No. 8314/2001
8437/2001

IN THE MATTER OF LEON BRAUNSTEIN, solicitor

- AND –

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. A. G. Gibson (in the chair)
Mr. J. P. Davies
Mrs C. Pickering

Date of Hearing: 31st January 2002

FINDINGS

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

There were two applications before the Tribunal: -

FIRST an application was duly made by the Mostazafan and Janbazan Foundation on 14th December 2000 that Leon Braunstein of Berkeley Square, Mayfair, London W1X (now of Lansdowne Row, Berkeley Square, London W1J) solicitor 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 allegations against the Respondent were: -

1. That the Respondent failed to account to the Applicant for the sum of US$10,781.50 received by the Respondent on behalf of the Applicant from Rover Group Limited contrary to Rules 1(a) and 1(d) of the Solicitors' Practice Rules 1990.

2. That the Respondent sought and accepted instructions or continued to accept instructions and/or to act for the Applicant when his interests conflicted with those of the Applicant contrary to Rules 1(a) 1(c) and 1(d) of the Solicitors' Practice Rules 1990.

3. That, while acting as solicitor for the Applicant, the Respondent:

3.1 obtained details from the Applicant of its bank account by a trick; and

3.2 induced the Applicant to transfer funds into that account by a trick;

so that the Respondent could obtain a garnishee order in respect of that account and ensure that there were sufficient funds in it contrary to Rule 1(a) 1(c) and 1(d) of the Solicitors' Practice Rules 1990.

AND SECONDLY an application was duly made by the Office for the Supervision of Solicitors ("OSS") by Roger Field solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands, DY1 1EY on 2nd August 2001 that Leon Braunstein solicitor of Park View Road, Surrey (now of Lansdowne Row, Berkeley Square, London, W1J) 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 allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in the following circumstances namely: -

(i) that he failed to render a bill of costs to and account to a client within a reasonable time of concluding the matter to which the bill related

(ii) that, having acquired relevant confidential information concerning former clients during the course of acting for them he accepted instructions to act against them.

(iii) that he failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors' Accounts Rules 1998

(iv) that he practised on his own account in breach of a condition on his Practising Certificate.

(v) that he withdrew monies from a client account other than as permitted by Rule 22(3) (b) of the Solicitors' Accounts Rules 1998.

(vi) that he acted where his own interests conflicted with the interests of a client.

(vii) that he allowed his clients' bank account to be used for the receipt and onward transmission of funds in circumstances where he was not acting for or advising the clients in relation to the underlying transactions.

(viii) that he failed to exercise proper supervision over a member of his unadmitted staff.

(ix) that he made representations to clients knowing them to be untrue or not caring whether they were true or false.

The applications were heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 31st January 2002 when the Mostazafan and Janbazan Foundation was represented by Mr Gordon-Saker of Counsel, the OSS was represented by Mr Roger Field Solicitor and Consultant to Messrs Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands, DY1 1EY and the Respondent did not appear and was not represented.

Prior to the substantive hearing the Tribunal heard submissions on behalf of both Applicants as to service. The Tribunal was satisfied as to due service upon the Respondent.

The Tribunal on 31st January 2002 consolidated the applications, hearing submissions on behalf of both Applicants before making decisions as to liability in either matter.

At the conclusion of the hearing the Tribunal ordered that the Respondent Leon Braunstein of Lansdowne Row, Berkeley Square, London, W1J (formerly of Berkeley Square, Mayfair, London W1X and Park View Road, Surrey) solicitor be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to both applications and enquiries fixed in the first matter in the sum of £4,975.55p and fixed in the second matter in the sum of £7,164.00 for legal costs together with the sum of £9,199.00 being the costs of the Investigation Accountant.

The facts of the applications are set out in paragraphs 1 to 78 hereunder: -

1. The Respondent born in 1951 was admitted a solicitor in 1978 and his name remained on the Roll of Solicitors.

The Application on behalf of The Mostazafan and Janbazan Foundation

2. The Applicant was a charitable organisation based in Iran. At all material times it had an office in London.

3. In about September 1991 the Respondent sought a retainer from the Applicant to act as its solicitor. A copy of the Respondent's letter to the Applicant's office in Tehran dated 4th September 1991 was before the Tribunal.

4. In the summer of 1991 representatives of Rover Group Limited ("Rover") visited Iran for the purpose of negotiations with the Applicant. The hotel expenses incurred by the Rover representatives were paid by the Applicant.

5. By a letter dated 3rd September 1991 the Respondent wrote to Rover in the following terms:

   "You mentioned to me this morning that certain hotel expenses had been incurred by the Rover party during their recent visit to Iran which you would like to repay. Please note that these monies can be paid to us and if our clients wish to accept payment therefor so be it otherwise we can discuss with you the return of the same."

   A copy of the letter was before the Tribunal.

6. On or about 10th October 1991 Rover paid to the Respondent the sum of US$10,781.50 in respect of the said expenses. A copy of a letter from Rover Group dated 17th December 1991, evidencing such payment, was before the Tribunal

7. The Respondent having purportedly accepted such sum on behalf of the Applicant did not account therefor to the Applicant.

8. On 8th October 1992 the Respondent issued a writ from the Central Office of the High Court in which he claimed against the Applicant the sum of £205,000 in respect of fees for work allegedly carried out by the Respondent as the Applicant's solicitor. The writ, in action number 1992 B No. 5628 ("the QB action"), was addressed to the Applicant at its registered office in Tehran.

9. On 22nd December 1992 the Respondent entered judgement against the Applicant in the QB action, in default of notice of intention to defend, in the sum of £205,000 together with interest. On 16th April 1993 the Respondent obtained a garnishee order nisi in respect of the judgment debt. Copies of the writ and the default judgment were before the Tribunal.

