No. 8446/2001

IN THE MATTER OF HWEE KHOON YOUNG, 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 David Elwyn Barton solicitor and partner in the firm of Messrs Whitehead Monckton solicitors of 72 King Street, Maidstone, Kent, ME14 1BL on 13th August 2001 that Hwee Khoon Young of High Street, North Crawley, Buckinghamshire, 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 as follows:-

a) She compromised her independence or integrity, or was likely to do so;
b) She compromised or impaired, or was likely to do so, her good repute and that of the solicitors' profession;
c) She withdrew client money from client account in circumstances other than permitted by Rule 22 of the Solicitors' Accounts Rules 1988;
d) She had 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 on 7th February 2002 when David Elwyn Barton solicitor and partner in

the firm of Messrs Whitehead Monckton solicitors of 72 King Street, Maidstone, Kent, ME14 1BL appeared as the Applicant and the Respondent was represented by David T. Morgan, solicitor of 9 Gray's Inn Square, London WC1R 5JF.

The evidence before the Tribunal included the admissions of the Respondent to allegations (c) and (d) and her oral evidence.

At the conclusion of the hearing the Tribunal ordered that the Respondent Hwee Khoon Young of High Street, North Crawley, Buckinghamshire, solicitor be suspended from practice as a solicitor for an indefinite period to commence on 7th February 2002 and they further ordered her to pay the costs of and incidental to the application and enquiry fixed in the sum of £8,351.27p.

The facts are set out in paragraphs 1 to 29 hereunder:-

1. The Respondent born in 1951 was admitted as a solicitor in 1987 and her name remained on the Roll of Solicitors.

2. At all material times the Respondent was carrying on practice under the style of Young and Co. at 199 Piccadilly, London. She was in partnership with her husband.

3. In about September 1998 the Respondent was introduced to a new or prospective client by the name of DM and his company AFCM. The introduction was effected by GL an existing client of the Respondent. DM became a client as a result of the introduction. GL had been a client since August 1998 having instructed the Respondent for the first time that month.

4. DM was at all material times the Managing Director of AFCM which was a company incorporated in the Bahamas. The Respondent was instructed to form a United Kingdom subsidiary of AFCM, which she duly did. Her instructions came from either DM or GL. GL had a general authority from DM to give instructions. The subsidiary formed by the Respondent was called AFCM (UK) Limited, and its Registered Office was the practice address of the Respondent. DM was a director, and gave his address in the documentation as Florida, USA.

5. The Respondent was appointed as solicitor to AFCM and opened a ledger in the firm's client account in the name of the company.

6. At all material times the Respondent believed that GL had entered into a fee agreement with DM/AFCM pursuant to which GL was to be paid a fee for introducing clients to AFCM. She believed GL to be the company's right hand man in the UK. She acted on his instructions when they were given.

7. In early October 1998 the Respondent was asked by GL and/or DM for assistance in finding banking facilities in the UK for the Bahamian company and its UK subsidiary. She arranged a meeting with both DM and GL and officers from her own bankers, The Royal Bank of Scotland. The meeting took place on 8th October. On 16th October 1998 the Bank wrote to the Respondent to inform her that "… for operational reasons we are unable to open accounts". As the Respondent had introduced the two companies to her bank, and had received a refusal, she telephoned to ask the reasons.

She was told that the refusal could have been for a variety of reasons including money laundering. The Respondent, together with GL and DM, had attempted unsuccessfully to open accounts for the company with other UK banks.

8. In about October 1998 DM had expressed an interest in purchasing a property known as 12 Curzon Street, London, the price for which was £8,000,000 (eight million). The owners of the freehold were existing clients of the Respondent, and the Respondent had acted for GL in August 1998 in the formation of a company which thereafter rented a flat in the said building. GL occupied the flat and introduced DM/AFCM to the possibility of purchasing the building.

