

IN THE MATTER OF NIGEL GUY POLLARD, former solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Gibson (in the chair)
Mr. L N Gilford
Dame Simone Prendergast

Date of Hearing: 4th April 2002

FINDINGS

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

An application had been duly made on behalf of the Office for the Supervision of Solicitors ("OSS") on 20th August 2000 by Gerald Malcolm Lynch solicitor and consultant with the firm of Messrs. Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend on Sea, Essex SS2 6HZ that Nigel Guy Pollard solicitor of Little Billing, Northampton, 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 OSS sought an Order pursuant to the provisions of Section 47(2)(g) of the Solicitors Act 1974 prohibiting the restoration of the Respondent's name to the Roll of Solicitors except by Order of the Tribunal.

The allegations made against the Respondent were as follows:-

- (i) Contrary to the provisions of the Solicitors Accounts Rules 1991 he has:-
 - (a) failed to produce to the Monitoring and Investigation Unit of The Law Society for inspection all relevant documentation relating to clients' affairs;
 - (b) failed to pay into clients' account clients' moneys received;

- (c) failed to maintain full and complete proper books of account in relation to his practice as a solicitor;
- (ii) Has improperly utilised clients' funds for his own purposes.
- (iii) Has deceived alternatively improperly misled in connection with his practice as a solicitor:-
 - (a) the Monitoring & Investigation Unit of The Law Society and the Office for the Supervision of Solicitors;
 - (b) Messrs Handlesbanken of Denmark;
 - (c) the Inland Revenue;
 - (d) beneficiaries and/or their solicitors in respect of the estate of one S deceased;
 - (e) other solicitors in respect of matters arising from the S estate;
 - (f) a client in respect of the pursuit and settlement of a personal injury claim.
- (iv) Acted or continued to act in circumstances where a conflict of interest existed between him and a client;
- (v) Where a conflict of interest situation existed in respect of clients, failed to ensure that the client/clients obtained independent advice upon:-
 - (a) a gift (alleged) of moneys to the Respondent;
 - (b) in circumstances where a claim of negligence had arisen.
- (vi) Was guilty of unreasonable delay in the administration of the S estate as hereinafter appears.
- (vii) By virtue of each and all of the aforementioned has been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Gerald Malcolm Lynch solicitor and consultant with the firm of Messrs Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea SS2 6HZ appeared as the applicant and Mr A E Noone solicitor and partner in the firm of Messrs Toller Hales & Collcutt of 55 Headlands, Kettering, Northampton, NN15 7EY appeared on behalf of the Respondent.

Preliminary Matter

The Tribunal was informed that the Respondent had been subject to an investigation by the police. Charges had been laid against him. The criminal trial had been scheduled to take place in the Birmingham Crown Court on the 15th April 2002. It appeared that certain of the directions made by the Judge listed to try the case had not been complied with and it was not certain that the trial would take place on that date.

The Respondent denied all of the allegations made against him save allegation (iv) namely that he acted or continued to act in circumstances where a conflict of interest existed between him and the client. In respect of that allegation the Respondent agreed that it would be right that the Order sought be made against him.

As an Order pursuant to Section 47 of the Solicitors Act 1974 was the only Order which was available to the Tribunal to make, the parties agreed that the Tribunal should make such an Order in respect of the admitted allegation but that all of the other allegations should lie on the file. Should the Respondent in the future make an application for Restoration to the Roll then those matters would be available to be taken into account by the Tribunal as would any conviction of the Respondent following his criminal trial. It was the joint application of the parties that the Tribunal should proceed on that basis. The Tribunal agreed.

The evidence before the Tribunal included the admission of the Respondent of allegation (iv).

At the conclusion of the hearing the Tribunal ordered that the Respondent Nigel Guy Pollard of Little Billing, Northampton, former solicitor be prohibited from having his name restored to the Roll of Solicitors without the consent of the Tribunal and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,762.50.

The facts are set out in paragraphs 1 to 11 hereunder: -

1. The Respondent, who was 58 years of age, had been admitted as a solicitor in 1967. In November 1999 the name of the Respondent was removed voluntarily from the Roll of Solicitors.
2. At the times material to the application the Respondent was a partner in the firm of Messrs Parker Groom, solicitors of Wellingborough. That partnership had been dissolved in 1994 whereafter the Respondent practised in the firm under the name of Parker Pollard.
3. In or about April 1995 the Respondent joined the firm of Messrs Greenfield Whiston of Kettering and the firm became known as Pollard Greenfield & Whiston. That partnership was dissolved on 31st July 1996. As at the 31st July and until the 1st December 1996 the Respondent practised as Parker Pollard. On that date he entered into partnership with one, Jennifer Carol Laurence under the style of Lawrences at 32A Sheep Street, Wellingborough. The partnership was dissolved on the 1st August 1997.
4. The Respondent had acted in connection with the estate of Mr H who had died on 30th August 1997. The Respondent had drawn the deceased's Will on 11th June 1987. The Respondent was an Executor of the Will and Trustee of the trust created by the Will. A Grant of Probate was issued on 25th October 1999 in the jurisdiction of the Isle of Man.
5. Assets were situated in the Isle of Man and included a company known as Bourne Limited. Assets were also situated in Denmark consisting of Danish Kroner held in bank accounts in the deceased's name at Handlesbanken, Copenhagen. The Respondent held a Power of Attorney to deal with the funds in Denmark.
6. The Will drawn on 11th June 1987 covered all assets (wheresoever situated) save for those in Spain which had been dealt with under a separate Spanish Will.

7. In the event the Spanish assets were transferred to Bourne Limited, a company in which the Respondent held all of the shares and was therefore the legal owner.
8. In December 1987 after the death of Mr S, the Respondent wrote to Handlesbanken in relation to the Danish funds seeking the release of the funds to Bourne Limited.
9. It was the Respondent's position that the deceased had indicated that upon the death of the deceased the Respondent was to have use of the Danish funds. He said the funds were "designated" for him and did not form part of the deceased's estate.
10. At the time that the deceased made his Will and/or at the time of the alleged gift, the Respondent had not ensured that the deceased had taken independent advice.

The Submissions of the Applicant

11. In the circumstances it was right that an Order prohibiting the restoration of the Respondent's name to the Roll of Solicitors without the consent of the Tribunal first obtained was appropriate.

The Submissions of the Respondent

12. It was agreed on behalf of the Respondent that such an Order should be made.
13. The Respondent's employment in the solicitor's firm ceased in 1998. He had encountered difficulties in renewing his Practising Certificate and had not since 1998 practised as a solicitor. He had made a living by obtaining work in pursuit of his hobbies of cricket and gardening. The Respondent would not wish to enter practice as a solicitor again.

The Findings of the Tribunal

The Tribunal found allegation (iv) to have been substantiated, indeed it was not contested. It was a serious matter for a solicitor to act in a situation where his own interests were in conflict with those of the client without ensuring that the client concerned obtained formal independent advice. It was right that the name of the Respondent should not be restored to the Roll in the absence of an Order from this Tribunal. The Tribunal ordered the Respondent to pay the Applicant's costs in an agreed fixed sum.

DATED this 19th day of June 2002

on behalf of the Tribunal

A G Gibson
Chairman