10. The default judgment was subsequently set aside and the QB action had not yet been concluded.

11. Despite the matters set out above the Respondent continued to seek instructions from the London Office of the Applicant which, as with the Applicant's office in Tehran, was unaware of the issue of the writ or the entry of the default judgement. Between October 1992 and October 1993 the Respondent sought and obtained instructions from the Applicant in relation to (a) the obtaining of work permits for employees of the Applicant (b) the registration of the Applicant as a charity and (c) the proposed purchase of land. Copies of documents relating to such work and a copy of the Respondent's interim bill number 2593 dated 30th April 1993 were before the Tribunal. The Applicant was unaware of the issue of the writ or the entry of the default judgment or the making of the garnishee order nisi until October 1993 when it was given notice of the garnishee order nisi.

12. In about mid-March 1993 the Respondent asked the Applicant's London Office for confirmation from the Applicant's bankers that there were substantial funds in the Applicant's bank account. This request was made purportedly in relation to the work being carried out by the Respondent to obtain the registration of the Applicant as a charity. Such details were provided by the Applicant under cover of a letter dated 29th March 1993 a copy of which was before the Tribunal.

13. On 30th March 1993, the date upon which such letter was received by the Respondent, the Respondent applied for a garnishee order nisi in respect of such account. A copy of the affidavit sworn in support of the application dated 30th March 1993 was before the Tribunal.

14. A garnishee order nisi was made on 16th April 1993. A copy of the order was not served upon the Applicant until 27th October 1993, when it was served under cover of a letter of that date. The Applicant was unaware of (a) the proceedings (b) the default judgment and (c) the garnishee order nisi before October 1993. The hearing of the garnishee order absolute was adjourned. Copies of the garnishee order nisi and the said letter were before the Tribunal.

15. On 28th September 1993 the Respondent had a meeting with officials of the Applicant's London Office in relation to the registration of the Applicant as a charity. In the course of that meeting the Respondent asked for a recent bank statement. He was shown a statement for the month of August 1993. The Respondent told the Applicant's officials that there were insufficient funds in the account for the purpose

of registering the Applicant as a charity. He advised the Applicant that a substantial amount should be transferred into that account. He was told by Mr E, an employee of the Applicant, that a substantial sum was to be transferred into the account either that day or the next but that monies would also be transferred out. The Respondent asked the Applicant to transfer further monies into the account and that he be informed of the transfer. Pursuant to that advice a further sum of £120,000 was transferred into the account on 22nd October 1993. Copies of the Ledger History Report relating to the account for the period 30th June 1993 to 31st December 1993 were before the Tribunal. On the same day, 22nd October 1993, the hearing of the garnishee order absolute was restored by the Respondent and fixed for 5th November 1993. On 25th October 1993 the bank was given notice of the garnishee order absolute.

The Application by Roger Field on behalf of the OSS

16. At times material to this application the Respondent practised on his own account under the style of Braunstein & Co. at successive addresses of Garden Hall House,Wellesley Road, Sutton, SM2 5BW, Riverbank House, 4th Floor, 1 Putney Bridge Approach, Fulham, SW6 3YD, 119-120 Roebuck House, Palace Street, Victoria, SW1E 5BE and 6 Leeward House, Plantation Wharf, London, SW11 3TX.

17. On or about 29th January 1998 the Respondent received instructions to act in connection with the detention by immigration authorities of Mr JRK and in subsequent related judicial review proceedings. JRK was a director of C Ltd and he controlled C Ltd. The Respondent received papers relating to C Ltd and also carried out some work for C Ltd in addition to the work which he performed for JRK. He received costs on account from C Ltd which he paid into client account.

18. On 16th February 1998 JRK discharged the Respondent as his solicitor in relation to all of his affairs and on 17th February 1998 Mr P F Gerber ("PFG"), a consultant to the firm of Saunders Bearman, wrote to the Respondent to the effect that he had been instructed to act for JRK. Then he requested the release of files held by the Respondent relating to JRK and his various business interests and the return of the balance of monies held on account after deduction of reasonable costs. On 18th February 1998 the Respondent claimed a lien over all the documents in his possession and stated that this would be exercised until formal accounting took place.

19. By 10th March 1998 accounting had not taken place and the papers had not been handed over. PFG protested by letter and threatened court proceedings. The Respondent viewed this as improper for reasons which he set out in his response.

20. At this time there was a simmering dispute between JRK and a Mr SF and others concerning C Ltd. PFG wrote to SF on 16th March 1998. On 17th March 1998 the Respondent wrote to PFG having been instructed, he claimed, by SF and C Ltd. PFG replied on the same date and questioned the professional propriety of the Respondent in accepting instructions to pursue either JRK or C Ltd saying that the Respondent might be compromised as a consequence of information in his possession which might be used to the detriment of either JRK or C Ltd.

21. The Respondent rejected PFG's view. He did not believe that any information had been provided by JRK which would compromise his professional position. He had received instructions from the new beneficial owners of the shares of C Ltd to act on

C Ltd's behalf. He said that he had sought guidance from the Law Society and had been given comfort.

22. On 13th March 1998 the Respondent wrote a letter to a company (EFS Ltd of Jersey) as follows:-

"We would wish to put you on notice, that having made further enquiries into the affairs of [C Ltd] we have discovered possible criminal wrongdoing of a very substantial nature and we have, accordingly, suggested to our clients that these matters should be reported to the appropriate authorities. We would put you on notice that it would not be appropriate for you to discuss any of these matters with Mr JRK or Miss P or anyone acting on their behalf. We do, however, consider it quite likely that the appropriate authorities will be in contact with you shortly.

As a matter of practical expediency, we would suggest that any correspondence addressed to [C Ltd] care of yourselves be forwarded to us. We would anticipate liasing closely with the authorities to assist them with their enquiries into the affairs of [C Ltd]."