9. In October 1998 the Respondent agreed to accept into her client account in the AFCM ledger a payment from DM. Over the following three months she accepted the following payments:

a) $80,000 on 9th October 1998 (Sterling equivalent £46,430.64)
b) $115,902.38 on 12th November 1998 (Sterling equivalent £69,278.17)
c) $499,969.60 on 21st December 1998 (Sterling equivalent £295,989.23)
d) $499,969.88 on 14th January 1999 (Sterling equivalent £301,440.93)

The total received was $1,195,841.86 or £713,138.97.

10. An inspection of the Respondent's books of accounts was commenced on 10th November 1999 and a copy of the resulting Report dated 15th August 2000 was before the Tribunal.

11. Various amounts disbursed by the Respondent and the manner of disbursement were described in the Report as follows.

12. The Respondent claimed that on receipt of the first amount totalling $80,000 she had a meeting with GL who, in the course of that meeting, telephoned DM. The Respondent spoke to DM and she said that he told her to follow GL's instructions in relation to the disbursement of the $80,000. The Respondent said that she did not have this authority in writing and that she did not confirm it in writing to DM.

13. Thereafter, on the verbal instructions of GL numerous payments were made out of the funds received and the majority of these payments were cash amounts given to GL as noted below –

(i)	Cash Withdrawals from Client Bank Account	£105,995.00
(ii)	Payments to Rex Air Limited	38,800.00
(iii)	Payments to Mrs Young's Private Bank Account	6,700.00
(iv)	Payments to Ladbrokes	250,000.00
(v)	Payment to Office Bank Account	1,500.00
		£402,995.00

(i) Cash Withdrawals from Client Bank Account - £105,995.00

14. During the period 4th September 1998 to 7th September 1999 the Respondent arranged for nineteen cash withdrawals from client bank account varying in amount between £450.00 and £15,000.00 and totalling £105,995.00. The cash was then paid to GL.

(ii) Payments to Rex Air Limited - £38,800.00

15. During the period 7th August 1998 to 10th September 1999 the Respondent issued sixteen client account cheques to Rex Air Limited for amounts varying between £450.00 and £10,000.00 and totalling £38,800.00. The Respondent was a director and shareholder of a travel agency business trading under the name of Rex Air Limited and she explained that as the travel agency had a large amount of cash and the client wanted cash, then to save on banking costs for both parties, the client account cheques were cashed at the travel agency rather than the bank. She said that the cash was then paid to GL.

(iii) Payments to the Respondent's Private Bank Account - £6,700.00

16. During the period 10th August 1998 to 4th November 1999 the Respondent issued three client account cheques made payable to herself, for amounts varying between £300.00 and £6,000.00 and totalling £6,700.00.

17. The Respondent explained that GL had requested cash amounts and, as she did not have her client account chequebook to hand, she used her own bank account to take money out in cash which she gave to GL. She then reimbursed her own bank account from client bank account.

(iv) Payments to Ladbrokes - £25,000.00

18. During the period 4th January 1999 to 15th February 1999 the firm made five telegraphic transfers to an account in the name of GL at Ladbrokes. The telegraphic transfers varied in amount between £10,000.00 and £70,000.00 and totalled £250,000.00. The Respondent explained that GL had instructed her to make the payments to his account at Ladbrokes because he said that he had a friend there who could convert this money to cash.

19. The Respondent said that at the time she made the transfers she knew that Ladbrokes was a bookmaker. She said, however, that she did not check the instructions with DM/AFCM before making these telegraphic transfers.

(v) Payments to Office Bank Account - £1,500.00

20. On 27th January 1999 funds, including an amount of £1,500.00, were transferred from client to office bank account.

21. Mrs Young said that on 21st December 1998 she had withdrawn an amount of £1,500.00 in cash from the firm's office bank account as she did not have the client bank account chequebook to hand. This amount was paid to GL and to reimburse office bank account and to pay bank charges she had made the transfer from client bank account.

