

IN THE MATTER OF ANTHONY JOSEPH McCANN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. G B Marsh (in the Chair)
Mr. R B Bamford
Lady Bonham Carter

Date Of Hearing: 10th October 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An application was duly made on behalf of the Solicitors Complaints Bureau (superseded by the Office for the Supervision of Solicitors) by Andrew Christopher Graham Hopper solicitor of PO Box 7, Pontyclun, Mid Glamorgan on the 10th June 1996 that Anthony Joseph McCann of London, W1 solicitor 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:

- (i) failed to comply with the Solicitors Accounts Rules 1991 in that he failed to keep his books of account properly written up, contrary to Rule 11(1) of the said Rules;
- (ii) failed to comply with the said Rules in that he drew money from client account other than as permitted by Rule 7 and contrary to Rule 8 of the said Rules;
- (iii) been guilty of conduct unbecoming a solicitor in that he utilised clients' funds for his own purposes.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 10th October 1996 when Andrew Christopher Graham Hopper solicitor of PO Box 7, Pontyclun, Mid Glamorgan appeared for the applicant and the respondent appeared in person.

The evidence before the tribunal included the oral evidence of the respondent and the oral evidence of Mr. B.L. Shaw, the Investigation Accountant of the Solicitors Complaints Bureau.

The respondent admitted the allegations but denied dishonesty.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Anthony Joseph McCann of London, W1 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 £2,272.35 inclusive.

The facts are set out in paragraphs 1 to 12 hereunder.

1. The respondent, born in 1961, was admitted a solicitor in 1987. At the material times he practised as McCann Petrou (in partnership) and subsequently alone as McCann Associates at 30 Harcourt Street, London, W1.
2. Upon due notice to the respondent an inspection of his books of account was undertaken by an Investigation Accountant of the Solicitors Complaints Bureau. A copy of the report, dated the 19th December 1995, was before the Tribunal. Upon the Investigation Accountant's first visit to the respondent on the 4th December 1995 the books of account were not produced for inspection, the respondent explaining that his books were in storage. The inspection was adjourned to allow the respondent time to retrieve his books and reconvened on the 6th December 1995. The latest available reconciliation for balances on the client ledger with the cash book and bank balance was at the 30th April 1995. The inspection was adjourned again to allow the respondent to bring his records up to date. On the 8th December 1995 it was found that the books were not in compliance with the Solicitors Accounts Rules. A list of liabilities to clients as at the 31st October 1995 was produced for inspection and totalled £9,549.55 after adjustments. A comparison of that total with cash held on client bank account, after allowance for uncleared items, revealed a cash shortage of £3,517.44.
3. The shortage was accounted for in the following way:-

(i)	Personal Payment	£2,500.00
(ii)	Unallocated Payment	550.00
(iii)	Debit Balances	<u>667.86</u>
		£3,717.86
(iv)	Credit Interest retained in Client bank account (surplus)	(200.41)
(v)	Book Difference (surplus)	<u>(0.01)</u>
	Cash Shortage	<u><u>£3,517.44</u></u>

The respondent told the Investigation Accountant that he was in a position to rectify the cash shortage and would inform the Bureau as and when he had done so.

4. Particular attention was paid to the personal payment of £2,500 which was drawn from client bank account on the 13th July 1995 by the respondent. That sum was not allocated to any individual account in the clients' ledger. The respondent agreed that the payment had not been allocated but he could not agree that the payment was improper. He did agree that there was no individual client ledger account at the time of the inspection against which the payment could properly have been allocated and he said that he would get his own accountants to look into the matter. The respondent had told the Investigation Accountant that at the time he made the payment he believed that he had surplus funds in his client bank account. The sum of £2,500 had been a cash withdrawal from client account.
5. The respondent had not told the Investigation Accountant at the time of the inspection for what purpose that cash sum was used, nor was he prepared to divulge that information when giving evidence before the Tribunal.
6. In evidence the respondent said he had undertaken what he himself had described as a "thumb nail sketch" of the financial position which led him to believe that he was entitled to costs in the order of £2,500 and that was why he made the withdrawal of that sum from client account. He was not able to say on what evidence or facts he had formed this view. While giving evidence he expressed the view that an unallocated cash withdrawal from client account was not a breach of the Solicitors Accounts Rules.
7. The respondent said that he had kept his books of account himself to try to curtail expenditure. The respondent accepted that that had been a mistake and he should have accepted the advice of his accountant to use his accountant's own book keeping service. The books were a shambles. The books had not been written up for two years. The respondent had drawn reconciliation statements during the course of the three day period when the Investigation Accountant attended his offices. They had not been prepared upon the dates required by the Rules.
8. It was the Investigation Accountant's contention that the reconciliation statement dated the 30th April 1995 did not reveal a cash surplus. That was about three months prior to the withdrawal. The respondent said that the position differed from time to time and it had been his view that a subsequent reconciliation would have revealed that surplus.
9. The respondent said that he was of the view that £2,500 was owed to him in respect of invoices delivered and work done. He had not taken money out of client account without previous consideration of the position. He genuinely believed that £2,500 was owing to him. The respondent told the Tribunal that there had been between six and twelve invoices and indicated that they probably related to property developers for whom he acted. He pointed out that his firm in the main undertook conveyancing work and always had conduct of a number of small property transactions.