23. On 15th March 1998 the Respondent wrote to a company (CCC Ltd of Japan) as follows:-

"We act for clients who have instructed us that a fraudulent act may have been perpetrated against your company. We are instructed that the fraudulent act relates to a transfer of approximately US$30,000,000 (Thirty Million United States Dollars) to three separate companies in the names of O,G and [C Ltd].

Our clients believe that these matters are of a sufficiently serious matter so as to be brought to your immediate attention and accordingly, we would be obliged if you would let us have the name and contact details of the person having conduct of this matter so that we may write direct to them.

In like manner, we would also be obliged if you would provide us with the name and contact details of the appropriate Police authorities and Attorneys who will be dealing with this matter. These matters have come to light as a result of our clients being asked to take over the management and operation of a company called [C Ltd]. It would appear that the fraud was perpetrated by persons who were previously in control of this company.

Our clients are considering the possibility of referring this matter to the authorities in this country and we have been instructed to assist them in ascertaining the facts."

24. On 24th March 1998 PFG wrote by way of complaint to the OSS and enclosed relevant copy correspondence.

25. The OSS wrote to the Respondent on 2nd April 1998 for his explanation of the two matters raised by PFG. He replied on 3rd April 1998, denied any impropriety and enclosed a copy of an earlier letter he had written to the OSS on 20th March 1998.

26. On 22nd April 1998 the Respondent wrote to the OSS by way of complaint against PFG.

27. After the case note was sent to the parties the Respondent emphasised his position in his letter to the OSS of 1st June 1998. On 11th June he sent to the OSS a copy of his bill to C Ltd and copy Board Minutes of C Ltd and on the following day he made further representations.

28. On 18th June 1998 PFG wrote to the OSS and enclosed copy papers relating to a Chancery Division action brought by Mr TT against a number of defendants including C Ltd and JRK. The Respondent acted for TT.

29. The OSS wrote to the Respondent on 1st July 1998 and asked him to address specific points relating to his instructions from JRK, C Ltd and TT. He responded by letter of 8th July and enclosed a copy transcript of his earlier referral of his professional position to the Law Society.

30. PFG wrote to the OSS on 24th August 1998 and the Respondent wrote to the OSS on 1st September 1998 and 24th September 1998.

31. The Applicant wrote to the Respondent and to PFG on 8th February 1999 about the matters which had been raised and they replied, respectively, on 26th February and 3rd March 1999.

32. The first instance Committee resolved to refer the Respondent's conduct to the Solicitors Disciplinary Tribunal. He appealed. PFG provided his observations by letter of 29th November 2000.

33. The Appeals Committee dismissed the appeal at their meeting on 20th December 2000.

34. Copies of all the relevant documents were before the Tribunal.

35. Upon due notice the Monitoring and Investigation Unit of the OSS carried out an inspection of the books of account of Braunstein & Co. A Report was subsequently prepared dated 16th March 2000 and which dealt with the books of account and other matters. A copy of the Report was before the Tribunal.

36. The Investigation Accountant, Mr G, noted the following matters in his Report.

Books of Account

37. At the initial interview on 1st July 1999 the Respondent did not produce any books of account and he explained to Mr G that a firm of accountants, RO, were responsible for the day to day maintenance of the client and office accounting records and that those records were currently with them. He added that he would normally go through the client account reconciliations with the accountants.

38. Mr G spoke to the accountants by telephone during the interview and was told that no reconciliation of the client bank accounts had been produced since March 1999. Mr G asked the Respondent for his comment about this situation and he replied that he had been pressing RO to get the client account up to date and that he was not aware that reconciliations had not been done since March 1999. The Respondent went on to

explain that when he had entered into the Individual Voluntary Arrangement in March 1999 part of this required Henderson & Co. to take over the operation of his office bank account and the responsibility for the maintenance of the books of account generally was passed to RO. Mr G asked the Respondent if this caused any difficulties with meeting payments as they became due and the Respondent said that it had worked satisfactorily so far and that if there was any delay in his supervisor making payments it just meant that those payments would be delayed.

39. Mr G attended the offices of RO later on that day and was informed by them that they had been presented with client books of account written up and reconciled to the end of March 1999. They had also been supplied with information relating to client account transactions after March 1999 but they said that this latter information had only been provided to them by the Respondent at the end of June 1999 and was incomplete.

40. Mr G postponed the inspection to enable the Respondent to have his books of account brought up to date and when the inspection was recommenced on 28th September 1999 it was found that the books were only written up to 30th June 1999 and that, with the exception of that for 30th June 1999, reconciliations were still absent after 31st March 1999.

41. On 11th October 1999 Mr G asked the Respondent why the client books of account were still not written up to date, (at this point the client books of account had not been written up beyond 30th June 1999). The Respondent said that the changeover to RO had created a hiatus, and that "My instructions to them were that the accounts are recorded on a weekly basis". Mr G pointed out that the Respondent had not received a client bank reconciliation from his accountants since March 1999 to which he replied "No I haven't". Mr G asked the Respondent if he considered that he was exercising proper control over clients' money to which the Respondent replied "I think at the moment we are because we know what sums we have for clients. I'm not happy with the state of the accounts".

42. The books of account were not, however, in compliance with the Solicitors' Accounts Rules as they contained numerous withdrawals to cash from client bank account, for which no confirmatory evidence was available.

43. In view of the facts mentioned above, together with the lack of evidence provided by the Respondent it was not possible for the Investigation Accountant to express an opinion as to whether funds held on client bank accounts were sufficient to cover the Respondent's liabilities to his clients.

Transfer from Client to Office Bank Account - £25,000.00

44. The Respondent acted for a company PCW Ltd, one of a group of companies owned by SF from whom the Respondent took his instructions.