The Respondent's General Comments to the Investigation and Compliance Officer

22. In relation to all the payments out of funds received from DM/AFCM, Mrs Young said that she thought that she was acting on the client's instructions. She said that all the instructions to make the payments had been given to GL, either in person or over the telephone. She confirmed that none of the instructions had been given in writing or confirmed in writing.

23. When asked why GL wanted so much money in cash, the Respondent said that it was to pay for building work at 12 Curzon Street. She confirmed however, that at the time the building work was being done at 12 Curzon Street, GL and DM/AFCM had no legal interest in the building.

24. When the Respondent was asked if she was acting as a bank she said "in a sense yes".

25. The Respondent made all the withdrawals from client account on the instructions of her client DM/AFCM (whether given directly or by GL) but did not secure her instructions in writing or confirm them in writing. Withdrawals thus contravened provisions of Rule 22 (1)(f) of the Solicitors' Accounts Rules 1998. In a letter from the Respondent to the OSS dated 4th October 2000 she admitted that allegation.

26. In the said letter the Respondent said that she made no enquiries as to the source of the funds she banked and disbursed. She stated that she felt she had a major new client and was concerned to be as accommodating as possible.

27. In her letter she made reference to "gatherers". This term appeared in an affidavit sworn by GL on 26th March 1999 a copy of which was before the Tribunal and was used to describe persons engaged by DM/AFCM to undertake tasks for them. GL had found a property in his "gathering" capacity and the Respondent accommodated him and DM/AFCM in the manner in which he disbursed the various sums of money.

28. In her said letter the Respondent expressed her regret at her casual approach to the situation and she accepted the factual matters contained in the Report of the Monitoring and Investigation Unit.

29. The Respondent was the money laundering officer for her firm.

The Submissions of the Applicant

30. The Respondent had admitted the breach of Rule 22 of the Solicitors' Accounts Rules and by implication had admitted allegation (d).

31. The remainder of the allegations related to money laundering and the Law Society's warning issued to the profession, "the Blue Card".

32. At the very least the Respondent had closed her eyes to factors of the transactions which stood out glaringly as potential breaches of money laundering regulations, despite being the money laundering officer for her practice.

33. She had asserted that she was aware of the money laundering regulations and of the Law Society warning.

34. She had admitted that she had not put into place practical procedures in respect of money laundering and had not paid enough attention to the warning.

35. She had acknowledged to the Investigation and Compliance Officer that she had in effect become a banker.

36. The Respondent's new clients were two individuals who had emerged "out of the blue". The Blue Card said that signs to watch for included unusual instructions i.e. clients who had no discernible reason for using the firm' services and also requests to hold large sums of cash in a client account particularly for no other purpose than onward transmission to a third party.

37. Caution was also urged in respect of suspect territory. Florida and the Bahamas, the territories in this case, were "global hotspots" as far as money laundering were concerned.

38. The features of the transactions shouted out for caution and the Respondent either disregarded them or turned a blind eye.

39. The Respondent had been dealing with two comparatively new individuals and one completely new organisation. The Respondent had said that she had not got involved with DM's investment programme because she did not understand this.

40. The Tribunal was asked to note the letters from the Royal Bank of Scotland and in particular the letter of 16th October 1998 from the Royal Bank of Scotland to the Respondent stating that "for operational reasons we were unable to open accounts".

41. Alarm bells should then have been ringing very loudly but it appeared that this was not the case. The clients had acquired no banking facilities within the United Kingdom.

42. The Respondent had admitted in correspondence that she did not make any enquiries as to where the money had come from, stating in her letter of 4th October 2000:

> "In the circumstances, I did not make any enquiries as to the source of these funds (or subsequent funds) entering the account. I felt the firm had a major new client and was concerned to be as accommodating as possible.
>
> I accordingly did not enquire as to what the funds were to be utilised for."