10. The respondent indicated that his firm had not been under financial pressure and it had been the usual practice of the firm to prepare the invoice and then transfer the costs to office account.
11. The respondent said that a number of the small property developers for whom he acted required payment due to them to be made in cash. It was not unusual for cash to be handed to a client and for that client then to return some cash in payment of the respondent's invoice. He also said that it was rare for him to make a cash withdrawal in respect of costs from client account.
12. The Law Society had intervened into the respondent's firm in February 1996. The shortfall on client account had not been replaced. The exposure of the Law Society's Compensation Fund related to the extent of the shortfall.

The Submissions of the Applicant

13. In the submission of the applicant the allegations were made out. The respondent himself had described his books as being an utter shambles. He had withdrawn a sum of cash from client account and apparently had spent the money. He acknowledged that the respondent disputed that he had any dishonest intent in so doing.

The Submissions of the Respondent

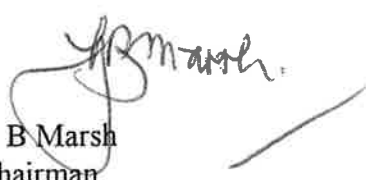
14. The respondent apologised to the Tribunal. He should have taken his own accountant's advice with regard to the keeping of the proper books of account.
15. The respondent was not dishonest; he did not have a criminal record. He was a member of his church and undertook social work. He owned his flat and was an established member of the community.
16. The sum of money in the withdrawal from client account was not enormous. The respondent had suffered financially to a great degree because he had been unable to practise since the Law Society's intervention into his practice.
17. It had already been a penalty to face allegations before the Tribunal. The respondent had been employed by a reputable and high profile city firm for a period of some four years. He described himself as a dedicated member of the solicitors' profession. He had assisted others to join the profession by paying fees for trainee solicitors.
18. The respondent did not wish to practise on his own account again. He hoped he might obtain work as an employee in a medium sized firm dealing with social welfare matters.
19. At the time of the hearing the respondent was in receipt of income support and received assistance with the mortgage on his flat under the housing benefit system.

The Tribunal FOUND all of the allegations to have been substantiated. The Tribunal were dismayed to find that the respondent had set up in practice (latterly as a sole

practitioner) apparently without even a rudimentary knowledge of or respect for the Solicitors Accounts Rules and their great importance. The philosophy of the Accounts Rules was to ensure that a client's money was never intermingled with that of a solicitor and there could never be any confusion between the two. Clients' monies were sacrosanct and a failure to treat them as such was a serious matter and it was, in this case, perhaps even more serious as the respondent appeared to have no comprehension of the seriousness of not handling clients' monies with the care integrity and probity that his clients were entitled to expect. There was no clear evidence of dishonesty before the Tribunal, but the respondent had withdrawn a sum of money in cash from his client account after casually undertaking what he himself described as a "thumb nail sketch". That revealed an approach that was at best reckless and at worst represented a flagrant disregard for the important rules by which members of the solicitors' profession are bound. The respondent appeared to consider that the shocking disarray in his book keeping served to mitigate an improper withdrawal from client account. The Tribunal recognise that the withdrawal of money in this case did not represent the greatest sum of money in respect of which disciplinary proceedings have been prosecuted. Nevertheless the respondent in his actions and by his attitude had totally failed to show the probity and integrity which is required of a member of the solicitors' profession. It was for these reasons that the Tribunal decided that the respondent must be struck off the Roll of Solicitors and he would pay the costs in an agreed fixed sum.

DATED this 8th day of November 1996

on behalf of the Tribunal


G B Marsh
Chairman

12th
November 96