

IN THE MATTER OF BARRY ANTHONY RATNER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D.J. Leverton (in the Chair)
Mr. J.N. Barnecutt
Lady Maxwell-Hyslop

Date Of Hearing: 5th June 1997

FINDINGS

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

An application was duly made on behalf of the Office for the Supervision of Solicitors by David Rowland Swift, solicitor of 19 Hamilton Square, Birkenhead, Merseyside on 9th December 1996 that Barry Anthony Ratner, solicitor of Poulton-le-Fylde, Lancashire might be required to answer the allegations set out 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 unbecoming a solicitor in each of the following particulars, namely that he had -

- (i) contrary to Rule 3 of the Solicitors Accounts Rules 1991 failed to pay clients' funds received into a client account;
- (ii) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;

- (iii) contrary to rule 8 of the Solicitors Accounts Rules 1991 drawn money out of client account other than as permitted by Rule 7 of the said Rules;
- (iv) contrary to Rule 17 of the Solicitors Accounts Rules 1991 drawn money out of a controlled trust other than as permitted by Rule 16 of the said Rules;
- (v) misappropriated clients' funds and/or controlled trust funds;
- (vi) loaned money to a client without ensuring that the client was separately advised and represented;
- (vii) behaved in a manner that compromised or impaired or was likely to compromise or impair his good name or that of the profession.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 5th June 1997 when Peter Harland Cadman, solicitor and partner in the firm of Messrs. Russell-Cooke Potter & Chapman of 2 Putney Hill, Putney, London SW15 appeared for the applicant and the respondent did not appear and was not represented.

At the opening of the hearing the Tribunal was told that the respondent awaited a criminal trial and the subject matter of the allegations and of the criminal charges were the same. In view of this the Tribunal directed the members of the press present in the Court Room not to report the proceedings to ensure that the respondent's criminal trial would not be prejudiced. The press was free to report the outcome of the disciplinary proceedings, but not to report the evidence or the submissions until the outcome of the criminal trial was ascertained.

The evidence before the Tribunal included their being satisfied that relevant documentation had been served upon the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Barry Anthony Ratner, solicitor of Poulton le Fylde, Lancashire 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 £1,050.06, together with two thirds of the costs of the Investigation Accountant of the Law Society to be taxed if not agreed.

The facts are set out in paragraphs 1 to 9 hereunder.

1. The respondent, born in 1942, was admitted a solicitor in 1966. At the material times the respondent carried on in practice in partnership under the style of Porter Ratner & Co. at Yorkshire Bank chambers, 86 Whitegate Drive, Blackpool, Lancashire.
2. On 28th August 1996 the Law Society resolved to intervene in the respondent's practice.
3. Upon due notice to the respondent, the Investigation Accountant of the Law Society carried out an inspection of the respondent's books of account commencing on the 19th July 1996. There was before the Tribunal a copy of the Investigation Accountant's Report of 14th August 1996 which revealed that the firm's books of account did not comply with the Solicitors Accounts Rules 1991.

4. A total of £104,000 of clients' funds had been banked in the firm's office account prior to 30th June 1996. The situation had been rectified on 5th July 1996.
5. The Report further revealed that the respondent, who was the sole executor and trustee of the estate of WH B deceased, instigated the withdrawal of a total of £47,000 from the estate funds lodged in controlled trust accounts or client account. The total so withdrawn was reduced by a sum of £9,130 received by the estate as a "rebate".
6. The balance of funds withdrawn, a total of £37,870 was withdrawn in tranches in December 1993 and January 1994, was lost to the estate and the ultimate beneficiaries. That sum had been taken by the respondent for his own use and benefit and/or for the use and benefit of others not entitled thereto.
7. When initially asked about the sum of £37,870 in May 1994 the respondent contended that it was for the redemption of a loan by Chancery Investments Limited, a company said to be registered in the British Virgin Islands and for whom the respondent acted, which was charged upon the deceased's property. There was no genuine evidence that was so.
8. The major tranche was shown on the ledger to be withdrawn by cheque payable to Mortgage & Money Limited, a company controlled by the respondent, but in reality the sum was withdrawn by the respondent in cash.
9. When asked about the matter again in July 1996 the respondent stated that it was he who loaned money to the late WH B which he sought to recoup and that the reference to a loan by Chancery Investments Limited had been false.

The submissions of the applicant

10. The facts spoke for themselves. The applicant did allege that the respondent had behaved dishonestly.
11. The respondent had been the sole executor in the estate of WH B deceased. There were a number of small beneficiaries and the residual balance was to be split between twenty named charities. £37,870 had been drawn out of estate funds having been explained by the respondent as "mortgage repayment". The respondent suggested that the deceased had received a loan from Chancery Investments Limited secured on his residence. The Law Society's Investigation Accountant found that no loan was registered on the property and forms prepared for the Inland Revenue and Capital Transfer Tax purposes revealed no such liability. Although the cheque stub indicated that a cheque had been made payable to Mortgage & Money Limited, in reality the cheque had been drawn to cash.
12. The respondent then offered a further explanation that he himself had been the lender, but had not wanted to make that plain in case the client asked for more.
13. In the submission of the applicant the respondent had been guilty of theft by his dishonest appropriation of monies from a deceased person's estate depriving charities

from their rightful entitlement where they would have been unlikely to query their entitlement in the light of final accounts prepared by the respondent in which his theft would have been disguised.

14. The respondent had been charged with offences involving dishonesty and committal proceedings were pending at the time of the disciplinary hearing. It was understood that the respondent intended to produce medical evidence to the effect that he was unfit to stand trial. A firm of solicitors representing the respondent at the Tribunal's own listing Pre-Trial Review indicated that the respondent was unfit to attend, but no supporting Medical Certificate had been delivered.

The respondent made no submissions.

The Findings of the Tribunal

The Tribunal FOUND all of the allegations to have been substantiated. They were in no doubt that the respondent had dishonestly misappropriated monies which did not belong to him. Such behaviour would not be tolerated by the profession and there was no doubt that such dishonest conduct amounted to "professional suicide". The Tribunal Ordered the respondent to be struck off the Roll of Solicitors and ordered him to pay a proportion of the costs of and incidental to the application and enquiry in a fixed sum, together with two-thirds of the costs of the Investigation Accountant of the Law Society, to be taxed if not agreed (costs were apportioned because the respondent's partner, Mr. Porter, was dealt with by the Tribunal on the same day with regard to different allegations all of which had been disclosed by the same before-mentioned Investigation Accountant's Report).

DATED this 18th day of July 1997

on behalf of the Tribunal

D.J. Leverton
Chairman



Findings filed with the
Law Society on the 18th
day of July 1997