45. The relevant account in the clients' ledger showed that the following amounts had been transferred from client to office bank account thus:-

Date (1999)	Amount
16th June	£5,000.00

28th June	10,000.00
29th June	25,000.00
	£40,000.00

46. A review of the client file revealed only two invoices in respect of the firm's costs dated 11th June 1999 and 22nd June 1999 for £5,000 and £10,000 respectively. Mr G asked the Respondent why the transfer of £25,000 had been made to the office account operated by his Supervisor under the IVA and the Respondent told Mr G "That's all covered by bills." The Respondent agreed to provide evidence of the issue of a bill or bills of cost in respect of this transfer. At the date of issue of the report, however, no such evidence had been provided.

Cash Withdrawals from Client Bank Account - £16,374.39

47. It was noted that the following amounts, drawn on client bank account, had been withdrawn in cash –

Date of Cheque (1999)		Ledger Narrative	Amount
(i)	4th May	Cash re Bill	£500.00
(ii)	6th May	Cash re Bill	1,000.00
(iii)	11th May	PCW	2,500.00
(iv)	19th May	Re C	4,374.39
(v)	14th June	P	3,000.00
(vi)	15th June	PCW	5,000.00
			£16,374.39

48. Mr G asked the Respondent why these withdrawals had been made in the form of cash, and in respect of items (i) and (ii) he said that "They were made against fees and disbursements that were due to us on behalf of this and other matters in which we acted for him".

49. The Respondent confirmed that he had authorised these cash payments and he agreed to provide evidence that bills had been delivered to SF in each case. As at the date of issue of the report, however, no such evidence had been provided.

50. The Respondent told Mr G that, in respect of items (v) and (vi), he thought the payments were in respect of his costs and that all of the payments had been made with the client's authority. The Respondent again agreed to supply evidence to substantiate all of the payments but no such evidence had been provided at the date of issue of the report.

Payments of the Respondent's Monthly Hire Purchase Commitments - £3,794.24

51. On 7th May 1999 and 24th June 1999 client bank account was charged with two payments of £1,897.12 each. The payments were allocated to the relevant accounts in the client ledger for client matters P Trust and C/PCW Ltd., each of which was a matter conducted for the same client, SF.

52. The Respondent told Mr G that he had been compelled, because of his IVA, to sell certain of his assets including a Range Rover and a Bentley. The Respondent explained that the payments of £1,897.12 were each the equivalent of two months

Hire-Purchase repayments on the Range Rover vehicle and that these payments had previously been met by direct debits from his office bank account. He stated that the Range Rover had been purchased from him by SF and that the purchase price included the outstanding finance payments. It was not however possible for Mr G to see how the Respondent had dealt with the £16,000 sale proceeds.

53. The Respondent accepted that the outstanding finance payments were his personal liability but he said that by the time he came to sell the vehicle had had paid more than two-thirds of the amount due under the agreement so the property passed to him, and he agreed that he had not informed the finance company as "…. there was no need to as long as we were paying. We were juggling financially. What we are not doing is stealing clients' money".

Loan from Client – L – Sale of Aircraft - £9,133.83

54. The Respondent acted for client L, a company registered in the USA, in the sale of an aircraft. Between 4th September 1998 and 29th September 1998 the relevant account in the client ledger was allocated the following transactions –

Date(Sept 1998)	Narrative	Debit	Credit	Balance
4th	Monies from L		£9,133.83	£9,133.83 cr
5th	Monies paid on behalf L	£4,444.00		4,689.83 cr
16th	Client to office transfer	3,232.99		1,456.84 cr
22nd	Client to office transfer	1,456.84		NIL
29th	Office to client transfer		9,133.83	9,133.83 cr
29th	JB	9,055.70		78.13 cr

55. The file and papers supporting these transactions were requested during the inspection but other than a file marked 'File 1' which contained correspondence and papers pre-dating these transactions, none were produced. The Respondent told Mr G that he believed the original receipt of client's funds was the deposit on the sale of an aircraft and that the client agreed to loan this money to him for a short period without interest. The Respondent agreed that he had instigated each of the payments and transfers. The Respondent told Mr G that there had been no written loan agreement. Mr G asked the Respondent if he had advised the client to seek independent advice before making the loan to which the Respondent said "absolutely – their daughter was a solicitor – it didn't really matter. I know it was given and the person giving the advice had suggested they make the loan in the first place".

56. The Respondent agreed to get the client to confirm the details of the loan and authority for it and to provide these to the OSS. No such evidence had been received at the date of issue of the report.

Foreign Currency and Other Transactions

57. The Respondent had allowed client bank account to be used for the receipt and onward transmission of funds in circumstances where he was not acting for or advising a client in respect of the underlying transactions.

58. The Respondent acted for Mr and Mrs E in their defence against prosecution under copyright legislation. The Respondent told Mr G that the clients owned a company called L Enterprises and that the firm's costs in the matter were being met, in part, by contributions from a number of friends and associates of the clients.

59. Between 6th January 1999 and 26th March 1999 amounts of US$326,069.27 and £10,083.79 were credited to the firm's clients' US Dollar and Sterling bank accounts and these funds were received from L Enterprises. In the same period a total of US$267,066.37 and £10,083.79 was charged to the firm's client bank accounts for onward transmission to the bank accounts of a third party in the USA.

60. Mr G asked the Respondent to explain why such transactions appeared on the ledger of a criminal litigation matter. The Respondent told Mr G that they were "Payments for goods supplied. I can't help you any more than that I'm not privy to my client's business transactions" and that Mr and Mrs E had instructed him regarding the transactions.

