

IN THE MATTER OF HAVARD YOEL ROSE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. J.R.C. Clitheroe (in the Chair)  
Mr. J.C. Chesterton  
Mr. Dame Simone Prendergast

Date Of Hearing: 30th January 1996

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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 Gerald Malcolm Lynch solicitor of 16 Warrior Square, Southend-on-Sea, Essex on the 1st November 1995 that Havard Yoel Rose solicitor of C/o Messrs. Hallinan Blackburn Gittings & Nott, 26 Buckingham Palace Road, London, SW1W 0PQ 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 that the respondent had:-

- (a) dishonestly alternatively improperly utilised clients' moneys for his own benefit alternatively for the benefit of others not entitled thereto;
- (b) acted in breach of Rules 7 and 8 of the Solicitors Accounts Rules in that he drew from clients account monies other than permitted by the said Rules and utilised the same for his own alternatively for the benefit of others not entitled thereto;

- (c) acted in breach of Rule 11 of the Solicitors Accounts Rules in that he failed to keep his books of account properly written up and failed to effect reconciliations as by the said Rule required;
- (d) by virtue of each and all of the aforementioned been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 30th January 1996 when Gerald Malcolm Lynch solicitor and partner in the firm of Messrs. Drysdales and Janes of 16 Warrior Square, Southend-on-Sea, Essex appeared for the applicant and the respondent did not appear and was not represented. The Tribunal was in receipt of a letter dated the 26th January 1996 from Messrs. Hallinan Blackburn Gittings & Nott confirming that the respondent would not appear or be represented at the hearing.

The evidence before the Tribunal included the admissions of the respondent contained in the before-mentioned letter of the 26th January 1996 and in a letter referred to therein having been written by the firm to Messrs. Drysdales & Janes and dated the 6th December 1995. Those two letters are referred to in greater detail hereunder under the heading "The Submissions of the Respondent".

At the conclusion of the hearing the Tribunal ORDERED that the respondent Havard Yoel Rose of c/o Messrs. Hallinan Blackburn Gittings & Nott of 26 Buckingham Palace Road, London, SW1W 0QP 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 £4,782.70 inclusive.

The facts are set out in paragraphs 1 to 4 hereunder.

1. The respondent (aged sixty) was admitted a solicitor in 1960. He practised as a solicitor until 13th November 1974 at which date he was removed from the Roll. He was restored to the Roll on the 8th June 1983.
2. At the material times the respondent was in partnership and practising under the style and title of Maurice Hudgell & Co. at 28 Buckingham Palace Road, London, SW1 0RJ. The other partner was salaried only. The Law Society intervened into the firm on the 1st September 1995 but the intervention was withdrawn upon the disposal of the practice on the 8th September 1995 to Messrs. Whittingdales of 44 Bedford Row, London, WC1.
3. Pursuant to due statutory notice the Investigation Accountant of the Law Society inspected the books of the respondent commencing on the 2nd May 1995 and reporting on the 19th May 1995. A copy of the said report was before the Tribunal.
4. The following relevant matters were revealed:-
  - (a) At the 31st March 1995 there was a minimum cash shortage on clients account of £88,315.15.

- (b) The shortage was caused by improper transfers from client to office bank account and to an improperly allocated payment from clients bank account.
- (c) As at the 28th February 1995 there was a minimum cash shortage on clients account of £41,545.28 caused by improper transfers from client to office bank account.
- (d) Contrary to Rule 11 reconciliations of client account had not been carried out nor had all clients' liabilities been entered in the books of account.

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

- 5. It was manifestly the case that clients' money had been utilised by the respondent where he knew that no funds were available for transfer. The respondent had had the personal benefit of the use of clients' funds. It was accepted that he had made partial rectification of the shortfall.
- 6. It had been established to the satisfaction of the Bureau that the salaried partner was not a party to the dishonest use of clients' money or the breaches of the Solicitors Accounts Rules (save only in a technical sense) and had no knowledge of the matters in issue.

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

- 7. Solicitors acting for the respondent had written to the Bureau on the 21st July 1995 in which it was indicated that the respondent accepted full responsibility for his actions. It was essentially through inadequate management, over manning and serious cash flow problems that the respondent had effected transfers from client account to office account which were wholly unauthorised and which were clearly done to keep his practice as a viable and ongoing concern.
- 8. The respondent then acknowledged the problems and was taking steps to mitigate his position. Property was to be sold and the respondent would seek to ensure that the shortfall on client account had been reimbursed.
- 9. In the before-mentioned letter of the 6th December 1995 addressed to Messrs. Drysdales and Janes by Messrs. Hallinan Blackburn Gittings and Nott made formal admission of each of the allegations, although the Tribunal was invited to note that a book-keeper was employed and paid to write up the books and make the required reconciliations.
- 10. It was not accepted that it was manifestly the case that clients' money had been utilised in circumstances where the respondent knew that no funds were available for transfer, although it was conceded that some funds were transferred without appropriate authority. At that time the respondent had made full rectification.
- 11. In their letter of the 26th January 1996 Messrs. Hallinan Blackburn Gittings and Nott asked the Tribunal to bear in mind that the respondent was sixty years of age and was residing with his wife who had had to take up part-time nursing in order to support

herself and her husband. The respondent had ceased to practise following the intervention of the Law Society. One of their daughters had been employed in the practice and had lost her employment. The respondent had no income other than the wages of his wife and set out details of the outstanding debts of the respondent's practice. Some costs due to the practice had been collected.

