

IN THE MATTER OF DIXIT SHAH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

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Mr. R. J. C. Potter (in the chair)  
Mr. A. G. Gibson  
Ms A. Arya

Date of Hearing: 5th February 2002

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## FINDINGS

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

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An application was duly made on behalf of the Office for the Supervision of Solicitors ("OSS") by Andrew Miller solicitor employed by The Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 14<sup>th</sup> August 2001 that Dixit Shah of Churchgate Chambers, New Marine Lines, Bombay, 40020, India, 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 allegation against the Respondent was that contrary to Section 41 of the Solicitors Act 1974 he had, without permission pursuant to that Section, employed or remunerated in connection with his practice as a solicitor one Nicolas Richard Littledale Bentley, he being a person who to the knowledge of the Respondent had been suspended from practice.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 5<sup>th</sup> February 2002 when Andrew Miller solicitor employed by The Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire CV32 5AE appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the oral evidence of Mr Barri James Brandon.

At the conclusion of the hearing the Tribunal Ordered that the Respondent Dixit Shah of Churchgate Chambers, New Marine Lines, Bombay, 40020, India, solicitor be struck off the

Roll of Solicitors and they further Ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £1,490.00.

The facts are set out in paragraphs 1 to 10 hereunder:-

1. The Respondent was born in 1961 and admitted a solicitor in 1994. His name remained on the Roll of Solicitors. The Respondent was now resident in India.
2. Barri James Brandon ("Mr Brandon") had practised as sole principal for a number of years under the style of 'B. J. Brandon & Co', Solicitors. On or about 15<sup>th</sup> April 1998 the Respondent contracted to acquire that law practice from Mr Brandon, and the purchase of that firm was completed on or about 1<sup>st</sup> June 1998. A separate agreement was entered into by which, with effect from 4<sup>th</sup> January 1999, Mr Brandon was to become a Consultant to the Respondent. Between 1<sup>st</sup> June 1998 and January 1999 Mr Brandon continued to practise as a salaried partner or employee of the Respondent. Copies of the relevant agreements were before the Tribunal.
3. Nicholas Richard Littledale Bentley, ("Mr Bentley") was suspended from practice as a solicitor for an indefinite period by the Tribunal on 24<sup>th</sup> November 1994. Between November 1997 and May 1998 Mr Bentley provided general legal assistance to B. J. Brandon & Co. His services were invoiced by a company controlled by Mr Bentley named "Key-to-the-Door Limited". Although a PR was described as company director on those invoices the sole director of the company was in fact Mr Bentley, and the registered office of the company was situated at Mr Bentley's home address.
4. An application was made to this Tribunal in February 1999 in respect of Mr Bentley alleging he had been employed by solicitors in connection with their practices whilst suspended without the permission of the Law Society. At a hearing on 11<sup>th</sup> May 1999 this Tribunal found that allegation and others proven and ordered Mr Bentley be struck from the Roll.
5. In a witness statement dated 5<sup>th</sup> May 1999 and lodged with the Tribunal in connection with that application Mr Bentley confirmed that he had represented to Mr Brandon that he was "retired due to ill health".
6. Mr Brandon learned of Mr Bentley's suspension from practice on or about 2<sup>nd</sup> July 1998. In a letter dated 12<sup>th</sup> April 1999 from Mr Brandon's solicitors it was stated that Mr Brandon informed the Respondent of the fact of Mr Bentley's suspension immediately it came to his attention. On 10<sup>th</sup> September 1998 B. J. Brandon & Co submitted to the OSS an application for permission to employ Mr Bentley. By a letter to the OSS dated 24<sup>th</sup> September 1998 the Respondent confirmed that he had knowledge of Mr Bentley's suspension from July 1998.
7. By that same letter the Respondent confirmed that Mr Bentley had attended at his offices since 10<sup>th</sup> September 1998 "virtually every day" to provide the Respondent with legal advice and assistance. The Respondent stated in that letter that Mr Bentley was "not being employed and had not been paid for his attendance".
8. By letter dated 7<sup>th</sup> December 1998 the Respondent abandoned the application for permission to employ Mr Bentley. By his letter of 22<sup>nd</sup> May 2000 the Respondent confirmed that payment had been made to Mr Bentley for his services to the Respondent. The Respondent had at no stage obtained The Law Society's permission

for the employment of Mr Bentley. The OSS received no further communication from the Respondent in respect of his employment of Mr Bentley until his facsimile letter dated 4<sup>th</sup> February 2002.

