

IN THE MATTER OF BAYEZIA DJEMAL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Gibson (in the Chair)
Mr. A Gaynor-Smith
Dame Simone Prendergast

Date Of Hearing: 22nd 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 (subsequently known as the Office for the Supervision of Solicitors) by Geoffrey Williams solicitor of 36 West Bute Street, Cardiff, CF1 on the 11th July 1996 that Bayezia Djemal of

Kenton, Harrow, Middlesex 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 unbefitting a solicitor in each of the following respects, namely that he had:-

- a. Drawn monies out of client account other than in accordance with Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules;
- b. used clients' funds for his own purposes.

The application was heard at the Court Room, No 60 Carey Street, London WC2 on the 22nd October 1996 when Geoffrey Williams solicitor and partner in the firm of Messrs. Cartwrights Adams & Black 36 West Bute Street, Cardiff appeared and Mr Chris Gilman solicitor and partner in the firm of Ian Dowty & Co. 6 Albermarle Way, London, EC1V 4JB appeared for the respondent.

The evidence before the Tribunal included the admissions of the respondent and exhibits "BD1" and "BD2" respectively being a letter from the Law Society's Intervention Agent and two testimonials.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Bayezia Djemal of Kenton, Harrow, Middlesex 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 £3,054.62p inclusive.

The facts are set out in paragraphs 1 to 9 hereunder:-

1. The respondent, born in 1952, was admitted a solicitor in 1977. At the material times he practised under the style of Chas. E. Roberts & Boyce at 48a High Street, Harlesden, London, NW10 and at 185 Ladbroke Grove, London W10. He ceased so to practise upon intervention by the Law Society into his practice on or about 26th February 1996.
2. Upon notice duly given to him an inspection of the respondent's books of account was carried out by the Investigation Accountant of the Law Society. The Investigation Accountant's Report dated 19th February 1996 was before the Tribunal.
3. The report revealed that the respondent's books of account were not in compliance with the Solicitors Accounts Rules. A list of liabilities as at 31st December 1995 was produced for inspection. The items were in agreement with the balances shown in the clients' ledger but a comparison of its total, with cash held on client bank accounts, at that date, (after allowance for uncleared items) revealed a shortage of cash available to meet the liabilities of £119,708.82p. The cash shortage had been caused by misappropriation of clients' money by the respondent totalling £119,228.98 and debit balances of £479.84p.
4. At the time of the intervention the respondent told the Investigation Accountant that he was not able to replace the shortage.

5. The misappropriations had taken the following forms:-

i)	Unallocated round sum transfers from client to office bank account	£119,635.00
ii)	Unallocated cash withdrawals from client account	21,155.00
iii)	Office expenses charged to client bank account	12,011.48
iv)	Overtransfers from client to office bank account	9,618.54
		<u>£162,420.02</u>

The balance of £162,420.02 was reduced to £119,228.98 following a set off against costs due to office bank account and transfers from office bank account.

6. Between February and December 1995 client bank account had been charged with eighty three transfers all in round sums to the office bank account. The transfers varied in amount from £100.00 and £7,800.00 and had not been allocated to any

individual account in the clients' ledger. The transfers had been charged to accounts headed "Suspense Account" and "Costs TFR". The respondent admitted to the Investigation Accountant that the transfers were improper and he had instigated them in order to keep his firm from going under.

7. Between January and November 1995 client bank account had been charged with forty-one cash withdrawals, varying in amount between £50.00 and £2,000.00 none of which had been allocated to any individual account in the clients' ledger but had been charged to the "Suspense Account". The respondent admitted that those withdrawals had been utilised either for his own personal use or to fund office expenses.
8. Between February and October 1995 client bank account had been charged with twenty-two payments varying in amount between £19.34 and £5,000.00 none of which had been allocated to any individual account in the clients' ledger but had been charged to the "Suspense Account". The respondent admitted that these payments were in respect of office expenses.
9. Between February and September 1995 client bank account had been charged with nine sums varying in amount between £105.85 and £3,393.00 in respect of transfers from client to office bank account in excess of bills properly rendered. None of the excess transfers had been allocated to any individual account in the clients' ledger but had been charged to both the "Suspense Account" and "Costs TFR" accounts.

The submissions of the applicant

10. The respondent had admitted the facts and the allegations. The Law Society had intervened into his practice on the grounds of suspected dishonesty on the part of the respondent. He was no longer in practice and had been adjudicated bankrupt. The respondent had been the subject of a police investigation but was not to be prosecuted in the criminal court.
11. The Tribunal was, however, invited to take the view that the actions of the respondent were not necessarily honest even if he had formed no intention permanently to deprive his clients of their money. The Tribunal was reminded that the respondent had taken clients' funds for his personal use and to fund office expenses.
12. It appeared that the respondent had suffered from administrative difficulties in his firm as a whole. He would say that he had been left high and dry by his partners who were also members of his family. He had been subjected to financial pressure from his bank and he had found himself in a financial position which did not enable him to keep his firm afloat. It was then that the respondent embarked upon a long period of dishonest action characterised by a recourse to client account. In general terms the respondent had made withdrawals from client account totalling some £120,000.00 which he intended to put right upon receipts of costs from the Legal Aid Board. It followed therefore that the respondent had taken money belonging to private clients as the Legal Aid clients were unlikely to have placed any funds under the control of the respondent.
13. There was no doubt that the respondent had taken money behind the backs of those clients. Even if the Tribunal were able to accept the respondent's contention that the taking of this money amounted to unauthorised borrowing, no client concerned had been advised to take or had taken independent legal advice as to the prudence of such lending.

