

IN THE MATTER OF HELEN FRANCES TOBENAS, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. A.G. Gibson (in the Chair)

Mr. A. Gaynor-Smith

Dame Simone Prendergast

Date Of Hearing: 22nd October 1996

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## FINDINGS

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

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An application was duly made on behalf of the Law Society by Roger Field, solicitor of 31 Wolverhampton Street, Dudley, West Midlands on 2nd July 1996 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 as a solicitor Helen Francis Tobenas of Canton, Cardiff, South Glamorgan 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 misappropriation of clients' money by a solicitor had not been identified at an earlier stage because the respondent had chosen not to post a certain transaction to the appropriate client ledger account.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 22nd October 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 evidence before the Tribunal included exhibit "HFT 1", a letter addressed by the respondent to the applicant in which she said, "I do not wish to contest the application".

At the conclusion of the hearing the Tribunal ORDERED that as from 22nd October 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 Helen Frances Tobenas of Canton, South Glamorgan a person who was or had been a clerk to a solicitor and the Tribunal further Ordered her to pay the costs of and incidental to the application and enquiry, fixed in the sum of £974.00 inclusive.

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

1. The respondent, who was not a solicitor, was employed by Messrs. Gordon Williams, solicitors of 20 Cathedral Road, Cardiff ("the firm"). She had been employed by the firm in connection with its practice as solicitors from 4th October 1982 to 23rd May 1995 as a legal cashier in which position she was responsible, under the supervision of one or more partners, for the proper writing up of their books of account.
2. The firm wrote to the Solicitors Complaints Bureau (the Bureau) on 2nd May 1995 after one of the partners of the firm, Mr. A.P. Rees, had admitted misuse of clients' funds. He had resigned and the firm was arranging a meeting with their accountants.
3. The firm's accountants, Medina & Co. of Pendragon House, 94 Neville Street, Pontcanna, Cardiff reviewed transactions undertaken by Mr. Rees and prepared a Report dated 15th May 1995, a copy of which had been sent to the Bureau and was before the Tribunal.
4. The Report revealed, inter alia, that Mr. Rees had misappropriated clients' monies in the sum of £127,346.65 from May 1994. The misappropriation of clients' monies had not been identified at an earlier stage because the respondent had chosen not to post certain transactions to the appropriate client ledger accounts. Had they been posted, then the client ledger accounts concerned would have shown overdrawn balances. Bank reconciliations had not been undertaken since November 1994 and no reconciliations of client account balances with cash balances had been undertaken since April 1994.
5. On 27th March 1996 the Conduct Committee resolved that an application should be made to the Tribunal for an Order pursuant to Section 43(2) of the Solicitors' Act 1974 in respect of the respondent on the grounds that she, having been a clerk to a solicitor but not being a solicitor, had, in the opinion of the Law Society, occasioned or been a party to, with or without the connivance of the solicitors to whom she was or had been a clerk, an act or default in relation to that solicitor's practice which involved conduct on her part of such a nature that in the opinion of the Society it would be undesirable for her to be employed by a solicitor in connection with his or her practice.

#### **The submissions of the applicant**

6. The Report of Messrs. Medina & Co. opined that the respondent had been aware that there were serious problems relating to a number of financial transactions authorised

by Mr. Rees and that she had chosen to ignore the problems and she had compounded them by not posting transactions to the appropriate ledger accounts.

7. In the submission of the applicant, the respondent having occasioned the acts or defaults before the Tribunal, had been guilty of such conduct as to justify an Order being made in respect of her in the terms of Section 43(2) of the Solicitors' Act 1974. In her letter addressed to the applicant the respondent confirmed that she had received the relevant paper work and she did not wish to contest the application.

The Tribunal FOUND the allegation to have been substantiated. It was right that the future employment of the respondent within the solicitors' profession should be controlled and they made the Order sought, further Ordering the respondent to pay the costs of and incidental to the application and enquiry, fixed in the sum of £974.00 inclusive. The Tribunal accepted that the costs were at a relatively high level because the applicant had not received any response from the respondent until shortly before the hearing.

DATED this 2nd day of December 1996

on behalf of the Tribunal



A.G. Gibson  
Chairman

