

Appeal lodged 16/2/96

No. 7029/1995

IN THE MATTER OF MICHAEL KATZ, Solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. K I B Yeaman (in the Chair)
Mr. D W Faull
Mr. K J Griffin

Date Of Hearing: 6th February 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 Gerald Malcolm Lynch of 16 Warrior Square, Southend on Sea, Essex on the 10th November 1995 that Michael Katz a solicitor whose address was 4 Ladbroke Gardens, London, W11 2PT 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 allegation was that the respondent had failed to act in accordance with a Direction of the Assistant Director to the Solicitors Complaints Bureau made pursuant to Section 37 (A) of the Solicitors Act 1974 and consequently had been guilty of conduct unbecoming a solicitor.

At the opening of the hearing the applicant explained to the Tribunal that he had received instructions from the Solicitors Complaints Bureau in connection with another complaint made against the respondent. Having discussed the matter with the respondent and his representative it had been agreed that the extra allegations in that matter might be placed before the Tribunal at this hearing and dealt with together with those contained in the written application. The Tribunal consented to that course of action in respect of which the additional allegations were:

- (i) contrary to the instructions of the client the respondent failed to pass the papers in the matter of Mr R. W. to the client's representative;
- (ii) failed to reply to correspondence and enquiry addressed to him by the Solicitors Complaints Bureau;
- (iii) The foregoing matters amounted to conduct unbefitting a solicitor.

The respondent indicated to the Tribunal that he admitted those allegations.

The applicant further applied that the Direction of the Assistant Director be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 6th February 1996 when Gerald Malcolm Lynch, solicitor and partner in the firm of Messrs. Drysdales & Janes, 16 Warrior Square, Southend on Sea Essex, appeared for the applicant and the respondent was represented by Mr G Howells of Counsel instructed by the respondent.

The evidence before the Tribunal included the oral evidence of the respondent and exhibits "MK1" and "MK2" respectively being an unsworn statement of the respondent and a bundle of medical reports and testimonial letters. Subsequently the respondent confirmed under oath from the Witness Box the statement.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Michael Katz of 4 Ladbroke Gardens, London W11 2PT solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 6th February 1996 and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £893.05p and the Tribunal ordered that the Direction made by the Assistant Director of the Solicitors Complaints Bureau on the 5th May 1995 in respect of Michael Katz be treated for the purposes of enforcement as an order of the High Court.

The Tribunal further directed that the filing of the order with the Law Society should be suspended for the period of fourteen days to enable the respondent to achieve an orderly handing over of his clients' affairs to other solicitors instructed by those clients.

The facts are contained in paragraphs 1 to 10 hereunder:-

1. At the material time the respondent practised on his own account and under his own name at 4 Ladbroke Gardens, London W11 2PT. He was admitted as a solicitor of the Supreme Court in 1984 and was forty nine years of age.
2. Complaint was made to the Solicitors Complaints Bureau (the Bureau) by Mr W that he had received from the respondent inadequate professional service in connection with proceedings to be issued in respect of money owed to Mr W's wife. Money on account of costs had been received on the 7th December 1992.

