

IN THE MATTER OF CHARLES WESLEY ABOAGYE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A H Isaacs (in the chair)
Mr. J C Chesterton
Lady Bonham-Carter

Date of Hearing: 28th 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 Ian Paul Ryan solicitor and partner in the firm of Messrs Russell Cooke Potter and Chapman of 2 Putney Hill, Putney, London SW15 6AB on 28th June 2001 that Charles Wesley Aboagye solicitor of Hounslow, Middlesex, (subsequently notified to be of Eastchurch, Sheerness, Kent) 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 unbecoming a solicitor in each of the following particulars namely:-

- (a) that he failed to keep accounts properly written up for the purposes of either Rule 11 of the Solicitors' Accounts Rules 1991 or Rule 32 of the Solicitors' Accounts Rules 1998;
- (b) that contrary to Rule 5 of the Solicitors' Accounts Rules 1991 or Rule 23 of the Solicitors' Accounts Rules 1998, he drew money out of client account other than was permitted by the Rules;

- (c) that contrary to Rule 8 of the Solicitors' Accounts Rules 1991 or Rule 23 of the Solicitors' Accounts Rules 1998, he drew money out of client account other than was permitted by the Rules;
- (d) that he failed, on being required to do so, to produce his books of account for inspection by the investigating accountant of the Law Society contrary to Rule 34 of the Solicitors' Accounts Rules 1998;
- (e) that he deliberately and improperly utilised clients' funds for his own purposes;
- (f) that he dishonestly misappropriated clients' funds.

By a supplementary statement of Ian Paul Ryan dated 17th October 2001 it was further alleged against the Respondent that he had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- (i) that he had been convicted of one offence of theft and sentenced to three years imprisonment;
- (ii) that he had behaved in a manner unbecoming a Solicitor of the Supreme Court.

Application for an Adjournment

- (I) Mr Ryan having indicated to the Tribunal that he intended to seek leave to proceed with the substantive hearing on the basis of both the originating statement and the supplementary statement, the Tribunal considered Mr Aboagye's request for an adjournment of the proceedings as set out in correspondence.

The Submissions of Mr Aboagye

- (II) Mr Aboagye had written to Mr Ryan on 29th January 2002 as follows

“I have received your Supplementary Statement and write to inform that I DO NOT agree with the contents of the statement prepared by you.

I am very unhappy that because I am at Stanford Hill I cannot be present at any Tribunal hearing. I feel I am being prejudiced by your undue haste in having this matter listed. More importantly, I am in consultation with a solicitor with a view to appealing against the conviction at Southwark Crown Court. I feel I have good grounds for an appeal but I need a lawyer to deal with my case. Accordingly, it would not be proper for the hearing to go ahead on the basis of my conviction.

You could easily proceed on the basis of the other breaches which I do not intend to defend but I am not happy about you concentrating all your attention on a conviction which I am hopeful of having quashed at a future date.”

- (III) In a letter dated 2nd February 2002 to Mr Ryan Mr Aboagye had written

“I acknowledge receipt of your letter of 29th January 2002 with supplementary statement. Your letter appears to have crossed with my earlier reply. However, in case this letter failed to reach you I confirm that I am not in agreement with the amended statement.

Firstly I intend to appeal against the conviction and I am presently awaiting a visit from solicitors to take my instructions in preparation for the appeal. Secondly as you are aware I will not be able to attend the forthcoming Tribunal and as a consequence will be prevented from defending myself. In the circumstances, I strongly feel that I am being prejudiced.

I should be obliged if therefore the Tribunal hearing could be adjourned until the outcome of my appeal and or release, whichever is sooner (I am due to be released by the end of November).

Alternatively, the hearing proceeds but on the basis of the original facts contained in the first statement I feel that I have no good defence against the original charges, but only mitigating circumstances. In any event I expect that I would be struck off on the basis of the original facts.

However, if it is your intention to proceed on the basis of the conviction then I would wish to have the opportunity to personally attend the hearing. As this will not be possible until after I am released then I would ask that an adjournment be obtained until my release or my appeal against conviction has been decided.”

- (IV) The Tribunal also had before it a letter dated 24th February 2002 from Mr Aboagye to the Tribunal giving his anticipated date of release from prison.