61. The firm (the Respondent and Ms M, a trainee solicitor) acted for a client, MD, in the purchase of a property. On 30th October 1998 the relevant account in the clients' ledger was credited with two receipts of £14,994.00 and £29,994.00 totalling £44,988.00 described on the ledger as having been received from T and RS respectively. Thereafter the following payments were debited to the ledger thus:

Date	Amount	Ledger Narrative
30/10/98	£3,500.00	Cash to Client
2/11/98	1,000.00	Cash to AD
3/11/98	2,000.00	Cash to AD
11/11/98	1,000.00	Cash to AD
	£7,500.00	Cash to AD

62. A review of the client file provided no indication as to how the two receipts and the subsequent cash withdrawals related to the client's purchase of the property. Mr G asked the Respondent what these transactions related to and the Respondent told Mr G "I think she sold some shares and he (S) sent her that money. It's not something where we've had anything to do with it." Mr G asked the Respondent why he would allow the client to conduct such transactions through his clients' account to which the Respondent replied "As solicitors we often receive money on behalf of clients where we've not acted ….. I had no prior knowledge of the transaction and had not advised or acted in relation to this."

Failure to Inform Mortgagee Client of Relevant Information

63. The Respondent's firm acted for LW in the purchase of a property. The transaction was conducted by Miss M, a trainee solicitor. LW purchased the property at a purchase price of £92,000 with the assistance of an advance of £87,399.20 from Woolwich Plc.

64. An unsigned and undated acceptance of offer from the Woolwich Plc which was on the client matter file stated that the purchase price was £92,000.

65. The conveyancing instructions issued by the Woolwich Plc were on the client file and contained the following:
"Further instructions. The solicitor is requested to report to the Woolwich as soon as possible in writing and await further instructions before completing the mortgage in the following circumstances:

    1. if he becomes aware of information which he would reasonably expect the Woolwich to consider important in deciding whether, and on what terms, the Woolwich should make the mortgage advance to the borrower;

    4. the actual purchase price is less than that stated on the mortgage application or any allowance has been, or will be, made on completion."

66. The Requisition and Certificate of Title addressed to 'Woolwich Building Society' under cover of a letter dated 18th August 1998 included the following:-

    "6. The purchase price of the property shown below is to the best of my/our knowledge net of any concessions offered by the vendor and is the price stated in the transfer/disposition to the borrower".

67. On 27th August 1999 £90,181.20 was paid to the solicitors acting for the vendor and the ledger then recorded, inter alia, a payment on 23rd September 1998 of £2,257.89 to LW.

68. Mr G asked the Respondent if he could explain the payment of £2,257.89 to the purchaser and he said "I had no knowledge of that until you just pointed it out to me. I'll have to see if I can make contact with her (Miss M) and ask her for an explanation".

69. The Respondent told Mr G that the signature on the Report on Title, under the section of the document headed "solicitor's signature" was the writing of Miss M. The Report on Title stated that the "purchase price to be paid by the borrower" was £92,000.00

70. Miss M wrote to the OSS on 22nd February 2000 enclosing a copy of her response to the Respondent regarding the above matter. Her letter stated as follows:-

    "I refer to the above matter and to your letter dated 17th February 2000, received by me on 22nd February 2000. For your information I recall the transaction in question and further recall that an allowance was made upon completion in the sum of £2,000.00 in respect of major works to the external buildings. I seem to recall that this matter was brought to the attention of the Woolwich Building Society by myself via the telephone. I also recall making a telephone attendance note to this effect. Perhaps you could check the file. In view of the fact that some time has passed since this transaction completed, my memory of the same is somewhat vague. However, I believe that the above explanation is accurate. I hope that this information assists the Office for the Supervision of Solicitors in their investigations.

> In your letter you refer to me as having "care and conduct" of the matter. You are aware that I was a trainee solicitor at the time and was working under your supervision at all times."

70. By letter dated 9th June 2000 SF wrote to the OSS as follows:-

"I confirm that I have been provided with a full accounting by Braunstein & Co. for monies passing though their client account whilst acting as my solicitors and I am fully satisfied with the same. I have been passed a copy of a letter from you addressed to Mr Braunstein dated 3rd May. Quite frankly, I find the contents of the same to be astonishing and to my lay mind, quite petty. Mr Braunstein and his practice has carried out excellent work on my behalf about which I make no complaint.

I am aware that Mr Braunstein has worked under considerable pressure both financially and legally which has largely derived from the way the current Legal Aid and Court systems function.

At a time when I made a loan to Mr Braunstein to facilitate an investment transaction I was independently legally advised as to the position. In any event, I am a sophisticated and experienced businessman and am well able to formulate my own decisions in these matters.

When Mr Braunstein entered into his IVA I was informed of the position and was made aware that it was a condition of the IVA that motor vehicles owned by Mr Braunstein should be sold. Because I run a very large organisation with numerous businesses based worldwide, in order to assist Mr Braunstein, I agreed to purchase these vehicles from his through my companies and, accordingly did so.

It is disgusting to me to note that the Law Society and associated agencies should seek to attack Mr Braunstein at a time when they should, in fact, be providing him with their full support. I say this because I know Mr Braunstein has worked very hard and provided a major contribution to the legal profession. I am also aware that he is a past president of the West London Law Society.

Quite frankly, I find your report to be scandalous as to its contents which appear to concentrate on petty trivia and I would hope that you do not take this matter further."

71. On 3rd May 2000 the OSS wrote to the Respondent requesting his formal response to the contents of the report. He acknowledged this letter on 19th May 2000 and indicated that he was referring it to his accountant. In the first part of this letter he wrote:-

> "I also refer to my telephone conversation with DB [at the OSS] recently in which I informed her that I would be ceasing to practise on my own account……"

72. On 10th June 2000 the OSS wrote to the Respondent about his practising position and he responded by letter of 20th June 2000. He claimed that his client account had not been overdrawn but had a surplus of funds. This had been accepted by the Applicant.

