

IN THE MATTER OF MICHAEL WRIGHT, solicitors clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. K I B Yeaman (in the Chair)
Mr. J N Barnecutt
Mr. K J Griffin

Date Of Hearing: 4th February 1997

FINDINGS

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

An application was duly made on behalf of the Law Society by David Rowland Swift solicitor of 19 Hamilton Square, Birkenhead on the 23rd September 1996 that an Order be made by the Tribunal directing that as from a date specified in the Order no solicitor should except with the permission of the Law Society for such a period and subject to conditions as the Law Society might think fit to specify in the permission employ or remunerate in connection with the practice as a solicitor, Michael Wright of Thornton Cleveleys, Lancashire a person who was or had been a clerk to a solicitor within the meaning of the Solicitors Act 1974 or that such order might be made as the Tribunal should think right.

The allegation was that the respondent had been guilty of conduct of such a nature that in the opinion of the Law Society it would be undesirable for him to be employed by a solicitor in connection with his practice as a solicitor.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 4th February 1997 when Jonathan Goodwin solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead, Merseyside appeared for the applicant and the respondent did not appear and was not represented.

The respondent had addressed a letter to the applicant on the 14th October 1996 which is set out in detail under the heading "The Submissions of the Respondent".

The evidence before the Tribunal included the admissions of the respondent in his before mentioned letter.

At the conclusion of the hearing the Tribunal ORDERED that as from the 4th February 1997 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 Michael Wright of Thornton Cleveleys, Lancashire, a person who is or was 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 £1,618.09.

The facts are set out in paragraphs 1 to 13 hereunder.

1. The respondent who was not a solicitor was employed as a clerk within the meaning of the Solicitors Act 1974 by Messrs. Robert Leach Palmer & Co. solicitors of York House, York Avenue, Cleveleys, Lancashire. He was employed in the capacity of a financial services adviser by that firm from 1987 until May of 1994.
2. The partner responsible for the supervision of the respondent and with whom the respondent worked closely was Robert Westall Leach who took his own life on the 14th August 1994 following notification that a visit was to be made to the firm by the Investigation Accountant of the Law Society. It was subsequently discovered that there were substantial financial irregularities and a shortfall in clients' funds. Mr Leach had been responsible for the financial and investment activities of the firm.
3. The Financial Services Monitoring Unit of the Law Society carried out a monitoring visit and inspection of the firm in regard to the firm's compliance with the Solicitors Investment Business Rules 1990 culminating on the 16th November 1994. There was before the Tribunal a copy of the Monitoring Unit's Report of the 12th September 1995 which showed that the firm conducted investment business subject to the provisions of the Solicitors investment Business Rules 1990 and the Solicitors Practice Rules 1990.
4. The business conducted by the firm was undertaken by the respondent in his capacity as a Financial Services Adviser. The respondent purported to be experienced in the field of investment business. He was responsible for the firm's Financial Services Department and worked with supervision appropriate to his perceived competence and experience. The respondent was familiar with the obligations of those conducting investment business and, as he knew, was obliged to comply with the terms of the Solicitors Investment Business Rules 1990 and the Solicitors Practice Rules 1990.
5. The Monitoring Unit's Report demonstrated that the standard of compliance had been poor over a period of time and in particular from 1987 to May 1994 during which time the respondent had been responsible for the investment business conducted. At visits conducted in 1992 comprehensive breaches were drawn to the attention of the firm

and the respondent. Compliance advice was given to the respondent. The Report of the 12th September 1995 revealed that the conduct of investment business by the respondent at the firm demonstrated substantial and widespread breaches of the Solicitors Investment Business Rules 1990 and the Statements of Principle issued by the Securities and Investment Board.

