

IN THE MATTER OF ANDREW JONATHAN SHAW, solicitors clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. G B Marsh (in the Chair)
Mr. J N Barnecutt
Mr. K J Griffin

Date Of Hearing: 12th December 1996

FINDINGS

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

An application was duly made on behalf of the Law Society by Roger Field solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on the 2nd August 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 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 Andrew Jonathan Shaw of Wath-upon-Dearne, Near Rotherham, South Yorkshire, S63 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 having been a clerk to a solicitor but not being a solicitor had in the opinion of the Law Society 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 that solicitor's practice which involved conduct on his part of such a nature that in the opinion of the Society it 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, No.60 Carey Street, London, WC2 on the 12th December 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 AJS1 a letter of the 20th August 1996 addressed by the respondent to the applicant, (referred to hereinafter as "the respondent's letter"). The respondent admitted the facts.

At the conclusion of the hearing the Tribunal ORDERED that as from the 12th December 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 Andrew Jonathan Shaw of Tickhill, Doncaster, BN11 (formerly of Wath-upon-Deerne, Near Rotherham, South Yorkshire) 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 £790.00 inclusive.

The facts are set out in paragraphs 1 to 8 hereunder.

1. The respondent who was not a solicitor, was in the employ of Frank Allen & Co. (later Frank Allen Pennington) of Hill House Chambers, 7 Regent Terrace, South Parade, Doncaster, DN1 2EE. (Hereinafter called "the firm")
2. The respondent was employed by the firm in connection with its practice as solicitors from January 1989 until 5th March 1993. He was responsible, under the supervision of partners, for the conduct of the professional business of clients of the firm.
3. The firm wrote to the Solicitors Complaints Bureau (the Bureau) on 9th March 1993. Steps had been taken so that the respondent was no longer held out as a partner in the firm. The firm had discovered that the respondent had not been admitted a solicitor. Although he had passed the relevant examinations and completed articles of clerkship the relevant application to seek admission to the Roll had not been made. The firm understood that the respondent intended to make the required application.
4. The firm forwarded to the Bureau on 25th March 1993 a copy of a letter which had been received from the respondent with a copy of a letter which the respondent had written to the Law Society on 18th March 1993 in which he had set out the relevant background. In early 1991 when completion of his articles should have occurred the respondent had suffered a mild breakdown in health. He had been away from work for a number of weeks and had contemplated leaving the profession. He had returned to work and continued effectively as a clerk until October 1991. At that time the firm had sought an indication of his intentions and he had given the impression that he was both able to and would apply to be admitted. No application had been made and yet he had continued to hold himself out as a qualified solicitor until the true facts had emerged in March 1993. The respondent understood the likely consequences of his actions and accepted these.

5. On 9th June 1993 the respondent was interviewed by the Law Society under the provisions of Regulation 34 of the Training Regulations 1990. The circumstances which had emerged were considered and the Law Society took the view that the respondent had been grossly irresponsible as a result of which his student enrolment had been cancelled. He was informed of this decision by letter of 11th June 1993.
6. The Bureau wrote to the respondent on 28th April 1995 and sought his comments upon the matter. He did not respond to this letter or to further letters which were written to him on 30th May and 26th June 1995.
7. The Bureau ascertained that the respondent had moved his address and further letters were written to his new address on 20th December, 22nd January 1996, 19th February 1996, 13th March 1996 and 9th April 1996. No replies were received from the respondent.
8. On the 24th April 1996 the Adjudication Committee of the Bureau appointed by the Council of the Law Society resolved that an application should be made to the Solicitors Disciplinary Tribunal for an Order under section 43(2) of the Solicitors Act 1974 in respect of the respondent.

The Submissions of the Applicant

9. The applicant understood that the respondent had failed to register his articles with the Law Society and he believed that would prohibit his admission as a solicitor. He had not taken any steps to ascertain the precise position or to put matters right.
10. The position was bizarre in that the partners in the firm had believed the respondent to have qualified and to have been admitted as a solicitor. He had been held out a partner at a time when he had not been admitted. In the submission of the applicant the respondent had been guilty of such conduct as to justify an order being made in respect of him in the terms of section 43(2) of the Solicitors Act 1974.
11. The applicant believed the respondent was employed in a carpet retail business and also believed that the respondent had no intention of practising as a solicitor in the future or, of course, in seeking to be admitted to the Roll.

The Submissions of the Respondent (contained in the respondent's letter)

12. In the respondent's letter he said:

"I refer to your letter of the 13th August 1996 and our subsequent telephone conversation and write to confirm that all the facts as detailed in your statement are admitted."

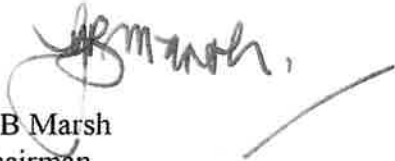
The Findings of the Tribunal

The Tribunal FOUND the matters alleged against the respondent to have been substantiated. The matter was an extraordinary one and the Tribunal accepted the applicant's description of the facts as "bizarre". There was no doubt that it was right

that an order should be made controlling the respondent's employment within the solicitors' profession in the future. The Tribunal made the order sought and further ordered the respondent to pay the costs of and incidental to the application and enquiry in a fixed sum.

DATED this 29th day of January 1997

on behalf of the Tribunal


G B Marsh
Chairman

Findings made with the
Law Society on the 3rd
day of February 1997