43. The Respondent's thinking was also described in that letter:

> "Although the term "money laundering activities" had indeed been mentioned at the time the Royal Bank of Scotland had declined to open an account for AFCM, I must explain the context. Following the meeting with (who was our firm's bank manager and whom we already knew) on 8th October 1998, he wrote to me on 16th October 1998, simply saying that "for operational reasons" the bank was unable to open the

accounts. I enclose a copy of his letter. As I knew him I rang to discuss the situation. He then told me that he himself had no idea why AFCM's application had been turned down, because it was the decision of the bank's operational people, and all they told him was that the applications could have been turned down for a variety of possible reasons including (among others mentioned) money laundering. In the context it did not seem to me for one moment that actual money laundering might be involved. Indeed to this day I have no idea whether actual money laundering has been involved, although this possibility seems to lie at the back of the OSS's concern. At the time, therefore, it did not occur to me that there was anything untoward in proceeding to open a client account for AFCM."

44. Given everything the Respondent knew at that stage the possibility of money laundering should have been in her mind.

45. There did not appear to be any underlying transaction. The Respondent had believed that the money was being paid out for refurbishment of a building but had put forward no evidence that actual refurbishment was taking place. At the time the money was paid none of her clients had had an interest in the property and indeed the transaction never went ahead.

46. The Respondent had not acted for her new clients in the proposed property purchase as she already acted for the freeholders. In the submission of the Applicant it begged the question why anyone would spend large sums on a building in which they had no legal interest.

47. The Applicant accepted that the Respondent had been very candid in her initial response to the Report and in her written statement which was before the Tribunal.

The Submissions of the Respondent

The Oral Evidence of the Respondent

48. The Respondent confirmed that her written statement was true and correct.

49. The Respondent's wish to be accommodating to her new clients had been within the bounds of legality. It had never crossed her mind to do otherwise.

50. She had been the de facto money laundering officer for the firm as the practice of her husband and partner did not generally involve holding clients' money.

51. The Respondent had thought that she could spot money laundering although she had not prepared a list for herself. She had seen the Blue Card warning but during the events in question money laundering had never crossed her mind. The events had not seemed unusual.

52. She had received large sums of money into her client account but paid them out mostly to GL who to the Respondent was the client, not a third party.

53. She had not received money from the Bahamas or Florida before and had not thought about them as suspect territories.

54. The firm had a dollar account as her husband's practice was in shipping. The account was set up when the firm began so was already in existence but was not active.

55. As regarded any underlying transaction the $80,000.00 had been received to pay AFCM's expenses in this country and the clients were still actively trying to open a bank account so the Respondent had not thought much about it.

56. She should have thought about the other subsequent sums but she had not thought about the big picture. She had been lulled into a false sense of security by the first payment.

57. The company had made an offer for the lease on Curzon Street with an option to buy and the Respondent had sent draft documents to their solicitors. They had needed to be operational quickly so they had to paint the premises and order equipment etc. The Respondent had seen the work in progress herself.

58. Looking back alarm bells should have rung but at the time she had not thought about it.

59. The Respondent had asked the Royal Bank of Scotland for the reasons for declining to open an account and when she spoke to the Manager he had said that the applications could have been turned down for a variety of reasons including money laundering.

60. AFCM was supposedly involved in investing other peoples' money. The Respondent had thought that the warning applied to moneys coming from third parties not from her own client.

61. She had thought that the bank might have been worried about the money coming from the investors. She had thought that the money she held was the client's own money.

62. The Respondent thought that the bank would have warned her if they had been concerned as she was a long standing client of theirs.

63. The Respondent was very sorry for the part she had played which had been a lapse of judgement.

64. The Respondent was proud of being a solicitor.

65. She had now retired from the profession and had planned to stop practising by the time the Investigation and Compliance Officer came.

66. She had attended the Hearing because of her reputation. She did not want anyone to think that she had been dishonest or had been consciously involved in money laundering activities.

67. In cross examination the Respondent said that her practice was principally commercial and residential conveyancing with some company secretarial work.

68. She had read the Law Society warning and the money laundering regulations and had thought that she understood them. They were not always at the front of her mind however. She thought she understood the duties of a money laundering officer.

