

IN THE MATTER OF THOMAS STEPHEN COWELL solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J R C Clitheroe (in the chair)
Mr. D J Leverton
Mrs C Pickering

Date of Hearing: 7th February 2002

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 ("OSS") by Roger Field solicitor of Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands, DY1 1EY on 26th May 1999 that Thomas Stephen Cowell solicitor of Messrs T S Cowell & Co, 45 Queen's Street, Deal, Kent, CT14 6EY might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegation against the Respondent was that he had refused to comply with the requirement properly made by the Council of The Law Society under Rule 27 (1) of the Solicitors' Accounts Rules 1991 and that by reason thereof he had been guilty of conduct unbecoming a solicitor.

By a supplementary statement of Roger Field dated 7th November 2001 an alternative allegation was made against the Respondent namely that he had delayed unreasonably in complying with a requirement properly made by the Council of The Law Society under Rule 27 (1) of the Solicitors Accounts Rules 1991 and that by reason thereof he had been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 7th February 2001 when Roger Field solicitor and consultant to the firm of Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands, DY1 1EY appeared as the Applicant and the Respondent did not appear and was not represented.

At the conclusion of the hearing the Tribunal ordered that the Respondent, Thomas Stephen Cowell of T S Cowell & Co 45 Queen's Street, Deal, Kent, CT14 6EY solicitor be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £7,535.25.

The facts are set out in paragraphs 1 to 20 hereunder: -

1. The Respondent born in 1941 was admitted as a solicitor in 1966 and his name remained on the Roll of Solicitors.
2. At times material to the application the Respondent carried on practice in partnership under the style of T S Cowell & Co of 45 Queen Street, Deal, Kent, CT14 6EY.
3. Upon due notice to the Respondent the Monitoring & Investigation Unit of the OSS carried out an inspection of his books of account. A copy of the subsequent Report dated 3rd September 1998 was before the Tribunal.
4. During the inspection the Respondent was requested by the Investigation and Compliance Officer to produce the files and accounting records relating to a Trust, the D Secret Trust, in respect of which it was understood that the Respondent was or had been a controlled Trustee but the Respondent declined to produce the documents requested and would not discuss the matter and the inspection was therefore terminated.
5. On 14th September 1998 the OSS wrote to the Respondent in the wake of the inspection asking the Respondent to explain why he declined to produce or discuss the files and accounting records relating to the D Secret Trust.
6. On the 1st October 1998 the Respondent's solicitors replied making reference to an article which had appeared in The Law Society's Gazette relating to overseas accounts and suggesting that the action being taken or proposed against the Respondent was not consistent with the advice given in the article.
7. The letter further said:-

"It seems reasonably clear... that nothing untoward was observed in the recent monitoring visit and that, during the lifetime of the secret trust, Tom Cowell acted properly upon his instructions, whilst at the same time keeping a record of his dealings with the D Trust monies."
8. By a letter dated 16th October 1998 the OSS replied setting out the reason why the article did not afford an answer to the position taken by the Respondent and saying as follows:-

"The guidance given in the Gazette article is quite correct. However we are unable to ascertain whether Mr Cowell has "acted properly upon his instructions, whilst at the same time keeping a record of his dealings with the D Trust monies." We have been denied access to the files and accounting records and therefore we are unable to form an opinion as to whether Mr Cowell has acted properly. That is the crux of the matter."

9. By a letter dated 21st October the Respondent's solicitors asked for further time.
10. On 19th March 1999 the Respondent was notified by the OSS of the decision of the Compliance and Supervision Committee on 4th March 1999 that the Respondent's conduct be referred to the Solicitors Disciplinary Tribunal.
11. Between the issuing of proceedings and the hearing before the Tribunal on 23rd November 1999 the Applicant was in correspondence with the Respondent's solicitors regarding a possible application to the High Court for a declaration in this matter. No such application was made at that time and the matter came before the Tribunal for a substantive hearing on 23rd November 1999.
12. On that occasion the Tribunal adjourned the matter and its Memorandum of Adjournment stated as follows:-

"The Tribunal declined to make a finding. It decided that it would allow the Respondent one last opportunity to clarify the situation. Despite expressing considerable dismay at the Respondent's intransigence, the Tribunal decided to give him one last chance."
13. The Tribunal decided that there should be weekly reports from the Respondent of the steps he was taking in the matter and of progress. The Tribunal said:-

"The Tribunal wish to make it plain to the Respondent that if he fails to comply with any of the Tribunal's requirements, the Tribunal would take a very grave view of such failure."
14. The Clerk to the Tribunal wrote to the Respondent's solicitors on a number of occasions indicating that weekly reports were not being provided.
15. The Respondent made an application to the High Court for a declaration in this matter.
16. The High Court found in favour of The Law Society. A copy of the Order of the High Court was before the Tribunal. By letter of 19th October 2001 the Applicant sent a copy of the sealed Order to the Respondent's solicitors stating:-

"I am content that your client has 21 days from 12th October to comply with the Order. Please let me know as soon as you are in possession of relevant files and accounting records."