9. By a decision dated 28<sup>th</sup> March 2001 the Professional Regulation Casework Sub-Committee resolved to refer the conduct of the Respondent and Mr Brandon to this Tribunal. Mr Brandon appealed that decision and on 16<sup>th</sup> May 2001 the Professional Regulation Appeals Casework Sub-Committee allowed that appeal and resolved to refer the Respondent alone to this Tribunal.
10. Copies of all relevant documents were before the Tribunal.

#### **The Submissions of the Applicant**

11. The Applicant gave to the Tribunal details of his compliance with the Order for substituted service dated 5<sup>th</sup> October 2001 together with details of actual service upon the Respondent as indicated by electronic mail received on the day of the hearing showing the Respondent's knowledge of the Applicant's electronic mail address. The Applicant submitted that this showed that the Respondent had known of the proceedings since October 2001 but his first response had been received by the Applicant the day before the hearing.
12. Mr Brandon gave oral evidence in support of the submissions of the Applicant.

#### **The Oral Evidence of Mr Brandon**

13. Mr Brandon confirmed that the contents of his statement dated 15<sup>th</sup> January 2002 were true.
14. Exhibited thereto were a copy of his consultancy agreement with the Respondent and other related agreements all dated the 15<sup>th</sup> April 1998.
15. Before his practice had been acquired by the Respondent Mr Brandon had employed Mr Bentley who was introduced to him by Mr Brandon's book keeper. Mr Brandon would have been prepared to employ Mr Bentley directly but Mr Bentley said that he wished to be paid through the company "Key-to-the-Door Limited".
16. Mr Bentley told Mr Brandon that he was a retired solicitor.
17. On the 2<sup>nd</sup> July 1998 Mr Bentley told Mr Brandon in a telephone conversation that he was a suspended solicitor not a retired solicitor. Mr Bentley sent to Mr Brandon details of the Findings and it appeared that no dishonesty had been involved. The OSS had confirmed this to Mr Brandon.
18. Mr Brandon reported the conversation to the Respondent and said that he had heard from Mr Bentley who had said that he had been suspended but no dishonesty was involved.
19. An application was made by Mr Brandon at the Respondent's request for permission to employ Mr Bentley but this permission was never granted.

20. The Law Society had investigated Mr Brandon's conduct in relation to Mr Bentley and Mr Brandon had been severely reprimanded.
21. At the conclusion of Mr Brandon's evidence the Applicant made the following further submissions.
22. There was a hiatus in the employment of Mr Bentley by the Respondent after the Respondent had been told by Mr Brandon on 3<sup>rd</sup> July 1998 that Mr Bentley was a suspended solicitor.
23. Mr Bentley had not been employed until September 1998 when Mr Brandon had gone on holiday. In Mr Brandon's absence the employment had taken place. The precise dates were not certain but the Respondent's letter of 24<sup>th</sup> September 1998 to the OSS said as follows:-

"Further since Mr Brandon has been away on holiday from 10<sup>th</sup> September returning on the 29<sup>th</sup> September, Mr Bentley has also been attending these offices, again on a voluntary basis, to advise me on certain technical aspects relating to conveyancing".
24. The Applicant did not seek to show that the Respondent had knowledge of Mr Bentley's suspension prior to the 3<sup>rd</sup> July but submitted that over the period 10<sup>th</sup> to 29<sup>th</sup> September the Respondent had employed Mr Bentley with knowledge of the suspension.
25. After that date, if the Tribunal accepted Mr Brandon's evidence, the Respondent was on notice. Mr Brandon had been investigated by The Law Society and a conclusion reached.
26. Mr Brandon's evidence was corroborated by Mr Bentley's own statement dated 5<sup>th</sup> May 1999 in disciplinary proceedings in which he said:-