69. The Respondent defined money laundering as money derived from illegal activities which someone was trying to put into the system and make legal.

70. She knew of one or two examples of how this could be done but did not know the various processes. She understood that one method was to buy shares with the money and then when the shares were sold the money would be clean.

71. She had never really thought about the possibility of someone putting money into a solicitor's practice and then taking it out again. The Blue Card had not been at the forefront of her mind.

72. Now she would want to know what money was for and why she was receiving it.

73. When she had received the $80,000.00 she had known what it was for but for the subsequent sums she had not known the reasons.

74. At the time she had had no other Bahamian companies but had had others before as her husband had a shipping practice and lots of ships were registered with Bahamian companies.

75. The fact of a company being Bahamian was not new to her and she did not think anything about it.

76. The clients had asked her about a bank and she suggested the Royal Bank of Scotland and had gone with them to the meeting.

77. She had not been aware of the involvement of any other banks.

78. At the meeting the client had not been asked to explain movements of money. The client had brought a bundle of documents to the bank but the Respondent had not seen them.

79. The receipt of a little under 1.2 million dollars over a three month period was unusual but at that time the Respondent had been under a lot of work and family pressure as set out in her statement and she had not thought about that at all at the time.

80. The facts suggested that she had become a banker but if she had done so she had not meant to.

81. It had struck her as unusual that GL had asked her to pay cash sums to him as other clients had not asked for this.

82. She had regarded the money as the company's money. She had been preoccupied with other things and just had not thought. She knew that was not satisfactory.

83. GL had suggested using the Respondent's travel agency which he had known about. She had used this facility because GL did not have a bank account, the travel agency had cash there and it was convenient.

84. In her letter of 4th October 2000 she had written:

"As regards payments to Rex Air Ltd … I was effectively saving bank charges for AFCM by offering Rex Air Ltd as a convenient de facto bank cash till which provided cash against client account cheques. "

Saving bank charges had been the effect and was convenient. There had been no benefit to the Respondent who had not charged for the service. She had not thought there was anything untoward.

85. In making the facilities of her private bank account available to GL she had just been being helpful. She could see now the difficulty it created but did not see it at the time or would not have done any of this. She had not thought about that at all. She had never offered that facility to any other clients.

86. In relation to using Ladbrokes for GL to collect his cash that had seemed a good way of getting him off her back and she had not thought about it. GL would turn up unannounced and as she had no secretary he would get access to her. The Respondent denied that he had put her under pressure and said she had acted of her own free will.

87. The first £10,000 paid to Ladbrokes had not seemed bad and she thought GL had been very clever.

88. She had thought that money was being used for the refurbishment and also for commissions. There had been no underlying legal transaction except the matter of 12 Curzon Street. She was now aware of the importance of this but had not been at the time. The warning had just not come to the front of her mind.

89. The events had occurred over three to four months when the Respondent had been under pressure and had not focused on these transactions.

90. The Respondent had only charged for the incorporation of the company. £1,500 in fees was all she had earned for this mess.

91. It was not that the Respondent had been prepared to offer free banking facilities it had just happened.

92. She had not charged for the service as she saw it as incidental to the client's purchase of Curzon Street. She denied that she had in mind the fees she would have received for that transaction.

93. The money had come to her firm by telegraphic transfer from New York Bank, no money had been received from banks in the Bahamas.

94. GL had held British and Mauritius passports and was of Chinese extraction.

95. GL had assisted the Respondent in getting rid of a tenant from 12 Curzon whose rent was in arreas. The previous tenant had given his mobile phone to GL. The Respondent had telephoned it to speak to the previous tenant and had instead spoken to GL. GL had spoken to the new tenant to discover his terms for leaving. It was as a result of that telephone call that the Respondent had first met GL.

96. At the time the Respondent had been involved in a difficult transaction. In addition her father-in-law had died, her husband had gone to Malaysia and the Respondent had had to look after her mother-in-law.

