

IN THE MATTER OF GRAHAM LESLIE ALBERT WHEELBAND, solicitors clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. G B Marsh (in the Chair)  
Mr. A Gaynor Smith  
Lady Bonham Carter

Date Of Hearing: 15th January 1998

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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 Peter Harland Cadman of 2 Putney Hill, Putney, London SW15 on the 9th January 1997 that an Order be made by the Tribunal directing that as from a date specified in the order no solicitor should except with permission from the Law Society for such period and subject to such conditions as the Law Society might think fit to specify in the permission employ or remunerate in connection with the practice as a solicitor Grahame Leslie Albert Wheelband of

Leamington Spa, Warwickshire 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 allegations were 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 namely that:-

- a. he accepted instructions to act when a conflict of interest occurred. In particular he acted for himself as a purchaser while at the same time acting for the vendor and the mortgagee;

- b. he failed to notify his building society clients of material facts;
- c. he misled his building society mortgagees with regard to relevant facts.

The application was heard at the Court Room No 60 Carey Street, London WC2 on the 15th January 1998 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 Mr Smyth solicitor of Messrs Dibb Lupton Alsop Carlton House 18 Albert Square Manchester appeared for the respondent.

The evidence before the Tribunal included the admission of the facts by the respondent (who resisted the making of the order sought) and exhibit "GLAW 1" being written references in support of the respondent.

At the conclusion of the hearing the Tribunal ordered that as from the 15th January 1998 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 Grahame Leslie Albert Wheelband of Leamington Spa, Warwickshire 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 of £900.00 inclusive.

The facts are set out in paragraphs 1 to 7 hereunder:-

1. The respondent who was not a solicitor was employed as a conveyancing clerk by Messrs Blakemores solicitors of Birmingham. The respondent had been employed in that capacity by that firm and its predecessors for approximately 11 years. The partner responsible for the supervision of the respondent was Mr R A Blakemore. Upon due notice an Investigation Accountant of the Law Society carried out an inspection of the Books of Account of Messrs Blakemores. The inspection began on the 31st July 1995 and the Tribunal had before it a copy of the Investigation Accountant's report dated the 9th January 1996.
2. The Report dealt with a number of matters but in particular said that until the respondent's suspension from his employer firm in August 1995 and his subsequent resignation in September 1995 the respondent was in charge of the firm's conveyancing department at its Leamington Spa Office. The respondent's resignation followed his admissions that he had obtained mortgages for himself and others to assist in the purchase of properties built by a developer client of the firm, where the building society client had not been made aware of material facts.
3. The Investigation Accountant set out details of transactions in respect of which complaint had arisen. The details are set out in the following paragraphs.
4. Messrs Blakemores had acted for a number of years for a developer client trading as two limited companies.

5. A review of some of the client matter files showed that there had been a disposal to the respondent of ten properties forming part of residential developments and that the respondent had had conduct of the matters on a day to day basis. It was also noted that Mr. Blakemore, who prior to his retirement in April 1990 had overall control of the client's affairs, had similarly purchased four properties.
6. In all but one case Blakemores had acted for the vendor, the purchaser and the mortgagee. In addition, where either allowances were given by the developer or deposits were said to have been paid direct by the purchaser to the developer, there was no evidence on the client matter files that the building society client was made aware of that fact. The properties purchased by the respondent were let to tenants and the building society clients had not been made aware of this material fact.
7. The respondent said that he had been told by Mr. Blakemore that he had the overall control of the developer's client affairs, that the client was suffering cash flow difficulties and had suggested that deals favourable to members of the firm could be negotiated. Not only had the respondent availed himself of the favourable terms but it appeared that another solicitor at the firm had been responsible for signing relevant reports on title.

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

8. The respondent was an experienced legal executive who should have been well aware that he should not act for himself when there is a clear conflict of interest. He should also have been well aware of his obligation to notify a Building Society client of material facts.