"I realised that permission of The Law Society was required only as late as July 1998. As soon as this requirement was known I stopped work. When Brandon asked me back in July 1998 I assumed that permission had been given although I made no enquiries in this regard..... I did not deliberately set out to mislead Mr Brandon about my ability to practise. I was at fault in being ignorant at the time of what it meant to be an "unqualified person". I represented myself to Mr Brandon as having retired due to ill health as this is how I saw myself in 1997".
27. In the submission of the Applicant the period from the 10<sup>th</sup> to 29<sup>th</sup> September was not a long period of time but was an extremely serious breach of Section 41. The Respondent was not present but could not have said that he was unaware of the need to seek permission. He was aware because, with his consent and endorsement, an application for permission to employ Mr Brandon had been made.
28. The Respondent had been aware that there was a prohibition on employing Mr Bentley but he had set out to defy it for his own convenience.
29. In his letter of 4<sup>th</sup> February 2002 the Respondent had said that he did not employ Mr Bentley but Key-to-the-Door Limited.

30. The Applicant submitted that this must be a wholly spurious line of defence.
31. Key-to-the-Door Limited could not be an employee, it was a company and it was the creature of Mr Bentley.
32. The company was the agent for Mr Bentley and contracted on behalf of him as its principal. There was therefore a contract between the Respondent in his firm and Mr Bentley and that contract must have been one of employment.
33. If the Applicant was wrong in that submission then the fact of remuneration remained as admitted on the correspondence and Section 41 said "employed or remunerated". The fact that the remuneration passed through an agent did not mean that it was not remuneration.
34. The argument that interposing a company defeated Section 41 was ingenious but wholly misconceived.
35. Section 41 was a notoriously difficult section which could on occasion give rise to a harsh result. This was not such an occasion, the Respondent had been guilty of a serious breach of the Section at the serious end of the scale.
36. The Tribunal might wish to consider that it had power either to strike off or suspend a Respondent found to be in breach of Section 41.

### **The Submissions of the Respondent**

37. The Respondent's submissions were contained in his letter dated 4<sup>th</sup> February 2002 which was repeated more fully by electronic mail dated 5<sup>th</sup> February 2002 which said:-

The facts are as follows:-

"I am being asked to answer a charge that I employed or remunerated 'Mr Nick Bentley', whom I had knowledge that he was suspended from practice, which is contrary to S.41 of the Solicitors Act 1941.

On enquiries, it is found by the OSS, that B J Brandon & Co, which had been in practice since the early seventies, at 4/6 Castle Street, had paid for services rendered to a Company called 'Key to the Door Limited' from November 1997 to September 1998.

Key to the Door Ltd used the services of Mr Bentley to provide these services.

Mr Brandon was a sole practitioner until 1<sup>st</sup> June 1998, when I bought the entire equity interest and Mr Brandon became a salaried partner.

After I took over the practice it had come to light that Mr Bentley was suspended.

I was inclined to provide him employment and to follow the rules, I asked Mr Brandon to make application for permission to employ him.

Mr Bentley was never employed at all by B J Brandon & Co.

It was a company called key to the door, which was hired and paid.

IF 'KEY TO THE DOOR' LIMITED USED MR. BENTLEY TO PROVIDE THE SERVICE OR ALLOWED ITSELF TO BE REPRESENTED BY MR. BENTLEY,

IT IS NOT AN OFFENCE COMMITTED BY MR. BRANDON OR ME.

WE MUST RECOGNISE THE CONCEPT OF CORPORATE ENTITY AS BEING DISTINCT FROM ITS MEMBERS AND RELATIVES.

The idea of key to the door limited was neither Mr. Brandon's nor mine. It was Mr Bentley's own creation. Perhaps he was aware of S41 and this was his way to cover it.

May be he was perfectly justified and legal in what he did.

Section 41 or any other section does not prohibit a suspended Solicitor from working or taking up employment. All a suspension does is it inherently disables a solicitor from conducting his own practice as proprietor, partner or director of an incorporated practice.

