

IN THE MATTER OF GEOFFREY JOHN SMITH, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. Barnecutt (in the Chair)
Mr. Roome
Mr. Griffin

Date Of Hearing: 20th 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 Gerald Malcolm Lynch solicitor of 16 Warrior Square, Southend-on-Sea on the 12th October 1995 that an order be made by the Tribunal directing that as from a date to be specified in such order no solicitor should except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions that the Society might think fit to specify in the permission employ or remunerate in connection with the practice as a solicitor Geoffrey John Smith of Estover, Plymouth PL6 a person who was or had been a clerk to a solicitor or that such other order might be made as the Tribunal might think right.

The allegation was that the respondent having been a clerk to a solicitor but not being a solicitor, had in the opinion of the Society, occasioned or been a party to, with or without the connivance of the solicitor to whom he was or had been a clerk, an act or default in relation to that solicitor's practice which involved conduct on his part 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 or her practice.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on 20th December 1995 when Gerald Malcolm Lynch, solicitor and partner in the firm of Messrs. Drysdale & Janes of 16 Warrior Square, Southend on Sea, Essex appeared for the applicant and the respondent appeared in person.

The evidence before the Tribunal included the admissions of the respondent.

At the conclusion of the hearing the Tribunal made the order sought pursuant to Section 43 of the Solicitors Act 1974 effective from the 20th December 1995 and they further ordered that the respondent pay fixed costs in the sum of £641.30p 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 to 1 to 6 hereunder:-

1. The respondent, who was not a solicitor, had been employed from the 24th January 1994 until his dismissal on the 24th October 1994 as a clerk in the practice of Messrs Plant Haynes, solicitors of 9 The Crescent, Plymouth, Devon.
2. The respondent's employers had written to the Law Society on the 1st November 1994 advising of their concern about the behaviour of the respondent and by a further letter on the 23rd November confirmed that a client account shortfall had been ascertained in respect of work undertaken by the respondent and the police had been notified.
3. The Investigation Accountant of the Law Society inspected the books of Messrs. Plant Haynes on the 20th January 1995. His report dated the 14th February 1995 was before the Tribunal.
4. In the estate of JSE deceased, the respondent was a trustee of the will together with the widow of the deceased. He had conduct of the matter when at a previous firm which had in May 1994 paid Messrs. Plant Haynes the sum of £10,385.53 which was reduced by a proper payment to the widow of £200. On the 27th June 1994 the account was charged with a payment of £8,000 by transfer to the account of Axa Equity and Law at the Bennets Hill, Birmingham Branch of National Westminster Bank. The respondent had told the partners of Plant Haynes that he was authorised to make that payment as a trustee. On the 24th October 1994 the respondent admitted to the practice manager of Plant Haynes that that sum had been misappropriated by him. The money was repaid by the respondent's mother.
5. In addition to the £8,000 the respondent had appropriated eleven dividends in respect of the will trust totalling £464.29.
6. The matter having been considered by the Conduct Committee of the Adjudication and Appeals Committee of the Law Society it resolved on the 7th June 1995 that application should be made to the Tribunal for an Order pursuant to Section 43(2) of the Solicitors Act 1974.

The Submissions of the Applicant

7. It was clear that the respondent's behaviour justified the Order restricting his employment within the solicitors profession. -


The Submissions of the Respondent

8. The respondent appeared before the Tribunal as a matter of courtesy. He had intended to place mitigation before the Tribunal, until it was explained to him that the Tribunal had power either to make the Order or not to make the Order. In accepting the facts he felt that the Order would be made and to present mitigation to the Tribunal would achieve nothing.
9. The Tribunal noted however that the respondent in corresponding with the Solicitors Complaints Bureau had indicated that at the time of the transfer of the sum of £8,000 he needed money urgently. He had no intention permanently to deprive the will trust fund of the monies removed. His late father's house was to be sold and re-imburement would have been made from the proceeds of sale. The respondent had said that his honesty and integrity had not been called into question prior to that time and he had worked within the solicitors' profession for thirty years. He would comply with any restrictions placed upon him.

The Tribunal FOUND the allegation to have been substantiated. It agreed with the applicant that in the circumstances it was right that the respondent's employment within the solicitor's profession should be controlled: the Tribunal made the Order sought and further Ordered the respondent to pay agreed fixed costs together with the costs of the Law Society's Investigation Accountant to be taxed if not agreed.

DATED this 19th day of February 1996

on behalf of the Tribunal


J.N. Barnecutt
Chairman

Findings filed with the
Law Society on the 22nd
day of February 1996