The Submissions of Mr Ryan on behalf of the OSS

- (V) As Mr Aboagye had admitted the matters contained in the originating application Mr Ryan was able to proceed on that basis.
- (VI) However he sought the permission of the Tribunal to proceed also on the supplementary statement. It was important to have a conviction for dishonesty recorded in the Findings of the Tribunal in case Mr Aboagye made an application to the Tribunal at a future date.
- (VII) Mr Aboagye was considering an appeal against his conviction. Mr Aboagye would need to apply for leave to appeal out of time.
- (VIII) It seemed more sensible to proceed on both statements.
- (IX) Mr Aboagye had had all the documents. Though he had not been co-operative so as to enable the proceedings to be heard without delay. Mr Aboagye had only responded to the proceedings in February 2002. In the submission of Mr Ryan the matter had been properly dealt with and should proceed.

- (X) Mr Ryan had been fair in his handling of the proceedings. The matter had already been adjourned because Mr Ryan had not been sure that he could show service of the supplementary statement at an earlier hearing.

The Decision of the Tribunal in Relation to the Application for Adjournment.

- (XI) Mr Aboagye stood at present convicted of offences of dishonesty whatever his future intentions might be regarding an appeal. It was in the interests of the profession and the public that the matter be disposed of as quickly as possible and not be delayed until Mr Aboagye's release from prison. The Tribunal rejected Mr Aboagye's request for an adjournment and gave permission to Mr Ryan to proceed with the substantive hearing on the basis of the originating and supplementary statements.

The Substantive Hearing

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 28th February 2002 when Ian Paul Ryan solicitor and partner in the firm of Messrs Russell Cooke Potter and Chapman of 2 Putney Hill, Putney, London SW15 6AB appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the Respondent to allegations (a) to (f) as contained in his letter to the Applicant dated 2nd February 2002.

At the conclusion of the hearing the Tribunal ordered that the Respondent Charles Wesley Aboagye of Eastchurch, Sheerness, Kent, (formerly of Hounslow, Middlesex) 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 to be subject to detailed assessment if not agreed.

The facts are set out in paragraphs 1 to 22 hereunder:-

1. The Respondent born in 1961 was admitted as a solicitor in 1991 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent was carrying on practice under the style of Charles Wesley & Co. 124 Glenthorne Road, Hammersmith, London W6 0LP.
3. Upon due notice to the Respondent the Investigation Accountant of the Law Society carried out an inspection of the Respondent's books of account. Copies of the Reports of the Investigation Accountant dated 29th October 1999 and 22nd November 2000 were before the Tribunal.
4. The Report of 29th October 1999 stated that between 28th May 1998 and 17th June 1999 the Respondent either failed to pay funds received from or on behalf of clients in respect of undisbursed liabilities into a client account or drew money out of client account other than as permitted by the Solicitors' Accounts Rules. The amount involved was £274,381.70p.
5. Two such items were exemplified in the Report.

6. The firm acted for RKB in connection with a purchase of a property. The relevant ledger account was in the name of PB but the Respondent confirmed to the Investigation Accountant that the name of the client was RKB.
7. On 12th November 1998 the client paid the firm £6,410. as the balance of completion money. The Respondent said that he paid this money, together with £100 of another client's money, into office bank account by mistake. This money remained in office bank account until it was transferred to client bank account on 2nd February 1999, eighty two days later.
8. On 30th November 1998 an amount of £13,673.53 was transferred from client to office bank account. The Respondent explained that this transfer was made upon his telephone instructions and was intended to correct the error in relation to RKB referred to above together with another amount of £7,160.35 which he had mistakenly lodged in office bank account on 11th November 1998. The Respondent did not know whether it was his mistake or the bank's that the transfer had been made from client to office rather than office to client bank account.
9. The Respondent said that he did not know about this error until the beginning of January 1999. The correcting transfer was not made until 2nd February 1999. The Respondent explained that he did not correct the situation earlier because of cash flow problems and said that he had to borrow money to repay client bank account.
10. At the time of the second inspection which commenced on 20th October 2000 the Respondent said that all the books of account and bank documents were with his reporting accountants save for certain client ledger accounts and bank statements which he said were at his home address.
11. Contact could not be made with the reporting accountant and the Respondent agreed with the Investigation Accountant that he would produce what books and records he had at his home at the office on the next working day, 23rd October 2000, together with the matter file of a client AB which he said was also at his home address.
12. On 23rd October 2000 the Respondent produced some client and office chequebook counterfoils and paying-in books, all of which related to transactions prior to March 2000 together with some client ledger cards.
13. The Respondent said that he could not find the AB file but that it might have accidentally been sent to storage. The Respondent told the Investigation Accountant that he was leaving the office and would not return until lunchtime the following day as he had to accompany his wife for a hospital appointment.
14. The following day the Investigation Accountant returned to the Respondent's office and was summoned to a meeting with Mr H-D, the Respondent's partner, and Ms B a clerk. Ms B said that she had received a telephone call late the previous evening from the Respondent who said that he would not be attending the office at all the next day.
15. At 11.45am that morning a call had been received from a member of National Westminster Bank's fraud department informing the firm that a telegraphic transfer for £495,000 had been made from the firm's client bank account and converted into