3. The matter was investigated by the department of the Bureau concerned with inadequate professional service and an assessment produced dated the 10th March 1995 which summarised the action taken in relation to the instructions and the alleged inadequacy thereof. It was submitted to both parties but no response was made by the respondent.
4. On the 5th May 1995 the Assistant Director with delegated power ruled that the professional service was not of the quality which could reasonably have been expected because the respondent did not act expeditiously: there was evidence that the pleadings were inaccurate and there was failure to account for moneys paid. The Assistant Director accordingly determined that the respondent should not be entitled to any costs, he should be entitled to retain the fee paid on issue of the Writ: the balance was to be repaid to the complainant and the Assistant Director further determined that an award of compensation was appropriate in the sum of £150.00.
5. The respondent was notified of the Assistant Director's decision by letter of the 9th May 1995. No appeal was made against the award.
6. No payment having been made, the Bureau wrote again on the 24th July 1995 to say that the matter would be referred as a matter of professional conduct if payment had not been made. On the 8th August, the respondent on the telephone said that he had been on holiday and had only just read the letter of the 28th July and he would forward a cheque. No payment had yet been made. The Director had required payment within thirty five days of notification of the decision, that was to say not later than the 13th June.
7. The respondent passed at this stage in the hearing a cheque drawn in favour of the complainant client in the appropriate sum (namely £720.00) to the Tribunal. The Tribunal authorised its clerk to forward it directly to the Solicitors Complaints Bureau.
8. The additional matters of complaint arose in connection with the respondent's client Mr R W who was serving a prison sentence. In June 1995 Mr R W had written to complain to the Bureau. He had terminated the respondent's retainer and had required his file of papers to be dispatched to another solicitor or to his mother's home address. The Bureau had been in correspondence with the respondent in connection with the matter and on the 11th September 1995 the Bureau wrote to the respondent asking him to contact his erstwhile client. It was common ground that the requested papers had not at the time of the hearing still been delivered.
9. A further letter was sent by the Bureau to the respondent on the 29th December 1995 which explained that Mr R W had informed the Bureau that the respondent had failed to release the file of papers to his mother.
10. An Assistant Director wrote in connection with the complaint reminding the respondent that failure to reply to correspondence addressed to him by the Bureau was a matter of professional conduct. The respondent was invited to deal with the matter within ten days and warned that if he did not do so the matter might be referred to the Disciplinary Tribunal. No reply was made

The submissions of the applicant

11. The general failures of the respondent were apparent. He had not responded to letters addressed to him by the Bureau he had not taken any steps to comply with a Direction made by an Assistant Director of the Bureau. There was no doubt that the respondent had been guilty of conduct unbecoming a solicitor.

The submissions of the respondent

12. In connection with the Direction of the Bureau, the respondent had undertaken considerable work on the case involving a complicated commercial matter relating to a film production. He issued proceedings a week after he had been instructed. There were hundreds of pages of correspondence. The respondent had taken the file with him as he had been in America at the time on Christmas holiday and had faxed a statement of claim. The respondent had been advised to deal with the matter in a particular way which might well have proved beneficial to his client. He agreed a rate of £60.00 per hour plus VAT. He had undertaken a considerable amount of work including a two hour initial consultation after his perusal of the file. There had been telephone calls from America and the drafting and issue of proceedings in time had been involved. The respondent accepted, however, that he had not appealed against the Direction made. He handed up a cheque for £720.00 made payable to the relevant client to the Tribunal and apologised for his failure.
13. In connection with Mr R W, the respondent had found himself in a very difficult position. A solicitor advocate had been instructed by the Registrar of Criminal Appeals in the matter. He had asked the respondent to retain some of the papers. The respondent required to keep the papers for the purposes of taxation and Mr R W was asking that they be sent to him or to his mother. The case had been one of great complexity and there were a great many papers. The respondent had been faced with three conflicting interests and had not known which way to turn. However he accepted that he ought to have produced a set of papers and accepted that he ought to have replied to the Bureau.
14. The respondent believed that he could put together a complete set of papers within twenty one days and undertook that he would do so and send those documents to his erstwhile client or his mother as had been requested.
15. The respondent apologised for his failures. The matter in which a Direction had been made had arisen at the time when the respondent was dealing with an earlier matter before the Tribunal which caused him great stress at the time.
16. The respondent found it very difficult to deal with a client who had "turned on him". He realised that was a self destructive pattern with which he had to deal. He had reacted to the problems by ignoring them tending to freeze rather than fight back.
17. The respondent's wife had intended to help in his practice during the previous summer whilst she was having a break from an academic course. She had been unable to do so and in fact they had separated for a time. The respondent received a letter from her solicitors requesting a divorce.