17. By letter dated 25th October 2001 the Respondent's solicitors replied stating that their instructions were that there was impliedly no time limit for compliance with the declaration and that the Respondent:-

"...will produce the necessary documents, assuming that they still exist, as soon as he is able rather than within twenty-one days of the date of the Hearing."

18. By a letter dated 26th October 2001 the Applicant raised his concern about the comment in the letter of 25th October, stating as follows:-

"I view your comments about the continuing existence of the relevant documents as giving cause for concern. This is the first intimation that has been given during the long passage of the Tribunal and High Court proceedings."

19. In further correspondence the Applicant again asked for disclosure of the documents

20. By letter dated 5th February 2002 the Respondent's solicitors wrote to the Applicant as follows:-

"Further to my letter of 31st January, Tom Cowell has rung me to say that the required documents are "physically incapable of production". I assume this to mean that they have been destroyed."

The Submissions of the Applicant

21. The assumption of the Respondent's solicitors in their letter of 5th February 2002 was not necessarily correct but the real point was that the documents had not been produced.
22. Without the presence of the Respondent or his representative or any affidavit or statement from the Respondent it was impossible for the Tribunal to determine the exact status of the documents.
23. The two short allegations made against the Respondent did not perhaps do justice to the outrageous way in which the Respondent had behaved.
24. There had been a long and deliberate campaign by the Respondent first to gain time and then to flout the Orders of his professional body in the wake of a clear High Court Order that the documents be handed over.
25. Everything the Respondent had done was predicated on the existence of the documents.
26. If the Respondent had had any doubts as to their existence any honest solicitor would have referred to that to avoid the time and expense which had been incurred.
27. It was a matter of regret that the Respondent was not present and that the Applicant did not have an opportunity to explore the matter further.

28. The Respondent was not practising as a solicitor and had not done so for some time.

The Findings of the Tribunal

Having considered the documentation and the submissions of the Applicant the Tribunal found both allegations to have been substantiated.

The Hearing before the Tribunal on 16th March 1995

At a hearing before the Tribunal on 16th March 1995 the following allegations were found to have been substantiated against the Respondent and another:-

- (i) that they had failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors' Accounts Rules 1986 and/or Rule 11 of the Solicitors Accounts Rules 1991;
- (ii) they had drawn money from a client account other than as permitted by Rule 7 of the Solicitors' Accounts Rules 1986 and/or Rule 7 of the Solicitors Accounts Rules 1991, contrary to Rule 8 of the Solicitors' Accounts Rules 1986 and/or Rule 8 of the said Solicitors' Accounts Rules 1991;
- (iii) they had paid sums in respect of private loans by means of transfer between clients' ledger accounts out of funds held on account of the lenders without the prior written authority of the lenders contrary to Rule 10(2) of the Solicitors Accounts Rules 1991.

It was further alleged against the Respondent alone that he had been guilty of conduct unbecoming a solicitor in that:-

- (iv) he had utilised clients' funds for his own or other improper purposes.

The Tribunal on that occasion said that the state of the Respondent's book keeping and accounting and the handling of clients' money revealed a deplorable state of affairs. Although the Tribunal recognised that the provision of unqualified accountants' reports over a period of time might well have lulled them into a sense of false security, the ultimate responsibility was theirs and it was clear that no attempts at being meticulous both in record keeping and in compliance with the Solicitors' Accounts Rules had been made. In the opinion of the Tribunal the Respondents had adopted a wholly unacceptable cavalier approach. The Tribunal gave credit to Mr Cowell for his frank acceptance of the main culpability. It was clear that the major part of the breaches resulted from the actions of Mr Cowell. In order to mark the Tribunal's very great concern and its censure of the attitude and behaviour of Mr Cowell, the Tribunal considered it appropriate to impose fines totalling £8,000 and ordered Mr Cowell to pay the whole of the Applicant's costs.

At the hearing on 7th February 2002 the Tribunal considered that the Respondent had been shown to have been guilty of a failure to comply with the standard of conduct which was to be expected of a member of an honourable profession. He had failed to comply with a proper request from his professional body; he had been told by the

Chancery Division of the High Court that that request should be complied with; he had argued spuriously that because the Order of the High Court did not specify 21 days he could comply with the request at his leisure and finally he had informed his solicitors shortly before the hearing that the documents which had been the subject of the entire matter were "physically incapable of production".

The above conduct in itself was a clear case of disrespect to the Court, this Tribunal and the profession and the Respondent's conduct was such that it brought the profession into disrepute.

The Tribunal having found the allegations proved had heard the details of the Respondent's previous appearance before the Tribunal and that, taken together with the complete disregard of the Direction of the OSS and of the Chancery Division showed a complete disregard by the Respondent of his obligations to the profession. The Respondent had been guilty of deliberate delay and obfuscation. The Tribunal had no hesitation in ordering that the Respondent be struck off the Roll.

The Tribunal ordered that the Respondent Thomas Stephen Cowell of Messrs T S Cowell & Co, 45 Queen's Street, Deal, Kent, CT14 6EY solicitor 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 £7,535.25.

DATED this 21st day of May 2002

on behalf of the Tribunal

J R Clitheroe
Chairman