

IN THE MATTER OF PETER AYLING, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D.J. Leverton (in the Chair)

Mrs. E. Stanley

Mr. K.J. Griffin

Date Of Hearing: 7th March 1996

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, Merseyside on 20th November 1995 that an Order be made by the Tribunal directing that as from a date specified in the Order, no solicitor should, except with the permission of the Law Society for such period and subject to such conditions as the Law Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Peter Ayling of Sudbury, Suffolk a person who was or had been 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 allegation was that the respondent had 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 namely that he had misappropriated clients' funds by retaining sums paid to him by clients on account of costs.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 7th March 1996 when David Rowland Swift, solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead, Merseyside appeared for the applicant and the respondent did not appear and was not represented.

The evidence before the Tribunal included the Tribunal's office file in respect of which the Tribunal expressed itself to be satisfied that the papers had been duly served upon the respondent.

At the conclusion of the hearing the Tribunal ORDERED that as from 7th March 1996 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 Peter Ayling of , Sudbury, Suffolk a person who was or had been a clerk to a solicitor and the Tribunal further Ordered him to pay the costs of and incidental to the application and enquiry, fixed in the sum of £536.27 inclusive.

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

1. The respondent, who was not a solicitor, was employed as a litigation clerk by Lewis Hessel & Company (the firm), solicitors of 2/6 High Street, Haverhill, Suffolk. He had been employed in that capacity by the firm from November 1992 until his employment was terminated in November 1993, following the firm's discovery of certain matters and the respondent's admissions of misconduct.
2. On 13th April 1994 the Investigation Accountant of the Law Society attended at the offices of Messrs. Graham Stanley Hessel at Haverhill and his Report was dated 23rd May 1994.
3. It was reported that the firm's books of account were not in compliance with the Solicitors' Accounts Rules. A list of liabilities to clients, as at 31st March 1994, was produced for inspection. The items were in agreement with the balances shown in the clients' ledger. However the partners agreed that it did not include further liabilities to six clients totalling £1,630. A cash shortage of £4,630 had arisen on client account which was made up of the misappropriations by the respondent, a debit balance of £3,000 and an improper transfer of £500. The cash shortage was rectified in full during the Investigation Accountant's inspection.
4. The Investigation Accountant reported that during the period of November 1992 to October 1993 five clients of the firm paid the following cash sums to the respondent on account of costs.

a.	Mr. N	£400.00
b.	Mr. O'K	400.00
c.	Mr. G	250.00
d.	Mr. & Mrs. S	40.00
e.	Mr. S	40.00
		<u>£1,130.00</u>

Those amounts were not paid into client bank account and the respondent had not accounted to the firm for those cash receipts.

5. Mr. Hessel, a partner in the firm, told the Investigation Accountant that during a meeting with the respondent on 26th October 1993 the respondent admitted to him that he had utilised those amounts for his own personal benefit. Mr. Hessel arranged

to rectify the shortage caused by the respondent's actions by obtaining the clients' permission to raise interim bills for the amounts paid on account of costs. Those bills of costs were delivered to the clients during the inspection.

The submissions of the applicant

6. In a letter addressed by the firm to the Law Society, the firm said that since his dismissal the respondent had apologised for his actions and indicated that his misdemeanours had resulted from personal financial problems and a mental breakdown. He had made an offer to repay all monies upon the basis that the firm would not press criminal charges against him. He also offered to assist the firm to resolve or clarify any matters he was handling whilst associated with the firm.

The Tribunal FOUND the allegation to have been substantiated. Clearly, it was right that an employee of a solicitor who had misappropriated clients' monies in this way should be controlled. They made the Order sought by the Law Society and further Ordered the respondent to pay the costs of and incidental to the application and enquiry in a fixed sum.

DATED this 3rd day of August 1996

on behalf of the Tribunal

D.J. Leverton
Chairman



Findings filed with the
Law Society on the 16th
day of August 1996