18. The respondent had helped his wife edit her essays for her masters degree and felt that she was not carrying out her side of the arrangement. She was under a lot of pressure herself from her course and a family bereavement in June.
19. The respondent believed that he had put a lot of effort into controlling his feelings about his marriage and had made great efforts not to argue or allow arguments to develop. He and his wife had been living together again since the 1st December 1995. They both realised that they were under a great deal of pressure. His wife could not help him with his business problems and he had come to accept that. He believed that he had put too much effort into getting his wife back rather than dealing with his own problems first. The respondent and his wife had two small children.
20. The respondent had by mutual agreement stopped seeing his psychotherapist. He had consulted a psychiatrist through his general practitioner and had taken antidepressants for a short time. He was worried that he was becoming clinically depressed.
21. The respondent told the Tribunal that he had only a small case load of some half a dozen matters. He had endeavoured to alleviate the stress by not taking on any new work. The respondent did not have any regular assistance with his professional work but told the Tribunal he could call upon help as and when it became necessary. He had been hindered when one of his customary helpers had not been available owing to her own family difficulties.

The Tribunal FOUND the allegations to have been substantiated, indeed they were not contested.

The respondent had appeared before the Tribunal on three earlier occasions. The first occasion was on the 4th August 1988. The Tribunal found the following allegations to have been substantiated.

The allegations were that the respondent had:-

- (a) (not substantiated);
- (b) failed to reply to correspondence and enquiry addressed to him by the client and by the Solicitors Complaints Bureau;
- (c) by virtue of the aforementioned had been guilty of conduct unbecoming a solicitor;
- (d)
 - (i) failed to reply to correspondence alternatively failed with reasonable expedition to reply to correspondence addressed to him by the solicitors instructed by a former client of his and by the Solicitors Complaints Bureau;
 - (ii) by virtue of the aforementioned had been guilty of conduct unbecoming a solicitor.

The Tribunal then said that failure to attend to correspondence addressed to him by his professional body was reprehensible. The Tribunal considered such behaviour to be conduct unbecoming a solicitor. It was not proper that a solicitor should not deal immediately with a request authorised by his former client to hand over a file of papers. Failure to act expeditiously in such matters might seriously prejudice the interests of the client as well as cause difficulty and inconvenience to his fellow solicitor. The Tribunal considered that the delay in the matter of the file requested was inexcusable and they found the second part of that allegation also to have been substantiated.

The Tribunal ordered that the respondent pay a penalty of £500.00 and costs of and incidental to the application and enquiry.

The second occasion was on the 23rd May 1995 the Tribunal found the following allegations to have substantiated. The allegations were that the respondent had:-

- (i) failed with reasonable expedition to made payment of fees to counsel incurred upon his instructions and in his practice as a solicitor;
- (ii) failed with reasonable expedition to settle the accounts of agents instructed by him in his practice as a solicitor;
- (iii) acted in breach of the provisions of Rule 7, 8 and 11 of the Solicitors Accounts Rules 1986 and 1991;
- (iv) failed to observe the provisions of a direction of an Assistant Director of the Solicitors Complaints Bureau made pursuant to the provisions of Section 37A and Schedule 1A of the Solicitors Act 1974 as amended;

(in accordance with the aforementioned, the Tribunal was asked to make an Order pursuant to the said Statute that the award of the Assistant Director should be enforceable as a debt in the High Court);
- (v) in respect of a legal aid claim for costs, the respondent failed to reply with reasonable expedition to correspondence and enquiry addressed to him thereon;
- (vi) in breach of his duty to act in good faith in his practice as a solicitor, he improperly misled other solicitors as to the legal aid status of a client and further failed or failed with reasonable expedition to reply to correspondence and enquiry addressed to him in regard thereto and in regard to a litigious matter generally;
- (vii) in relation to the matters referred to in Allegation (vi) and in breach of his duty the respondent misled the court as to the status in legal aid of his client;
- (viii) failed, alternatively failed with reasonable expedition, to reply to correspondence and enquiry addressed to him by the Solicitors Complaints Bureau;

- (ix) failed, alternatively unreasonably delayed, in the payment of fees due to medical experts employed by him;
- (x) failed to make any or any adequate response to correspondence and enquiry addressed to him by the Solicitors Complaints Bureau;
- (xi) by virtue of each and all of the before-mentioned had been guilty of conduct unbecoming a solicitor.

