

IN THE MATTER OF MALCOLM LEWIS MACDONALD, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A.G. Gibson (in the Chair)
Mr. A. H. Isaacs
Dame Simone Prendergast

Date Of Hearing: 4th January 1996

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 David Rowland Swift solicitor of 19 Hamilton Square, Birkenhead, L41 6AY on the 15th September 1995 that Malcolm Lewis Macdonald of _____, Frome BA11 might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegation was that the respondent had been guilty of conduct unbecoming a solicitor in that he had been convicted of an offence of dishonesty in the course of his practice as a solicitor.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 4th January 1995 when Geoffrey Williams solicitor and partner in the firm of Messrs. Cartwrights, Adams & Black of 36 West Bute Street, Cardiff appeared for the applicant and the respondent did not appear and was not represented.

The evidence before the Tribunal included the admission of the respondent contained in his statement dated the 17th December 1995.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Malcolm Lewis Macdonald of [redacted], Frome, BA11 [redacted] solicitor be Struck Off the Roll of Solicitors and they further order him to pay the costs of and incidental to the application and enquiry fixed in the sum of £851.87p. inclusive.

The facts are set out in paragraph 1 to 6 hereunder:-

1. The respondent, born in 1953, was admitted a solicitor in 1984. At the material times he practised in partnership under the style of Myer Cohen Mullia & Co. of Barry, South Glamorgan.
2. On the 31st May 1995 the respondent appeared before the Crown Court sitting at Newport and having been convicted of an offence of conspiracy to defraud a financial institution on the 29th September 1994 was sentenced to 15 months imprisonment suspended for two years.
3. The respondent had pleaded guilty on the advice of Counsel due to the technical nature of the offence rather than because the respondent had deliberately set out to offend. The trial at Newport Crown Court began in late September 1994 and the respondent entered a plea of guilty on what he believed was a very limited basis. The trial then collapsed in early May 1995 on the grounds that it had become too difficult for the jury to follow and all defendants were acquitted save those who had been advised to plead guilty at the start and the respondent's former client who, it transpired, had been a confidence trickster.

The submissions of the applicant

4. The respondent's former client had proved to be a confidence trickster who had continued to deceive the respondent. It was accepted that the respondent had no personal interest in what was going on and he did not seek directly to gain benefit. It appeared that the respondent had been a young man of some five years admission who had been drawn into mortgage fraud by a client with a dominant character. Although at first the respondent was a wholly innocent participant, he had come to realise what was going on and had continued to act for the confidence trickster client in the hope that all losses might be retrieved.
5. The custodial sentence imposed on the respondent was suspended for two years because of the exceptional circumstances of the trial having collapsed.
6. The Tribunal was referred to the sentencing remarks of His Honour Judge Crowther QC at the Crown Court in Newport Gwent and in particular when he said,

"What all three (one was the respondent) of you did was to become involved undoubtedly with a central dominant character. He used that background as an opportunity to seek to deceive gullible individuals and institutions with a panoply of a false scheme to develop prestigious property as a basis for obtaining huge sums. In the particular case with which you Macdonald and you Cowdery are concerned, obtaining by short term bridging finance. What

was needed in that at various stages were people with special expertise and special positions who would give credence to that as a genuine scheme."

7. He went on to say,

"Both of you (one being the respondent) share again a common feature that there undoubtedly came a stage which, whenever you think it was - and it is not possible, I think, to specify a date or a day or a letter but there certainly was by about the early summer of 1990 a time at which both of you could not fail to have known that you were playing a part in a very substantial dishonest scheme."

8. The respondent was a young solicitor who had behaved dishonestly. There was no doubt that he had brought the solicitors' profession into serious disrepute.

9. It had to be said on the respondent's behalf that he had behaved most properly towards his profession when the matters had come to light but nevertheless the Tribunal was invited to consider that in acting as he did and being convicted for the serious offences for which he had, the respondent had "committed professional suicide".

10. The respondent's misconduct had to be regarded as being at the top end of a scale of seriousness, indeed the respondent in his statement before the Tribunal accepted that his actions brought the profession into disrepute and further accepted the inevitability of the imposition of the ultimate sanction.

The submissions of the respondent (contained in his statement dated 17.12.95)

11. The respondent took no issue with the statement and application in the disciplinary proceedings. He confirmed that he had pleaded guilty on the advice of his Counsel due to the technical nature of the offence rather than because he had deliberately set out to offend.

12. No client account monies were involved, indeed the respondent himself was a victim of his former client. He lost £10,000 of his own family's money which was obtained by the deception of his former client.

13. As a result of the criminal proceedings, the respondent discovered that the former client had been very active in London prior to his arrival in South Wales. It was alleged that he had defrauded banks and other lending institutions of £2,500,000. As a result of the matters before the Tribunal the respondent's marriage broke up in 1991 which meant amongst other things leaving his then two year old son which caused him great personal distress. In addition the respondent had lost his self respect and professional status and had discovered that friends had gone with that lost status.

14. The respondent had become unemployed as a direct consequence of the case and was trying to find an alternative career. That was a long term project and he was faced with many difficulties. The respondent's financial position was not good. He had no resources to pay any costs which might be awarded.

15. The respondent accepted without hesitation that he would be Struck Off the Roll of solicitors and he was anxious not to cause the solicitors' profession any more embarrassment.
16. The respondent was unable to attend the hearing being unable to afford the travelling expenses. He sincerely apologised to the Tribunal for not being present.
17. On the morning of the hearing the Tribunal received a letter from Messrs. Ames Kent, solicitors of Frome, Somerset who had previously employed the respondent. The facts of the matter were confirmed in that letter and the firm's principal expressed the high regard that he had for the respondent and how sorry he would be if the profession lost a competent and conscientious solicitor whose downfall had been brought about by various errors of judgement when under considerable pressure and out of his depth as a junior partner in a branch office.

The Tribunal FIND the allegation to have been substantiated, indeed it was not contested. The Tribunal found this to be a very sad case. The Tribunal would not, of course, look behind the conviction which was for a serious offence which attracted a custodial sentence, albeit suspended.

It was a matter for great regret when a young and relatively inexperienced solicitor became drawn into a web of deceit and fraud without his deliberately setting out to be so involved. The mistake of this young solicitor was not to take immediate steps when he first entertained a suspicion that his client was engaged in dishonest activities. It was undoubtedly the case that a person of great experience can be taken in by a confidence trickster. Being in that position would, of course, have placed the respondent in professional jeopardy but his position would not have been as untenable as it had become when he decided to continue to act for a dishonest and fraudulent client, knowing that to be the case. The Tribunal have given credit to the respondent for the very proper way in which he behaved towards his solicitor employer and the solicitors' profession and his own professional body when matters came to light. However, as the respondent himself readily accepted, his conviction for a serious criminal offence justified the imposition of the ultimate sanction upon him and the Tribunal ORDERED that he be struck off and that he pay the costs of and incidental to the application and enquiry.

DATED this 5th day of February 1996

on behalf of the Tribunal



A G. Gibson
Chairman