#### **The submissions of the respondent**

9. The respondent admitted the facts which were before the Tribunal. The respondent had a long and successful history in the legal profession. He was a fellow of the Institute of Legal Executives. He had worked both in private practice and for a company engaged in building. Since the disciplinary proceedings had begun he had worked as a locum in order to avoid embarrassment to employers.
10. The developer client had proposed to Mr Blakemore that he should buy a number of properties with an attractive discount in order to relieve the client's severe cash flow difficulties. Mr Blakemore had put the same opportunity to the respondent. The respondent would not be facing disciplinary proceedings if Mr Blakemore and the client had not presented the opportunity. The respondent had not sought the opportunity but had taken it when it was offered.
11. The respondent had not approached lending institutions himself but the loans had been arranged through independent brokers.
12. Messrs Blakemore's had always alleged that the respondent had acted alone and without authority. There was evidence in the relevant files that a number of solicitors in the firm had been entirely aware of the transactions and the respondent's

involvement. Partners in the firm had knowledge of what was going on and they were in a supervisory capacity.

13. Other solicitors in the firm had been investigated but a decision had been made not to pursue disciplinary proceedings against them. Not unsurprisingly the respondent harboured a sense of injustice that he alone had been brought before the Tribunal. The respondent accepted however that he had to accept the consequences even though others in a senior position who knew precisely what had been happening did not have to do so.
14. All properties stood up to valuation. All of the advances had been arranged outside the MIRAS scheme and all Inland Revenue affairs were in order and up-to-date. There had been no financial loss to anyone. In fact the respondent still owned all the properties which remained tenanted.
15. The respondent had enjoyed an unblemished record of some thirty years in the solicitors' profession. He was clearly able and competent from a technical point of view. He had much to offer the profession. The respondent had suffered from considerable delays in the bringing of the proceedings. The matters in respect of which complaint arose began in 1991 and the last property transaction had been in 1993. The Investigation Accountants had visited Messrs Blakemores in July 1995.
16. The Law Society had investigated solicitors in the firm and the respondent accepted that it was entirely right that matters should be held in abeyance until that position had been clarified. In fact it had been clarified by the Law Society's decision not to bring disciplinary proceedings against solicitors in the firm. The respondent through those representing him had taken steps to try to move matters along more speedily. Nevertheless delay had occurred and that had been not without cost particularly in terms of anxiety and sleepless nights suffered by the respondent.
17. It was submitted on behalf of the respondent that the Tribunal was placed in a most difficult situation in the particular circumstances of this case in that the only order it could make in respect of the respondent was an order pursuant to Section 43 of the Solicitors Act 1974. Its choice was either to make the order or not to make the order. The Tribunal was urged not to make the order in this particular case and was reminded of its discretion to award costs only even though no disciplinary sanction was imposed. The imposition of costs would be a penalty in itself.
18. The respondent recognised that the Tribunal was bound to deprecate the respondent's conduct but it was invited to take into account the length of time that the respondent had served the profession with an unblemished record. The Tribunal could conclude that there had been no damage done to the solicitors' profession or to the public's confidence in it.
19. The Institute of Legal Executives was aware of the proceedings before the Tribunal. It had taken no action pending the outcome of these proceedings. The respondent remained in jeopardy of disciplinary proceedings being taken by his own professional body.

### The Findings of the Tribunal

The Tribunal found the allegations to have been substantiated. Indeed the underlying facts and the allegations themselves had not been disputed by the respondent. The Tribunal was entirely able to understand the respondent's sense of injustice that none of the solicitors having control and supervision of his work had not been made the subject of disciplinary proceedings by the Law Society.


The Tribunal have noted the statement of the respondent that he entered into the transactions not only because he himself saw them as a good business opportunity but also in order to assist the cash flow difficulties encountered by a substantial client of the firm. Although the Tribunal have taken note of the fact that the respondent was introduced to the proposals by a senior member of the firm and appears to have reported the matter to another solicitor at the firm and sought guidance, the respondent himself was an expert in the field of conveyancing and was a very experienced legal executive.

The Tribunal agree with the respondent's submission that it had only two choices open to it - either to make the order pursuant to Section 43 or not to make the order. In the circumstances and taking into account the allegations which had been substantiated and the respondent's clear acceptance of the facts (for which he must be given due credit) the Tribunal considered it right that the order sought should be made. They further ordered the respondent to pay the costs of and incidental to the application and enquiry in a fixed sum which had previously been agreed by the respondent.

In all of the circumstances of this particular case the Tribunal hope that the Law Society will give favourable consideration to the granting of consent to the employment the respondent by a suitable firm of solicitors in the event of application being made for such consent.

DATED this 13th day of February 1998

on behalf of the Tribunal

  
G B Marsh  
Chairman

Findings filed with the  
Law Society on the 20th  
day of February 1998