12. The respondent was aware of the shame he had brought upon the solicitors' profession and his own family. Even if he were permitted to remain on the Roll it was not his intention to renew his practising certificate. The respondent was wholly aware of the manner in which he had allowed himself to be "swamped" with his failure to cope with the obligations and responsibility of running a legal practice. He considered that his future prospects outside the law were non-existent.
13. Impropriety and breach of the Solicitors Accounts Rules was wholly admitted by the respondent but any dishonesty was denied. There was never any intention dishonestly to appropriate the funds in question with the intention of permanently depriving the clients entitled to such funds. In their submission that was reflected by the fact that funds were always available to make up the shortfall and no client had suffered any loss. The shortfall had been resolved by the respondent selling a property he had owned since 1967, cashing in a number of life insurance policies and the sale of his car. Those steps were taken at the earliest opportunity. About one hundred active files were passed to the firm taking over the respondent's practice and there had been no complaint from any client.
14. The serious nature of the allegations made against the respondent were conceded and the respondent was aware of the likely penalty to be imposed but expressed the hope that in all of the circumstances a finding of dishonesty could be avoided.

The Tribunal FOUND the allegations to have been substantiated, indeed they were admitted. With regard to the question of dishonesty, it was clear from the Investigation Accountant's report that the respondent had in dealing with the administration of an estate in which he was one of two executors, the estate being valued for probate at £107,453.85, made between the 14th December 1990 and the 20th December 1991 nineteen transfers from client to office bank account totalling £69,404.15. No bills had been delivered. The effect of the transfer was to deprive three charitable residuary legatees of their entitlement. The Tribunal took the view that that was a dishonest appropriation of clients' money to mitigate the respondent's firm's problems with cash flow.

On the 20th January 1973 the Disciplinary Committee constituted under the Solicitors Act 1957 having found the following allegations to have been substantiated, namely that he had:-

- (i) failed to comply with the Solicitors Accounts Rules 1967 in that he
  - (a) notwithstanding the provisions of Rule 11(2)(b) failed to keep properly written up such accounts as were necessary to record all dealings relating to his practise as a solicitor other than those referred to in

sub-paragraph (a) of paragraph (1) to that Rule in office columns in the ledger maintained by him;

- (b) notwithstanding the provisions of Rule 8(2) of the said Rules drew money other than money permitted by Rule 7 to be drawn from a client account;
- (2) been guilty in conduct unbecoming a solicitor in that he utilised for his own purposes money held and received by him on behalf of clients.

when the Committee imposed upon him a penalty of £750.00.

On the 13th November 1974 the Committee, having found allegations to have been substantiated that the respondent had:

- (i) failed to comply with the Solicitors Accounts Rules 1967 in that he:
  - (a) notwithstanding the provisions of Rule 8 of the said Rules drew out of client account money other than that permitted by Rule 7 of the said Rules;
  - (b) notwithstanding the provisions of Rule 11 of the said Rules failed to keep properly written up such books and accounts as are so required by such Rules;
- (ii) been guilty of conduct unbecoming a solicitor in that he utilised for his own purposes money held and received by him on behalf of clients.

Ordered that his name be Struck Off the Roll of Solicitors.

On the 26th April 1976 the respondent was convicted on indictment at the Central Criminal Court upon his own confession upon four counts of theft and two counts of false accounting. He was sentenced to serve an immediate term of two years imprisonment. His conviction related to the facts and matters which had formed the subject matter of the investigation which had led to the institution of the disciplinary proceedings in 1974.

On the 8th June 1983 following an application by the respondent on whose behalf it was submitted that he and his family had suffered greatly, he had paid his debt to the profession and to the public. He had worked conscientiously and humbly in order to redeem himself and restore his good name. Testimonials before the Tribunal indicated that he was respected as a lawyer and as a person by those solicitors and others with whom he came into contact. He had no wish at that time to set up in practice on his own and was prepared to accept any conditions that the Law Society might wish to impose upon any practising certificate issued to him. Despite the opposition of the Law Society the Tribunal granted the application and Ordered that the respondent's name be restored to the Roll of Solicitors of the Supreme Court. Although they granted the application, the Tribunal expressed the view that if a practising certificate

were to be issued to the respondent it should be only upon condition that he should practise in approved employment only.

The Tribunal was dismayed to learn of the unfortunate history of the respondent. The climate of opinion backed by a number of decisions made in recent years by the Master of the Rolls would render it extremely unlikely that the Tribunal would make an Order restoring a struck off solicitor to the Roll whose history in any way resembled that of the respondent in this case. The respondent had yet again been guilty of dishonest handling of clients' money. It was right that he be Struck Off the Roll and Ordered to pay the costs of and incidental to the application and enquiry.

DATED this 22nd day of February 1996

on behalf of the Tribunal



J.R.C. Clitheroe  
Chairman