US Dollars. On enquiry of the firm's Nat West branch, Mr H-D was informed that these funds were then lodged in the account of Spring Bureau de Change Ltd which was also a customer of the bank.

16. It was also discovered that the Respondent's office laptop computer had crashed and could not be re-booted. A note believed to be in the Respondent's handwriting was found in his desk listing, inter alia, the following –
- Go to bank + Cash as much as possible
- Call accountants + have story ready
Transfer Big One out of account
Book plane ticket
Passport
Disappear Files
17. A slip was also found showing a withdrawal, made the previous day, on the Respondent's personal MBNA International Visa account for a cash amount of £9,000 and the Investigation Accountant noted that the credit limit on the card was £9,000.
18. The Investigation Accountant had a further meeting with Mr H-D later that afternoon in which Mr H-D maintained that, although his name appeared on the firm's notepaper, he was not a partner. He said that he had joined the firm as an assistant solicitor on 1st August 2000 and he produced an employment offer made to him to support his contention. He said that it was only during the previous week, after the firm had received a new batch of notepaper, that he had noticed his name on the letter heading.
19. In view of the foregoing the Investigation Accountant terminated the inspection.
20. The matter was considered by the Compliance and Supervision Committee on 25th October 2000 when a decision was made amongst other things to intervene into the Respondent's practice on the grounds of suspected dishonesty on the part of the Respondent.
21. On 7th September 2001 the Respondent appeared before Southwark Crown Court and was convicted of one offence of theft and sentenced to three years' imprisonment. A copy of the Certificate of Conviction and copy of the Indictment were before the Tribunal. The particulars of offence stated on the Indictment were that on 23rd day of October 2000 the Respondent stole a bank balance to the value of £495,000 in money belonging to Charles Wesley & Co. Solicitors.
22. A copy of the sentencing remarks of His Honour Judge Hardy was before the Tribunal. It was noted that due to the vigilance of the banking authorities the moneys stolen by the Respondent had been recovered.

The Submissions of the Applicant

23. The note found in the Respondent's desk and referred to in the Investigation Accountant's Report demonstrated the Respondent's intention to misappropriate the firm's client account.

24. The Respondent had in correspondence accepted the allegations set out in the originating application.
25. In his sentencing remarks the Learned Judge had said
- “It is the Court’s duty to uphold the good name of solicitors to discourage such breach of trust by professional people. As you understand, fully I expect, given your position as a solicitor, a prison sentence is inevitable. This is a serious matter and the least possible sentence of imprisonment I can pass on you in the circumstances is one of three years’ imprisonment.”
26. The fact that the Respondent had been under a degree of pressure was reflected in the sentencing remarks but this remained a matter of the utmost seriousness involving theft from a client account.
27. The Applicant understood that the Respondent was now bankrupt.

The Submissions of the Respondent

28. The submissions of the Respondent were contained in his letters of 29th January and 2nd February 2002 set out above.

The Findings of the Tribunal

The Tribunal found all the allegations to have been substantiated. Allegations (a) to (f) had been admitted by the Respondent, allegation (i) was a matter of public record and the Tribunal found allegation (ii) proved as a result.

The Respondent had been found guilty in a Court of Law of theft from his client account and had been sentenced to a term of imprisonment. Although he had stated his intention to appeal against that conviction the Respondent had admitted the dishonest acts which had led to the conviction. He had damaged the reputation of the profession and undermined the confidence of the public in the profession. His misconduct had been of the most serious kind. The Tribunal ordered that the Respondent Charles Wesley Aboagye of Eastchurch, Sheerness, Kent (formerly of Hounslow, Middlesex) 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, such costs to be subject to a detailed assessment unless agreed.

DATED this 22nd day of May 2002

on behalf of the Tribunal

A H Isaacs
Chairman