73. On 8th September 2000 the OSS wrote to the Respondent and posed a number of specific questions relating to Braunstein & Co. He did not respond to this letter.

74. The Respondent wrote to the OSS on 24th November 2000. He enclosed a copy of an earlier letter he had written on 12th June 2000 the original of which had not been received. That letter addressed the OSS letter of 3rd May 2000 and enclosed the above letters from SF, and Miss M and other copy correspondence relating to his practising position. The OSS replied by letter of 16th January 2001.

75. The first instance Committee resolved to refer the Respondent's conduct to the Solicitors Disciplinary Tribunal.

76. On 23rd February 2000 the Respondent was granted a 1999/2000 Practising Certificate subject to a condition that within one month of the letter notifying him of that decision he might act as a solicitor only in approved employment. However, thereafter he continued to hold client monies in his firm of Braunstein & Co. and communicated with the OSS on 20th June 2000 under cover of a fax header sheet bearing the name "Braunstein & Co, Solicitors". His telephone conversation with DB on 11th April 2000 was consistent with his continuing to practise on his own account at that date.

77. The Respondent acted for AE, HK and JC. On 11th February 2000 Mr Ronald Walker QC (sitting as a Judge of the High Court) gave judgment in two actions.

(a) The Respondent –v – AE 1999 B 627
(b) AE, HK and JC –v- the Respondent 1997 E 331.

Adverse findings were made against the Respondent in both actions. At page 246 letter A of the judgement the Learned Judge said:

"I am conscious that I have made a number of findings which indicate a total, or almost total rejection of the evidence of a Solicitor of the Supreme Court, and of dishonest conduct on his part."

78. The Respondent sought indemnity from the Solicitors Indemnity Fund ("SIF") in respect of both matters. SIF declined to grant indemnity for the reasons set out in their letters to the Respondent of 8th November 2000 (AE) and 12th October 2000 (AE, HC and JC).

The Submissions on behalf of the Mostazafan and Janbazan Foundation

79. The proceedings in the High Court commenced by the Respondent in October 1992 against the Applicant had still not been concluded. The Applicant understood that the Respondent had been declared bankrupt and the Trustee in Bankruptcy had been appointed. The Trustee had not adopted the proceedings so they remained in limbo.

80. The issues in those proceedings, in which the Respondent had sued the Applicant for £205,000, were whether the Applicant had retained the Respondent in relation to

Rover, if so whether or not he had done the work and if so whether or not his fees were reasonable.

81. The complaints which led to the application before the Tribunal would not be determined in the High Court proceedings. The conflict of interest and garnishee issues arose from those proceedings but would not be determined in them.

82. The Applicant's evidence was contained in the bundle of documents and in the Affidavit of Mr E.

83. In relation to the money from Rover (the first allegation) the Applicant submitted that the facts called for a reply from the Respondent. No payment had been made by the Respondent to the Applicant.

84. In relation to the second allegation the Applicant's evidence was contained in the affidavit of Mr E.

85. Although the Respondent had issued a writ against the Applicant in October 1992 he had then continued to act for the Applicant for a year while the Applicant had been unaware of the proceedings.

86. In relation to the third allegation the sequence of events was set out in the affidavit of Mr E as follows:-

87. "Between October 1991 and October 1993 I instructed the Respondent to act on the Applicant's behalf in relation to three matters: (1) the purchase of a nursing home (2) the registration of the Applicant as a charity and (3) in relation to immigration and work permits for the Applicant's employees. There is now produced and shown to me marked "JE1" a schedule of letters sent to the Applicant by the Respondent in relation to those three matters. In addition to that correspondence a number of meetings took place over this period between the Respondent and employees of the London Office, including myself. Copies of documents relating to this work and a copy of the Respondent's interim bill dated 30th April 1993 are appended to the statement of facts.

88. In about the middle of March 1993 the Respondent asked us for a letter from our bankers to confirm that we had substantial funds in our account. The Respondent apparently needed this confirmation in relation to the charity registration. I provided the Respondent with that information under cover of a letter dated 29th March 1993, a copy of which is also appended to the statement of facts.

89. On 28th September 1993 the Respondent called at the London Office for a meeting and to have lunch with me and members of my staff. In the course of that meeting he asked me for a recent bank statement. I showed him the latest statement that I had which was for August, and I told him that we should have the statement for September within a few days.

90. The Respondent looked at the August statement and told me that the amount in the account would be insufficient for the purpose of registering the Applicant as a charity.

He told me that I should arrange the transfer of a substantial sum into the account and let him have a copy of the bank statement which would show that.

91. I told the Respondent that a substantial sum was being transferred into the account within the next day or so but that monies would also be paid out.. The Respondent asked me to transfer further monies into the account and to inform him of the transfer.

92. As will be seen from the copy ledger history report now produced and shown to me marked "JE2", £120,000 was transferred into the account on 28th September 1993 and another £120,000 was transferred on 22nd October 1993. The Respondent was informed of this.

93. On 27th October 1993 I was informed by our bank that the Respondent had obtained an Order freezing the Applicant's account. The Order had been served on the bank under cover of a letter dated 25th October 1993, a copy of which is now produced and shown to me marked "JE3".

94. I was not aware before 27th October 1993 that the Respondent had issued proceedings against the Applicant. In those proceedings the Respondent claims fees of £205,000 for work allegedly done in 1991 for the Tehran office in relation to negotiating an agreement with the Rover group. The Applicant denies that it retained the Respondent for such work. Those proceedings still continue.

95. I am now aware:-

(1) That the writ in the action commenced by the Respondent against the Applicant was issued on 8th October 1992.

(2) That the Respondent obtained Judgment in default of notice of intention to defend on 22nd December 1992.

