

IN THE MATTER OF SIMON JAMES ROSE, solicitors clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J R C Clitheroe (in the Chair)
Mr. D W Faull
Lady Bonham Carter

Date Of Hearing: 14th October 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 Andrew Christopher Graham Hopper, solicitor, of PO Box 7, Pontyclun, Mid Glamorgan on the 24th March 1997 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, Simon James Rose of Chellaston, Derby, 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 had occasioned or been a party to with or without the connivance of the solicitor to whom he was a clerk an act or default in relation to that solicitor's practice which involved conduct on his part of such a nature that it would be undesirable for him to be employed by a solicitor in connection with his practice, namely that he had misled the court and/or been a party to the court being misled as to progress of the preparation for trial of the defence of a client facing serious criminal charges.

The application was heard at the Court Room, No.60 Carey Street , London, WC2 on the 14th October 1997 when Andrew Christopher Graham Hopper of PO Box 7, Pontyclun, Mid Glamorgan appeared for the applicant and the respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the respondent contained in a letter addressed by the respondent to the applicant dated the 12th May 1997.

At the conclusion of the hearing the Tribunal ORDERED that as from the 14th October 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 Simon James Rose of Chellaston, Derby, 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 £382.50 inclusive.

The facts are set out in paragraphs 1 to 6 hereunder.

1. The respondent, who was not a solicitor, at the material times was employed as a clerk by the Smith Partnership of Burton on Trent. The workload of the respondent principally concerned the defence of clients involved in criminal proceedings.
2. The respondent had the conduct of the defence of Mr S whose trial on three counts of rape and one count of indecent assault was due to commence at Stafford Crown Court on the 7th February 1996. The respondent attended with Counsel, but his client did not appear. In the course of the proceedings the Court was given certain information by Counsel, who for all the relevant proceedings was instructed by the respondent. The Court was informed that all reasonable attempts had been made by the respondent's firm to inform Mr S of the trial date; that Legal Aid had been extended to enable leading counsel to be instructed in November 1995 and that a brief had been sent to leading counsel which had not safely arrived; that instructions had been given for the preparation of a medical report, that the medical report had been included in the brief to leading counsel, dispatched in December 1995, and that the report had actually been sent to the Crown Prosecution Service on or about the 5th February 1996.
3. The firm's records showed that no effort of any kind had been made to inform Mr S of the trial date. The consequence of the Court having been told that Mr S had been notified was that the Court had issued a warrant for his arrest not backed for bail.
4. It also transpired that, although Legal Aid had been extended to enable the firm to instruct leading counsel and a brief had been prepared, no brief had in fact been delivered.
5. It was also established that no prior authority from the Legal Aid Board for a medical report had been sought, and as a consequence no doctor had been instructed, no report had been prepared and it followed that it certainly could not have been included in any instructions to leading counsel or sent to the Crown Prosecution Service.

6. When confronted with the result of the enquiries by his employers as to those matters, on the 8th February 1996, the respondent resigned his employment.

The Submissions of the Applicant

7. The admitted facts spoke for themselves. The applicant invited the Tribunal to note that there had been a number of references to the respondent's ill health and his explanation for his conduct was described as irrational and impulsive and as a result of blind panic and fear.
8. In the circumstances it was right that an order be made rendering the respondent's future employment within the solicitors' profession subject to control.

The Submissions of the Respondent (contained in his before mentioned letter of the 12th May 1997)

9. The respondent admitted all of the facts alleged. He had undergone psychiatric treatment and ongoing treatment for stress and depression. He had no intention of working in the legal profession in any form again.
10. He apologised for his conduct which was inappropriate and he regretted he was unable to cope with the pressure of working for a solicitor's practice.

The Findings of the Tribunal

The Tribunal FOUND the allegation to have been substantiated. It was right that an order should be made in the terms of Section 43 of the Solicitors Act 1974 in respect of the respondent. They made that order and ordered him to pay the applicant's costs in a fixed sum.

DATED this 17th day of November 1997

on behalf of the Tribunal



J.R.C. Clitheroe
Chairman

*Findings filed with the
Law Society on the 25th
day of November 1997*