

IN THE MATTER OF JOHN HAYDN HUGHES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Gibson (in the Chair)
Mr. J R C Clitheroe
Mr. K J Griffin

Date Of Hearing: 5th November 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An application was duly made on behalf of the Solicitors Complaints Bureau (superseded by the Office for the Regulation of Solicitors) by Roger Field of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands, solicitor, on 22nd December 1995 that John Haydn Hughes, solicitor of Brynsinol, Swansea (subsequently the respondent's address was notified as c/o , Barry, South Glamorgan, CF62 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 the respondent had been guilty of conduct unbecoming a solicitor in each of the following circumstances namely that he had:-

- (i) given an undertaking in the name of the firm in which he was employed as an assistant solicitor when he had no authority so to do;
- (ii) drawn cheques on the office account of the said firm for his own purposes when he had no authority so to do;

- (iii) fraudulently completed a withdrawal notice in respect of a building society account with the intent to obtain for his own purposes controlled trust funds;
- (iv) failed to pay clients' monies into a client account without delay in accordance with Rule 3 of the Solicitors Accounts Rules 1991;
- (v) utilised clients' funds for his own purposes.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on 5th November 1996 when Roger Field solicitor and partner in the firm of Messrs Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands appeared for the applicant and the respondent did not appear and was not represented.

The Tribunal's office had received communications from the respondent requesting an adjournment. A letter had been received from the respondent's doctor couched in the following terms " I have been advised that Mr Hughes is due to appear in front of a disciplinary panel tomorrow. I would advise that this be postponed as Mr Hughes is suffering from an acute anxiety state resulting from this matter. I have explained quite clearly to Mr Hughes that he will need to resolve this issue at some time. I would suggest that you appoint a member of your support group to enable him to prepare for his inevitable appearance as he seems to have been unable to take the necessary steps himself."

The applicant resisted the respondent's application. He handed a small bundle of papers to the Tribunal, pointing out that the matter had been listed for hearing on the 19th March 1996. The applicant had been in receipt of a doctor's letter saying that the respondent was suffering from anxiety and stress related problems and asked that the hearing of the matter might be postponed. The matter stood adjourned on that occasion by consent.

On the 5th July 1996 the applicant requested that the matter be re-listed. The matter was then listed for hearing on 5th November 1996 and immediately prior to the hearing the respondent wrote requesting an adjournment and stating that a medical report would be placed before the Tribunal in time for the hearing. It was the applicant's view that again at the eleventh hour the respondent had sought to postpone the matter. The applicant referred to the respondent's letter of 28th May 1996 in which the respondent said that it was his wish to have the hearing "over and done with". The applicant reported that he had telephoned the respondent on 4th September 1996 when the respondent acknowledged that he really ought to see someone to take advice about the adjourned hearing and when he had been asked what his position was in relation to the allegations and the facts he said that broadly there would be no dispute.

The matters alleged against the respondent were of a serious nature.

The respondent's doctor's letter did not support what appeared to be the respondent's view that his doctor would offer him support. Indeed the doctor put the onus on the solicitors' profession itself and invited the Law Society to appoint a member of a support group.

It was important that there be finality in disciplinary proceedings.

The respondent's late application for postponement deprived the applicant of the opportunity of checking with the respondent's doctor as to the precise position and as to whether or not it

might be in the respondent's best interests to have matters disposed of and remove the troublesome weight from his shoulders. A conclusion of the disciplinary matters might very well mark a new start for the respondent.

In his letter, the respondent's doctor had not indicated any time scale, there had been no prognosis.

In the submission of the applicant there were no good reasons for not proceeding with the case before the Tribunal.

It was believed that the respondent was out of work and if he was working then such work was not connected with the law in any way.

The applicant recognised that it was a difficult decision for the Tribunal to make, but believed it could be inferred that the respondent would be helped by the removal of the weight from his shoulders.

The Tribunal having considered the matter said they were very conscious of the fact that the respondent was entitled to be heard. However the allegations were serious. The respondent did not appear to be becoming any more ready to defend himself than he was in the past. The Tribunal considered it right that the matter should be dealt with in the absence of the respondent, as the interests of the public and the solicitors' profession had to be served.

The evidence before the Tribunal included the admission of the respondent referred to above and the acceptance of the respondent that he had received all relevant papers.

At the conclusion of the hearing the Tribunal ORDERED that the respondent John Haydn Hughes of c/o Barry, South Glamorgan, CF62 (formerly of Brynsinol, Swansea) 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 £1,070.00 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 1 to 7 hereunder:-

1. The respondent (born in 1953) was admitted a solicitor in 1978. At the material times he was employed as an assistant solicitor in the firm of Berwyn Davies & Co. (the firm) of Aberdare, Mid Glamorgan with offices also in Commercial Street, Ystradgynlais, Swansea. His employment with that firm was terminated in July 1995.
2. Upon due notice to the firm the Investigation Accountant of the Solicitors Complaints Bureau (the Bureau) carried out an inspection of their books of account. A copy of the Investigation Accountant's Report of 30th October 1995 was before the Tribunal and revealed the following matters. The respondent had been employed by the firm as an assistant solicitor dealing with litigation matters until he was dismissed in July 1995 following the discovery of his misappropriation of clients' funds and other irregularities.