(3) That the writ was addressed to the Applicant's head office in Tehran.

(4) That there is a dispute as to whether the Respondent served the writ. The Applicant's case on its application to set aside the default Judgment was (and is) that the writ was not served and that nobody on behalf of the Applicant was aware of the proceedings until 27th October 1993.

(5) That the affidavit sworn in support of the Respondent's application for a garnishee order nisi was sworn on 30th March 1993 – the day after my letter to the Respondent enclosing details of the Applicant's funds in this country.

(6) That the garnishee order nisi was made on 16th April 1993.

(7) That the hearing of the garnishee order absolute was repeatedly adjourned.

(8) That on 22nd October 1993, the day that the second sum of £120,000 was transferred, the hearing of the garnishee order absolute was listed for 5th November 1993.

(9) That the bank was not served with the garnishee order nisi until 25th October 1993.

96. Between October 1992 and October 1993 I continued to instruct the Respondent and the Respondent continued to accept such instructions. I was completely unaware that the Respondent had issued proceedings against the Applicant in October 1992. He kept those proceedings a secret – both from me and from the Applicant.

97. In March 1993, 6 months after the issue of the proceedings, I was tricked into providing the Respondent with details of the Applicant's financial standing. I now know that he wanted this information, not in relation to the registration of the Applicant as a charity, but so that he had the information he needed to apply for a garnishee order.

98. In September and October 1993 I was tricked into providing the Respondent with details of the amount in our bank account and tricked in transferring money into that account. It was only when the money had been transferred and the Respondent had been informed of that, that he notified the bank of the garnishee order nisi (obtained 6 months earlier) and he had the hearing of the garnishee order absolute listed. He waited until there was more money in the account and he procured the transfer of that money by a trick.

99. While I appreciate that there is a continuing action between the Applicant and the Respondent (despite the fact it has been going on now for 8 years) the matters of which the Applicant complains will not be determined in that action and are entirely incidental to it."

100. By two tricks the Respondent purportedly acting as the Applicant's solicitor had obtained details of the Respondent's bank account and then obtained a garnishee order nisi and had persuaded the Applicant to place money into that account and after the second transfer of funds had obtained a garnishee order absolute.

101. There had been some correspondence from third parties but the Applicant had heard nothing directly from the Respondent in relation to the allegations.

The Submissions of Mr Field on behalf of the OSS

102. The Applicant had received no reply to his Notice to Admit documents and submitted that the documents were therefore not challenged.

103. The first two allegations by the OSS against the Respondent arose from a complaint by another solicitor, one allegation was a free standing matter relating to the Respondent's Practising Certificate and the remaining allegations arose from the Report of the Investigation Accountant.

104. The first two allegations were serious.

105. The Respondent had delayed releasing files causing significant inconvenience to his client and his client's new solicitor who protested strongly.

106. The correspondence at that period showed on its face that the Respondent did not contradict that he had acted for JRK. He did not say he had received his instructions from C Ltd.

107. In the submission of the Applicant, the Respondent's client in the immigration issue had been JRK not C Ltd.

108. When the first retainer ended JRK had written to the Respondent in a way which was wholly consistent with his having instructed the Respondent. PFG had written likewise and the Respondent replied likewise in correspondence which left no doubt that JRK was the client.

109. In relation to the second allegation it was submitted that any information required by a solicitor acting for a client was confidential. It remained confidential when the client became a former client. At the same time a solicitor had a duty to a present client to use all available information.

110. In the submission of the Applicant, JRK was a relevant client but even if this was not accepted it was submitted that JRK was a quasi or informal client to whom the same duty was owed as he was a director of C Ltd and owned it. It was wholly artificial for the Respondent to separate JRK from the company.

111. The transcript of the Respondent's conversation with the Ethics Division of the Law Society showed that the Respondent had put the best possible complexion on his position in order to achieve comfort. He had said that he did not hold any confidential information.

112. At the time the Respondent was instructed by SF and others however he held immigration papers in respect of JRK. These were confidential and must have included financial information which must have been relevant to his instructions from someone acting against his former client.

113. The correspondence to EFS and C Ltd showed the extent of the information which the Respondent held regarding JRK. This must have been relevant to SF's instructions.

114. The Respondent's letter of 11th June 1998 to the OSS and the enclosed bill and copy board minutes of C Ltd showed the extent of his knowledge. These documents were clearly confidential for the purposes of the second retainer. The information the Respondent held must have been relevant to the dispute about the company.

115. PFG had raised with the OSS another allegation regarding conflict in that, surprisingly, the Respondent acted for TT against JRK and C Ltd for whom he had previously acted.

116. The transcript of the Judgement in an application in the matter of TT included the following comments made by Mr Justice Rimer:

> " I do find it surprising that Mr Braunstein is acting for Mr T. in the heaviest form of litigation against a former client of his. I though that was something which was not acceptable amongst the ethics of solicitors."

Mr J on behalf of Mr T said:-

"My Lord, Mr Braunstein shared your concern and has been to see the Law Society and their professional ethics department in order to discuss that."

Mr Justice Rimer continued:-

"Well, I notice he said that. It was not entirely clear to me that they were aware that he was going to be acting in proceedings of this sort against his former client, but it does seem to be astonishing, quite frankly, that he should be doing that because he must have obtained privileged information about his client which he is now disclosing to others……

I imagine it seems to be more than probable that Mr K is going to have a good deal to say about it when these proceedings are served on him, if they ever are. I should have thought most defendants would be furious to find that their former solicitor was then suddenly acting for the other side against them and revealing privileged information and other material…….

Even his piece of evidence about leading Counsel's opinion on the validity of the Ecuadorian passport? It does not come from the files of C Ltd. That comes from his own recollection and it is prima facie disclosure of what I would have thought was privileged communication."