97. She had never been approached nor was she confident to advise on the investment work of a company.

98. At the conclusion of the Respondent's oral evidence the following further submissions were made on her behalf.

99. The Tribunal was asked to consider the Respondent's written statement.

100. The Respondent had been disarmingly frank about her stupidity in this matter. Any failures on her part were due to what the Tribunal might feel was extraordinary naivety.

101. The Tribunal was asked to take into account the background against which the transactions fell into the lap of the Respondent.

102. She had been lulled into a false sense of security with the initial payment of $80,000. She was used to dealing with Bahamian companies.

103. In a way the Respondent had found GL rather then him finding her through 12 Curzon Street and the mobile telephone.

104. Whatever reasons the Royal Bank of Scotland may have had for not wanting to do business with the Respondent's clients it seems quite clear that they had not alerted the Respondent to their own suspicions of money laundering.

105. There had been no question at any stage that the Respondent was in any way a perpetrator of fraud, indeed no personal benefit had accrued to her except the £1,500 fee for incorporating the company.

106. The Tribunal was asked to note the pressures the Respondent had been under which were set out in her statement. Her father-in-law's illness had, quite apart from the impact on the Respondent , also distracted her husband and partner from the affairs of the practice.

107. The Respondent was not now in practice and had no intention of continuing as a solicitor. She had only come to the Tribunal today as she wished to clear her name from any suggestion of dishonesty.

108. This did not excuse her from facilitating what may have been a fraud but the Tribunal was asked to give her credit for facing the music and apologising for her stupidity. She just had not thought.

109. At the time she had been conducting a practice for herself and her husband. It was hoped on behalf of the Respondent that the Tribunal would feel able to accept her evidence that she just really did not think however stupid that may have been. She accepted that she should have thought.

110. The Respondent had agreed to pay the costs of the Applicant in the sum of £8,351.27p.

111. It was accepted that the Respondent's actions were such that she was likely to compromise her integrity and good repute but the Respondent's main concern was that there be no finding of dishonesty against her. She accepted that she had been very unwise and incredibly naive but she was determined to clear her name and face the music.

112. She had been an unwitting tool in the hands of a client. She had not been an intentional participant.

The Findings of the Tribunal

The Tribunal had considered all the implications of this case. The Tribunal had found all the allegations to have been substantiated.

Allegations (c) and (d) had not been contested. The real question the Tribunal had to answer in the case was whether it had been established to the satisfaction of the Tribunal that allegations (a) and (b) were proved and beyond that whether it had been established that the Respondent had been dishonest.

The Tribunal was satisfied that the Respondent had compromised her independence and integrity and the good reputation of herself and the profession. That said, on the basis of the evidence before the Tribunal and the submissions of Mr Barton and Mr Morgan the Tribunal was not satisfied that the Respondent had engaged upon a course of dishonest conduct.

In considering penalty the Tribunal took the view that the Respondent had clearly been under many pressures and that holding herself out as the money laundering officer for the firm was clearly beyond her capabilities and professional expertise. With more experience the reaction of the Royal Bank of Scotland combined with the extraordinary transfers of money to her firm and their disbursement to other agencies including her own travel agency where there was no underlying transaction, would have alerted her to the implications of money laundering.

Given all that had been put before the Tribunal, the Tribunal (having accepted that the Respondent acted in a naïve and indeed stupid fashion, completely ignoring the warnings which the profession had given and of which she was aware even if she did not fully comprehend them) determined not to strike her from the Roll. The

Respondent was however clearly not fit to practise and the Tribunal would therefore suspend her from practice indefinitely.

The Tribunal therefore ordered that the Respondent Hwee Khoon Young of High Street, North Crawley, Buckinghamshire, solicitor be suspended from practice as a solicitor for an indefinite period to commence on 7th day of February 2002 and they further ordered her to pay the costs of and incidental to the application and enquiry fixed in the sum of £8,351.27p.

DATED this 21st day of May 2002

on behalf of the Tribunal

JRC Clitheroe.
Chairman