6. The respondent was also participating in Limited Companies in which he and/or Mr Robert Westall Leach had interests providing investment business services. In one case the respondent was a tied agent and his advice was not independent.
7. Contrary to Rule 8(5) of the Solicitors Investment Business Rules 1990 the respondent failed to establish or maintain a Central Register of matters required to be recorded by the said Rules.
8. Contrary to Rules 9(1) and 9(2) of the Solicitors Investment Business Rules 1990 the respondent failed to take reasonable steps to ascertain the facts about the clients' personal and financial positions or the suitability of investments or transactions for the clients as may reasonably have been expected to be relevant to the proper performance of authorised investment services.
9. Contrary to Rule 9(3) of the Solicitors Investment Rules 1990 the respondent failed to explain the extent of the risk to his client.
10. Contrary to Rule 9(5) of the Solicitors Investment Business Rules 1990 the respondent failed to keep or maintain records to show the information required to be ascertained by Rules 9(1) and 9(2) of the Solicitors Investment Business Rules 1990.
11. Contrary to Rule 10(3) of the Solicitors Investment Business Rules 1990 the respondent failed to ensure that there was a Client Agreement in proper and satisfactory form.
12. Contrary to Rule 12(5) of the Solicitors Investment Business Rules 1990 the respondent failed to keep and maintain records of transactions.
13. Contrary to paragraph 1(c) of Appendix 7 of the Solicitors Investment Business Rules 1990 the respondent failed to provide the best advice to his clients.

The Submissions of the Applicant

14. The participation of the respondent and/or Mr Leach in limited companies with interest providing investment business services was inconsistent with the respondent's position as a financial services adviser employed by the firm and was contrary to Rule 12 of the Solicitors Practice Rules 1990.
15. In general the report of the Monitoring Unit recited examples of non compliance which were entirely unsatisfactory and resulted in numerous breaches of the Rules and Principles. The investment business conducted by the respondent was of a poor standard.

16. The conduct of investment business gave rise to breaches of Rule 1 of the Solicitors Practice Rules 1990 in that independence was compromised or likely to be compromised and/or the duty to act in the clients' best interests was compromised or likely to be compromised and/or the reputation of the solicitor or his profession was compromised or likely to be compromised.
17. In the circumstances it was right that the respondent's future employment within the solicitors' profession should be controlled.

The Submissions of the Respondent (contained in his before mentioned letter dated the 14th October 1996)

18. "Dear Mr Swift

Re: Solicitors Disciplinary Tribunal

Further to your letter of 8th October 1996 I note the remarks contained in your letter.

As far as the breach of Rule 12 is concerned I drew this matter to the attention of the Solicitors Complaints Bureau prior to the investigations being carried out by them and have always admitted breach of this rule from the outset.

The breaches that you mention in your subsequent paragraphs were dealt with in detail and with evidence provided in an extensive report issued as a response to the Monitoring Unit report of 1st May 1995 which would appear to have been ignored.

I believe it to be a forgone conclusion that the proposed Section 43 Order will be issued and indeed this could be issued on the breach of Rule 12 alone which is something that I would accede to whilst I would prefer to contest the other points detailed in your statement I am not financially in a position to oppose the same as I am the individual that has suffered the greatest financial loss following the suicide of Mr Leach and his substantial misappropriation of clients funds. The remaining partners in the practice have received very substantial monies following his death due to the benefit of life policies that I arranged for Mr Leach and they are still practising and able to carry out their normal business having merely been rebuked by the Law Society. From my own point of view I have been unable to carry on business since Mr Leach's suicide and this situation will probably continue for the foreseeable future.

Yours sincerely
(Signed) M Wright"


The Findings of the Tribunal

The Tribunal was deeply concerned by the situation at the firm of Messrs. Robert Leach Palmer & Co. which was placed before them. It appeared that Mr Leach had been using the financial services department as a vehicle for the dishonest use of clients' money. It was not represented that the respondent was in any way complicit with that. However the respondent had held himself out to be something of a financial

service expert and had been in charge of the department (although, of course, not the compliance of the firm) and yet had permitted a considerable number of breaches of the Solicitors Investment Business Rules and the Solicitors Practice Rules to have taken place. Clearly it was right that the respondent's employment within the solicitors' profession should be controlled and the Tribunal made the appropriate order further ordering the respondent to pay the costs of incidental to the application and enquiry.

DATED this 24th day of February 1997

on behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'K I B Yeaman', written over a horizontal line.

K I B Yeaman
Chairman