117. The Respondent had held information crucial to his earlier retainer which was confidential and relevant.

118. In relation to the breaches of Accounts Rules the Respondent's books were in an obvious mess. The Respondent's comment that he thought at the moment he was exercising proper control over clients' money was optimistic. If only one reconciliation had been done in the relevant period it was difficult to see how the Respondent could know what the state of the accounts was.

119. The Investigation Accountant had not been able to express an opinion as to whether there were sufficient funds on client bank accounts to cover liabilities to clients. This was a fundamental question that the Investigation Accountants had to address when they went into practices on behalf of the profession and the public.

120. In relation to the £25,000 transfer from client to office bank accounts only two invoices were revealed and they were not referable to the three payments. Save from the one letter from SF there had been no evidence provided since the investigation and no copy bills.

121. Likewise in relation to the cash withdrawals there had been no evidence of bills delivered other than the letter from SF.

122. The monthly hire purchase commitments would have been personal commitments of the Respondent which raised the question of why they had been paid by a client.

123. The letter from SF purported to say that SF was wholly satisfied with the way the Respondent had dealt with his matters. No bills had however been produced to justify

the transfers or movement of funds. This was a retrospective approval by the client which did not comply with the Rules.

124. In relation to the sale of the aircraft the Respondent had borrowed £9,133.83 from the client L without interest or security. Evidence from the client concerning authority for the loan had never been provided.

125. In a letter dated 12th June 2000 to the OSS the Respondent had written

"I would confirm that this loan was effected through Mrs H, the mother of RH, an assistant solicitor employed in my practice. Ms H advised her mother in relation to this transaction."

126. The Tribunal was asked to consider what sort of independent advice that was. In the submission of the Applicant it was wholly insufficient.

127. In relation to allegation (vii) where a solicitor merely provided a service to a client as opposed to acting it was more difficult to police the movement of funds. This was the purpose of the money laundering regulations. The Applicant did not make allegations of money laundering against the Respondent but alleged that he had failed to keep the proper records needed to comply with the regulations.

128. In relation to allegation (viii) the matter had been an orthodox purchase but the Respondent had shown a lack of supervision of his trainee solicitor and a failure to emphasise to her the need to comply scrupulously with the requirements of the lender.

129. A letter dated 10th June 2000 from DB at the OSS to the Respondent made clear that in a telephone conversation between them on 11th April the Respondent had said that he would be ceasing to practise i.e. he still was in practice despite the fact that a condition on his Practising Certificate that he make an application to the OSS before commencing employment had taken effect in March 2000.

130. Moreover the Respondent had joined ICC as an in-house solicitor without the prior written approval of the Law Society. Approval had been given eventually but not he had commenced employment.

131. In relation to allegation (ix) the Learned Judge in the two actions in question had rejected the evidence given on oath by the Respondent.

132. The SIF had later declined indemnity relying heavily on the Judge's findings. In the submission of the Applicant that allegation was made out.

133. The allegations against the Respondent raised very serious matters indeed.

The Findings of the Tribunal

The Tribunal consider carefully the documentation before it including those documents which had been put forward by the Respondent at various stages of the matter in explanation.

The unchallenged documentation submitted by the first Applicant including the Affidavit of Mr E, which was accepted, clearly showed that the allegations made by the first Applicant against the Respondent were substantiated.

In relation to the first two allegations made by the second Applicant on behalf of the OSS, although the payment on account had come from C Ltd other documentation showed clearly that the Respondent had acted for JRK personally, held relevant confidential information about him and then accepted instructions to act against him.

The allegations relating to Accounts Rules breaches were clearly substantiated on the basis of the report of the Investigation Accountant which was accepted. The letter from SF provided at best a retrospective authority for certain movements of funds.

Allegation (iv) was substantiated by the documentation and in particular the letter from DB.

In relation to allegation (viii) the Respondent had been a person responsible for supervising the trainee solicitor and should have ensured that she had given all relevant information to the lender client.

Allegation (ix) was also clearly made out on the documentation, the Tribunal noting the comments of the Learned Judge.

The Tribunal therefore found all the allegations to have been proved.

The Tribunal had been horrified to hear of the measure of the allegations made out.

In relation to the first Applicant the Respondent had been guilty of a flagrant breach of trust. While purporting to act as the solicitor to the first Applicant he had persuaded his client to provide information and to move funds so that the Respondent could bring an action on his own behalf against the client and obtain access to the funds through the courts.

The Respondent had also been found guilty of very serious breaches of the Accounts Rules. He had made blatant use of clients' funds. In the case of the loan from L, advice given by an employee of the Respondent albeit a solicitor employee was clearly not independent as the Respondent must or should have known.

He had breached his professional rules in practising on his own account in breach of a condition on his Practising Certificate. He had failed to give proper supervision to a member of his unadmitted staff.

The Respondent had been found to have lied in a court of law.

Any right minded member of the public would abhor the Respondent's conduct in relation to the Iranian charity. The Respondent had been guilty of a chapter of disgraceful behaviour which could not be tolerated by the profession. Time and time again the Respondent had acted in fragrant breach of rule of professional conduct. In the interests of the public and of the reputation of the profession the Respondent could not be allowed to continue to practise.

The Tribunal therefore ordered that the Respondent Leon Braunstein of Lansdowne Row, Berkeley Square, London W1J (formerly of Berkeley Square, Mayfair, London W1X and of Park View Road, Surrey) be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to both applications and enquiries fixed in the first application of the sum of £4,975.55p and fixed in the second application in the sum of £7,164.00 for legal costs together with the sum of £9,199.00 being the costs of the Investigation Accountant.

DATED this 18th day of April 2002

on behalf of the Tribunal

A G Gibson
Chairman