It just puts a practising solicitor on the peril of disciplinary action, if he employs or remunerates a suspended or struck off solicitor, without permission.

If one reads section 41 carefully, the prohibition is on:

Employing

Or

Remunerating

Strictly, technically legally speaking, we did neither.

S41 does not expand its ambit using the words, directly or indirectly, or in any manner.

It merely uses the words, employ or remunerate.

With due respect, we did not employ him.

He was not given an employment contract, nor was he paid, nor was PAYE deducted.

Key to the door was a legal and conveyancing consultancy and it was hired and paid.

The fact that Mr. Bentley represented it or carried on work on behalf of the company was not volatile [sic] of Section 41.

With due respect, the entire Company Law legislation would lose its meaning and purpose, if the sanctity of a company as a separate legal entity is not recognised.

I have in my letter dated 22<sup>nd</sup> May stated that a payment was made to Mr. Bentley.

I apologise for the error, it was not paid to Mr. Bentley, it was paid to Key to the door limited.

I pray that my actions were not volatile [sic] of section 41 in the strictest literal interpretation and on the basis of the law of the Land regarding the corporate entity being distinct from the members.

The rules of SOLOMON V. SOLOMON would not apply in this case.

Mr Bentley did nothing illegal.

He studied the law and found the loophole.

May be if the Law society would like to change the law to cover this kind of circumvention.

S41 is a penal provision and should be strictly interpreted.

I did not have any part to play in Mr. Bentley's game as he started initially and Mr Brandon went by innocently and carelessly.

I hope that this point will be accepted by the Tribunal and will find me not guilty.

If this point is not acceptable, I may want to make more submissions as to the facts and will appreciate an opportunity before a verdict is made."

### **The Findings of the Tribunal**

The Tribunal found the allegation against the Respondent to have been substantiated.

The Tribunal had considered the status of Mr Bentley and had concluded that he was employed by the Respondent. The Tribunal adopted the argument of Mr Miller that the company was the agent of Mr Bentley. To find otherwise would drive a coach and horses through Section 41 of the Solicitors Act and could not have been what was envisaged in the legislation.

The Tribunal noted from the Respondent's own correspondence that he referred to his relationship with Mr Bentley not Key-to-the-Door, for example in his letter of 24<sup>th</sup> September 1998 the Respondent had written:-

"I asked Mr Bentley to come into the office for advisory purposes".

In his letter dated 7<sup>th</sup> December 1998 to the OSS the Respondent said that he did not wish “Mr Nicolas Bentley... to do any work whatsoever..... I do not wish to pursue the application made by B. J. Brandon and Co seeking permission of the Law Society to employ him.....”

It was clear from the correspondence that the Respondent had seen his relationship as being with Mr Bentley himself.

The Tribunal accepted the evidence of Mr Brandon that as from 3<sup>rd</sup> July 1998 the Respondent had known that Mr Bentley was a suspended solicitor. The Tribunal found the allegation to have been proved to the required standard.

Although the subsequent period during which Mr Bentley had been employed by the Respondent was short the Respondent had been well aware of the true situation having arranged for permission to be sought from The Law Society to employ Mr Bentley. The Respondent had made no effort to find alternative cover for the period when Mr Brandon was due to go on holiday so that those areas of work dealt with by Mr Brandon could be properly handled.

This had been a flagrant breach of the provisions requiring solicitors not to employ suspended solicitors without permission. The Respondent was well aware by September 1998 that Mr Bentley was suspended and to make matters worse he was prepared to employ Mr Bentley in an area of law in which the Respondent himself had no experience thus exposing the public to an unacceptable risk. The Respondent had put forward no mitigating circumstances claiming only that he had hired and paid the company rather than Mr Bentley, an argument which the Tribunal had rejected.

The Respondent had ignored the strict requirements relating to the employment of suspended solicitors for his own convenience. The appropriate penalty was the ultimate sanction. The Tribunal Ordered that the Respondent Dixit Shah of Churchgate Chambers, New Marine Lines, Bombay, 40020, India, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,490.00.

DATED this 29<sup>th</sup> day of March 2002

on behalf of the Tribunal

R. J. C. Potter  
Chairman