14. The applicant accepted that the respondent had made no attempt to conceal his actions in the books of account, but he was unable to resile from the fact that the taking of the money had been concealed from the clients concerned.
15. The Law Society's Compensation Fund had paid out £120,924.80p and pending claims outstanding at the date of the hearing were £2,184.43p. The costs of the intervention were £2,412.04p. As the result the total exposure to the Compensation Fund at the time of the hearing appeared to amount to £123,336.84p.
16. The Tribunal was invited to take the view that the matter before them represented a serious case of conduct unbecoming a solicitor.

The submissions of the respondent

17. The respondent had made a full and frank admission of the facts. He had made no attempt to conceal the position within his books and he had assisted wherever possible and co-operated with the Investigation Accountant. There was no doubt that the respondent had not formed any intention permanently to deprive clients of their money, indeed the activities of the respondent had been investigated by the police who had decided not to bring any prosecution in the criminal courts.
18. It was difficult to imagine what had gone through the respondent's mind. The respondent had not been able to draw living expenses from his business and there was no doubt that the monies transferred from client account had not been used for high living but to keep the firm afloat.
19. When the Investigation Accountant arrived at the respondent's office the respondent had immediately told him that there was a shortfall on client account and was able to quantify the actual deficit with a considerable degree of accuracy.
20. The respondent had been subject to considerable family pressures in what had been essentially a family firm. The respondent had been offered a partnership by a brother and there had been two practices in the Tottenham area which had been run fairly successfully. The respondent had taken over those firms, which had later run at a substantial loss. With hindsight it had been a foolish step to take, the respondent already had a practice of his own to run. The respondent had another brother and a sister who were also solicitors. They had not provided any great assistance. The brother had financial difficulties of his own and the sister had suffered serious health problems.
21. The respondent's sister had run his office and had been responsible for billing. After considerable absences from the office owing to her ill health, eventually she had to leave altogether for health reasons, the respondent discovered seven full boxes of files which should have been billed. Many files related to legally aided clients and the delay in the drawing and submitting of bills led to difficulties with the payment of costs.
22. The respondent suffered from many problems - he continued to try and run three offices with a skeleton staff. He wanted to continue in practice because he had a trainee solicitor and he wanted to ensure that she was able to finish her training.

23. In fact all the steps taken by the respondent had been taken for the benefit of others albeit the respondent having been misguided. He had tried to assist his trainee, his Legal Aid clients, and give assistance to his brother and his sister. The respondent's main problem was that his billing arrangements had collapsed and although income had been generated, monies had not been received. The respondent had committed the cardinal sin of using clients' money. Although the applicant put the matter as one of dishonesty the respondent was firm in his contention that his actions represented unauthorised borrowing. The attention of the Tribunal was drawn to a letter placed before it from the Law Society's Intervention Agent in which it was anticipated that the cost recovery figure would be more than enough to settle the respondent's indebtedness to the Law Society's Compensation Fund. The respondent's own estimate was that the total figure of monies due to his firm was in the region of a quarter of a million pounds.
24. The respondent had made a desperate attempt to keep his practice going and to meet his obligations to his family, his clients and his employees. The respondent had been well thought of as a solicitor in the locality in which he practised. It was the respondent's wish to play a role as a solicitor in the future and it was hoped that the Tribunal might be able to deal with the respondent by imposing a period of suspension upon him rather than the imposition of the ultimate sanction.

The Tribunal FOUND the allegations to have been substantiated, indeed they were not contested. Despite the submissions placed before them, the Tribunal made a finding that the respondent had been dishonest. He had taken clients' money to keep his practice afloat. The respondent could not avoid the fact that that was a dishonest act, it had been done behind the backs of his clients, even if he had formulated a firm intention to make full repayment. The Tribunal accept that the respondent had been subjected to considerable pressure and they give him credit for the fact that he made a full and frank disclosure to the Investigation Accountant and before the Tribunal. It is essential that any solicitor who believes his financial difficulties to be insurmountable should immediately make his position known to the Law Society to ensure that no clients suffer and to maintain the integrity of his client account. Such action could avoid very serious disciplinary action. The use of clients' money represented a serious breach of the trust placed in the solicitor by his client and such behaviour cannot be tolerated. The Tribunal Ordered that the respondent be Struck Off the Roll of Solicitors and further Ordered him to pay the costs of and incidental to the application and enquiry, to include the costs of the Investigation Accountant of the Law Society, in an agreed fixed sum.

DATED this 2nd day of December 1996

on behalf of the Tribunal

A G Gibson
Chairman



4th
December 96