

IN THE MATTER OF MARK DELANEY, Solicitors Clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J R C Clitheroe (in the Chair)
Mr. A G Gibson
Mr. D E Marlow

Date Of Hearing: 16th July 1996

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society 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 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 of a solicitor Mark Delaney of Tadley, Hampshire a person who was or had been a clerk to a solicitor or that such other order might be made as the Tribunal should think right.

The allegation was that the respondent had occasioned or had been a party to financial irregularities and had therefore 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 a solicitor's practice which involved conduct on his part of such a nature that in the opinion of the Law Society 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, 60 Carey Street, London WC2 on the 16th July 1996 when Roger Field solicitor and partner in the firm of 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 evidence before the Tribunal included a faxed transmission by the respondent addressed to the applicant received by the applicant on the day before the hearing in which the respondent said he would not contest the allegation.

At the conclusion of the hearing the Tribunal ORDERED that as from the 16th July 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 Mark Delaney of Tadley, Hampshire 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 £690.00 inclusive.

The facts are set out in paragraphs 1 to 5 hereunder:-

1. The respondent who was not a solicitor had been a clerk to Messrs McNulty & Co., Solicitors of 35 Church Street, Basingstoke, Hampshire (the Firm).
2. Prior to May 1994 the respondent had been a director of a broking business which ceased to trade on or about May 1994. It was then that the firm engaged the respondent who was responsible under the supervision of partners for the conduct of investment business of clients of the Firm. He was paid commission on the business which he introduced. The Investment Business Monitoring Unit of the Law Society visited the Firm on the 14th and 15th March 1995. The respondent resigned from the Firm on the 16th March 1995.
3. The Monitoring Unit report dated the 1st June 1995 was before the Tribunal. It revealed, inter alia, that in three cases pension monies had been transferred for the purpose of purchasing investment bonds. Whilst clients' personal pensions might be transferred from one life office to another, they could only be placed in pension funds approved by the Inland Revenue. The funds could only be used by the insured for the provision of retirement income. If such funds were allowed to be transferred to an investment bond, they could then be encashed and the clients would be able to benefit immediately from funds which had attracted tax relief and possibly contributions from the Department of Social Security. Such action would be contrary to legislation.
4. When interviewed by a Monitoring Unit representative the respondent had indicated that he was unable to recall details of the transactions. He denied that he had colluded with the clients to enable them to obtain immediate benefits from pension funds which normally they would not be entitled to. He attributed what had happened to the stress and problems which had arisen following the failure of his broking firm.
5. The Bureau sought an explanation from the respondent writing letters to him on the 10th July, 8th August and 27th September 1995 to which no replies were received.
6. On the 24th January 1996 the Adjudication and Appeals Committee of the Bureau resolved to make an application to the Solicitors Disciplinary Tribunal for an order pursuant to Section 43 (2) of the Solicitors Act 1974.


The submissions of the applicant

7. The respondent had been employed by a firm of solicitors on the basis of his expertise. What he did was clearly contrary to regulations which he should have known. In view of his apparent propensity to ignore the effect of important investment business rules, it was appropriate that his employment within the solicitors' profession should be controlled in the future.
8. The respondent made no submissions.

The Tribunal FOUND the allegation to have been substantiated. In the circumstances it was clearly right that the respondent's future employment within the solicitors' profession should be controlled. The Tribunal made the order sought and further ordered the respondent to pay fixed costs.

DATED this 23rd day of August 1996

on behalf of the Tribunal



J R C Clitheroe
Chairman

Findings filed with the
Law Society on the 28th
day of August 1996