal should think right.

The allegations were that the respondent had;

- (i) been convicted of criminal offences which disclosed such dishonesty that it would be undesirable for him to be employed by a solicitor in connection with his practice;
- (ii) been guilty of conduct of such a nature that in the opinion of the Law Society it would be undesirable for him to be employed by a solicitor in connection with his practice as a solicitor.

The application was heard at the Courtroom, No.60 Carey Street, London, WC2 on the 7th December 1995 when David Rowland Swift solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square. Birkenhead appeared for the applicant and the respondent did not appear and was not represented.

The applicant stated that the respondent was aware of these proceedings. He handed in a sworn affidavit of service dated 4th December 1995. A letter dated 25th September 1995 addressed to the applicant by the respondent was also handed in. The clerk had a signed A.R. card evidencing receipt of documents sent to the respondent on the 15th September 1995 by recorded delivery.

At the conclusion of the hearing the Tribunal ORDERED that as from the 7th December 1995 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 Gary Stephen Oram of Brixton, London, SW2 a person who is or was a clerk to a solicitor and the Tribunal further Ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £555.87.

The facts are set out in paragraphs 1 to 5 hereunder.

1. The respondent appeared at the Crown Court at Southwark and was convicted of five offences of procuring the execution of a valuable security by deception, one offence of obtaining property by deception and one offence of attempting to obtain property by deception. For these offences he was sentenced to a total of eighteen months imprisonment.
2. The respondent was employed as a Financial Adviser by the firm of O'Leary and Co. solicitors of 313 Mare Street, Hackney, London, E8 1EJ. This firm was the sole practice of Linda Joan O'Leary who was admitted a solicitor in 1979.
3. Upon due notice the Financial Services Monitoring Unit of the Law Society carried out a monitoring visit and inspection of the compliance of O'Leary & Co. with the Solicitors Investment Business Rules. A copy of the Monitoring Unit's report of the 9th December 1992 showed consistent widespread and serious breaches of the principles of the Securities and Investment Board, the Solicitors Investment Business Rules 1990, the Solicitors Publicity Code 1990 and the Solicitors Practice Rules 1990.
4. The conduct of the financial services business at the firm of O'Leary & Co. was left in the hands of the respondent who was employed by the firm as a clerk within the meaning of Section 43 of the Solicitors Act 1974. Effectively, the respondent had the conduct of the investment business of the firm which he conducted under the name of and under the auspices of the firm and he was therefore subject to the requirements of the Solicitors Investment Business Rules 1990, the Solicitors Publicity Code 1990 and the Solicitors Practice Rules 1990.
5. The Monitoring Unit of the Law Society discovered that it was the firm's policy to retain commission but there were no proper commission agreements with clients and

such as did exist appeared to be forged. It appeared that a sum of £90,000 had been received in commission over the period during which the respondent was employed by the firm. The records required to be kept were not kept or were inadequate with evidence of forged signatures on documents purporting to be records of facts ascertained from clients. There was no evidence of the suitability of transactions nor of the Best Advice having been given. No proper Buyers Guide was provided. Unsuitable products had been sold to clients. Advertising in the firm's Property Services House List contravened the Solicitors Publicity Code 1990. There was evidence that the respondent and Linda Joan O'Leary had generated income to the firm by themselves entering into insurance contracts, thereby becoming entitled to commission, which said policies were subsequently cancelled. The facts ascertained demonstrated disregard of proper practices in the financial services field.


The Submissions of the Applicant

6. The respondent who was not a solicitor was employed as a financial adviser by O'Leary & Co., solicitors. He was employed in that capacity by the firm from June 1991 to October 1992. The person responsible for the supervision of the respondent was Linda Joan O'Leary. Prior to the criminal proceedings taking place, the respondent had denied in correspondence that he was employed by the said Linda Joan O'Leary. It was the applicant's submission that this was contrary to the evidence. Unless the respondent was operating under the umbrella of a firm of solicitors authorised by its recognised professional body (the Law Society) the respondent could not provide financial services at all as he was not authorised to do so in any other capacity. The applicant cited the case of Butler (5240/1987) in which the Divisional Court reached the conclusion that it was not necessary for a master/servant relationship to exist in order to hold that a person was engaged as a clerk to a solicitor.
7. The applicant's application had been put on two grounds. Firstly, there were the convictions at Southwark Crown Court for criminal offences and secondly there were serious breaches of (inter alia) the Solicitors Investment Business Rules 1990. The breaches were itemised in the Monitoring Unit's report and referred amongst other things to improper, indeed fraudulent, taking out of insurance policies on the lives of the respondent and Mrs O'Leary in order to generate substantial commission to the firm which was in financial difficulties. Subsequently no premiums were paid on these policies and the commissions were subject to the claw back provisions.

Bearing in mind the evidence before them, the Tribunal had no hesitation in granting the Order sought.

DATED this 11th day of January 1996

on behalf of the Tribunal


A.H. Isaacs
Chairman

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