The Tribunal said that the cumulative effect of the allegations found to have been substantiated against the respondent caused the Tribunal considerable concern. The respondent himself admitted that his practice had been chaotic. The Tribunal bore in mind financial and personal pressures upon the respondent and noted that steps had been taken to alleviate such pressures as were capable of it. It was said that it was well known that the Tribunal took a serious view of a solicitor who did not deal promptly and fully with correspondence and enquiry addressed to him by the Solicitors Complaints Bureau.

The Tribunal accepted that the breaches of the Solicitors Accounts Rules were trivial and further noted that the respondent intended to close his client account and to concentrate on the criminal work which formed the greatest part of his practice.

The Tribunal also noted that the respondent was assisted in the administration of his practice by his wife who, having practised as a barrister for some time, had qualified as a solicitor.

The Tribunal did not consider this to be a case in which they should consider imposing a sanction that would deprive the respondent of his ability to practise. However, in order to mark the seriousness with which they viewed those matters they imposed a substantial financial penalty upon the respondent and it was for that reason that the Tribunal imposed a fine of £4,000.00 and ordered him to pay the costs of and incidental to the application and enquiry. They also ordered that part of the Direction made by the Assistant Director of the Solicitors Complaints Bureau should, for the purposes of enforcement, be treated as an Order of the High Court.

The third occasion was on the 21st September 1995. The Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that:

The respondent had failed, alternatively failed with reasonable expedition, to deliver to the Law Society pursuant to the requirements of Section 34 of the Solicitors Act 1974 an Accountant's Report and that consequently he had been guilty of conduct unbecoming a solicitor.

The Tribunal said that it had some sympathy with the respondent. He believed that he had discharged his duty by asking his accountant to send another copy of the relevant accounts to the Law Society. They were not received. Thereafter he offered a copy to the Investigation Accountant but was told that it had already been received. It was clear from the description in the Finding of the earlier hearing in the same year that his

administration had been in chaos and that he had been suffering from a great deal of stress. The Tribunal took the view that if the matters the subject of that complaint had been dealt with at the same time as those on the previous hearing in May 1995 it was highly unlikely that the Tribunal would have ordered any increased penalty. The Tribunal said that it was potentially unjust and unsatisfactory to bring the respondent back before the Tribunal again. A reprimand was sufficient penalty bearing in mind that he had had to suffer the additional burden of those proceedings hanging over him and would have to pay the applicant's costs.

It was a matter of dismay and for great concern to the Tribunal that the respondent was appearing before them again on the fourth occasion in February 1996. The allegations were broadly similar to a number of those which had been substantiated against him in the past. The Tribunal were deeply concerned at the respondent's appearance and demeanour. They gave careful consideration to the matter. They were concerned that it did not appear to them that the respondent was in a good state of mental health. He told the Tribunal about his unfortunate personal problems. He said he was suffering from stress, and possibly more serious mental ill health. The Tribunal did not think at the time of the hearing the respondent was fit to practise as a solicitor.

Therefore the Tribunal made an order suspending him from practice for an indefinite period of time. They were at pains to explain to the respondent that he could apply to the Tribunal to have the suspension lifted when he was in a position to prove that he had fully recovered from his then current problems.

The Tribunal suspended the filing of their order with the Law Society for a period of fourteen days to enable the respondent's clients to make arrangements for other solicitors to take over their matters.

The Tribunal also made a Direction that the Direction made by the Assistant Director of the Bureau should be treated for the purposes of enforcement as an order of the High court. The Tribunal authorised its clerk to send the cheque handed in by the respondent to the Solicitors Complaints Bureau to be passed on to the former client of the respondent concerned. Clearly there would be no question of enforcement if and when the cheque was paid. However the Tribunal took the view that until the former client was in receipt of cleared funds, the respondent's obligation had not ceased.

The Tribunal further ordered that the respondent should pay the costs of and incidental to the application and enquiry. The Tribunal had taken note of earlier assurances that such costs were not pursued in cases where circumstances would not justify such pursuit.

DATED this 12th day of March 1996

on behalf of the Tribunal



K I B Yeaman
Chairman