3. The Investigation Accountant interviewed the respondent on 25th October 1995 when the respondent admitted that, due to serious financial difficulties, he had in desperation acted dishonestly and misappropriated funds belonging both to the firm and to clients.
4. On 5th December 1994 an undertaking was given to Messrs. Glenisters, solicitors, on the firm's letterhead to pay the sum of £9,033.60 to BNP Mortgages Limited, within twenty eight days. The undertaking related to the respondent's own mortgage. The respondent admitted to the Investigation Accountant that he had no authority to issue the undertaking but said that he had done so in order to prevent repossession proceedings on his house. Mr Davies, the principal of the firm, had been unaware of the undertaking until 29th September 1995 when he received a letter from Messrs. Glenisters requesting him to comply.
5. On 23rd May 1995 a cheque in the sum of £10,000.01 was drawn on the firm's office account in favour of 'AWC'. Mr Davies told the Investigation Accountant that the bank had telephoned him for verification prior to clearing the cheque and as he had not issued it, he countermanded payment and the cheque was not cleared. The respondent admitted to the Investigation Accountant that he had drawn the cheque without authority and that Mr AWC was a relative of his wife to whom the respondent was indebted. He said that he knew that the cheque would not be cleared by the bank and he was "just buying time".
6. The respondent went on to admit that on 4th July 1995 he fraudulently completed a withdrawal notice in respect of a Halifax Building Society account in the name of 'ABD - executor of the will of WL'. The withdrawal was to be by cheque in the sum of £9,353.73 made payable to Halifax Mortgage Services Limited (formerly BNP Mortgages Limited) and he said that that related to his own mortgage account. The withdrawal had not actually been made and the respondent said that after presenting the withdrawal notice and the pass book at the building society office, he changed his mind at the last moment and walked out. He then returned to the firm's office and drew a cheque on an obsolete office bank account, again payable to Halifax Mortgage Services Limited in the sum of £9,353.73. The latter cheque was presented for payment but not cleared. Again the respondent explained that his house was about to be repossessed and in desperation he had sent the cheque in order to "buy time". He said that he knew the cheque would not clear.
7. The respondent had acted for Mrs TR in connection with a litigation matter and judgment had been awarded against her. He said on several occasions between July 1994 and May 1995 that he had received cash from Mrs TR and had given her a receipt. He said that those sums were partly on account of costs and partly in relation to the judgment debt and should have been paid into client account but the respondent admitted that he had improperly withheld approximately £700.00 for his own personal use. Mr Davies had provided £791.71p by a payment from his office bank account in settlement of the judgement debt on behalf of Mrs TR.

The submissions of the applicant

8. The respondent's actions were self evident. They were dishonest and wholly inconsistent with his position as a solicitor.

The respondent made no submissions

The Findings of the Tribunal

The Tribunal FIND all of the allegations made to have been substantiated.

Previous Findings and Orders

On the 1st March 1994 the following allegations were found to have been substantiated against the respondent. The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in that he:

- a) wilfully and repeatedly made withdrawals from client account in breach of the Solicitors Accounts Rules;
- b) had been guilty of persistent and undue delay in handling clients' affairs;
- c) made use of clients' monies to his own benefit;
- d) made a false entry in his client account ledger with the intention of deceiving his reporting accountant.

On that occasion the Tribunal said that no great significance was to be paid to allegation (c). The Tribunal had been swayed by an excellent testimonial written on behalf of the respondent to the effect that the respondent had not formed any will to mislead or defraud. The Tribunal accepted that assessment and was prepared to take a somewhat lenient view ordering the respondent to be suspended from practice as a solicitor for a period of one year from 1st March 1994.

On the 14th May 1987 the Tribunal found an allegation that the respondent had been guilty of conduct unbecoming a solicitor in that he had been convicted of certain criminal offences to have been substantiated.

The particulars of the offences were as follows:-

- (i) On a day unknown between 18th July 1983 and 10th December 1983 dishonestly and with a view to gain for himself or another or with intent to cause loss to another, falsified a document required for an accounting purpose, namely a client account card relating to the estate of EGJ deceased, by omitting from the said card a material particular, namely the receipt of a cheque in the sum of £2,785.30 from a building society,
- (ii) On or about 10th November 1983 the respondent dishonestly and with a view to gain for himself or another or with intent to cause loss to another, falsified a document required for an accounting purpose, namely a record of cash and cheques received and paid to the credit of M J and H H client account and dated 10th November 1983 by making an entry thereon which was or may have been misleading, false or deceptive in a material particular in that it purported

to show that £655.34 had been paid to M J and H H by S J of Cymdeithas Tai Eryri.

The Tribunal considered the matter to be a sad one but found the allegations to have been substantiated. At the time of the commission of the offences the respondent was a very young man, and the allegation stemmed also from the difficult circumstances reported in his first appearance before the Tribunal. He had suffered considerable disgrace, humiliation and anxiety as the result of his criminal prosecution and the two sets of disciplinary proceedings. The Tribunal considered that the respondent was fundamentally an honest and trustworthy person, who through youth and inexperience embarked upon a course of action that was exceedingly foolish, rather than dishonourable and they took a lenient view. They ordered that the respondent be suspended from practice for a period of one year to commence on the 2nd April 1987.

The Tribunal's Reasons

It was with considerable dismay that the Tribunal learned of the two earlier appearances before them of the respondent. An earlier division of the Tribunal considered that the respondent was fundamentally an honest and trustworthy person who through youth and inexperience embarked upon a course of action that was exceedingly foolish rather than dishonourable. This division of the Tribunal did not feel able to put such a generous interpretation on the facts before them. The respondent had behaved in a dishonest and disgraceful fashion and a solicitor who does not behave with the probity and integrity expected and required of a member of that profession may not continue to be a solicitor.

The Tribunal Ordered the respondent to be Struck Off the Roll of Solicitors and further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,070.00 and further ordered that he should pay the costs of the Investigation Accountant of the Solicitors Complaints Bureau such costs to be taxed if not agreed.

DATED this 2nd day of January 1997

on behalf of the Tribunal

A G Gibson
Chairman

