

IN THE MATTER OF SYDNEY JOHN SEMMENS, former solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs K. Todner (in the chair)
Mrs H Baucher
Lady Maxwell-Hyslop

Date of Hearing: 3rd June 2003

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 Geoffrey Williams then solicitor (but now of Queen's Counsel) of Geoffrey Williams & Christopher Green, 2A Churchill Way, Cardiff, CF10 2DW on 7th September 2001 that Sydney John Semmens of Colwyn Bay, North Wales, solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such orders be made as the Tribunal should think right.

On 19th December 2001 the Applicant made a supplementary statement containing further allegations. The allegations set out below are those contained in the original and supplementary statements.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following respects, namely:-

- (a) That he had failed to maintain properly written books of account contrary to Rule 11 of the Solicitors Accounts Rules 1991;

- (b) That he had failed to pay clients' funds into client account contrary to Rule 3 of the Solicitors Accounts Rules 1991;
- (c) That he had improperly transferred to his office account funds that he was holding in his client account as stakeholder in a conveyancing transaction;
- (d) That he had breached the terms of a professional undertaking;
- (e) That he had paid out of his client account funds held to the order of a firm of solicitors without the authority of the said firm;
- (f) That he had further failed to maintain properly written books of account contrary to Rule 11 of the Solicitors Accounts Rule 1991 and contrary to Rule 32 of the Solicitors Accounts Rules 1998;
- (g) That he had drawn monies out of a client account otherwise than as permitted by Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules;
- (h) That he had practised as a solicitor whilst there was no practising certificate issued to him in respect of such practice;
- (i) That he had failed to deliver Accountant's Reports to The Law Society notwithstanding the terms of Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
- (j) That he had failed to promptly pay his due contributions to the Solicitors Indemnity Fund Limited contrary to Section 37 of the Solicitors Act 1974 and the Rules made thereunder.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 3rd June 2003 when Geoffrey Williams appeared as the Applicant and the Respondent did not appear and was not represented.

The Applicant reminded the Tribunal that the matter had been adjourned owing to the Respondent's medical condition.

The Applicant had been instructed in January 2003 that the Respondent had in fact achieved a voluntary removal of his name from the Roll of Solicitors in July 2002.

In view of this the only order which was available to the Tribunal to make was that pursuant to Section 47(2)(g) of the Solicitors Act 1974, namely that the Respondent be prohibited from having his name restored to the Roll of Solicitors except by order of the Tribunal.

The Respondent had indicated that he admitted some of the allegations, although he did contest some other allegations. The Applicant considered in all of the circumstances that it would be appropriate to proceed on the admitted allegations only. It was the submission of the Applicant that the admitted allegations would justify the making of the Order sought.

The Tribunal agreed that it would be appropriate to adopt that course of action accepting that the Respondent was in no fit state to deal with the contested allegations. It would be open to

the Respondent to seek restoration to the Roll by making an application to the Tribunal should his mental health be regained. The Tribunal further noted that the Applicant had written to the Respondent on 31st January 2003 pointing out that the Tribunal would not be able to make an Order simply because the Respondent consented to it. The Order would have to be made on the basis of positive findings. The Respondent was, therefore, aware of the current situation.

The Respondent admitted allegations (a) and (b) and allegations (f) to (j). The Respondent in his letter addressed to the Applicant dated 3rd March 2003 confirmed that he agreed with the proposed approach.

At the conclusion of the hearing the Tribunal ordered that the Respondent Sydney John Semmens of Penrhyn Bay, Conwy (formerly of Colwyn Bay, North Wales) former solicitor be prohibited from having his name restored to the Roll of Solicitors except by order of the Tribunal and they further ordered him to pay the costs of and incidental to the application and enquiry (to include the costs of The Law Society's Investigation Accountant) to be subject to detailed assessment if not agreed between the parties.

The facts relating to the admitted allegations are set out in paragraphs 1 to 17 hereunder: -

1. The Respondent, born in 1950, was admitted as a solicitor in 1980. At the material times he practised as a solicitor on his own account under the style of Semmens & Co at 4 Penrhyn Road, Colwyn Bay, North Wales, L29 8LG.

Books of Account

2. Upon notice duly given to the Respondent an inspection of his books of account was carried out by the Investigation Unit of the OSS. A copy of the report prepared following the inspection dated 30th November 1999 was before the Tribunal. The report revealed that the books of account were not in compliance with the Solicitors Accounts Rules for the reasons noted below.

Liabilities to Clients

3. A list of liabilities to clients as at 31st July 1999 was produced for inspection which totalled £85,708.36 after adjustment. The items on the list were in agreement with the balances shown in the clients' ledger but the list did not include a further liability of £2,120 which was not shown by the books. A comparison of the total liabilities with cash held on client bank account at that date after allowance for uncleared items showed the following position:-

Liabilities to clients shown by the books	£85,708.36
Add liability not shown by the books	<u>2,120.00</u>
	£87,828.36
Cash available	84,867.15

Cash shortage	£2,961.21
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Replacement of the cash shortage - £2,961.21

4. The Respondent agreed the existence of the cash shortage of £2,961.21 on client bank account at 31st July 1999. On 1st September 1999 he told the Investigation and Compliance Officer that this would be replaced immediately and evidence of the replacement would be forwarded to the OSS. On 17th September 1999 the Investigation and Compliance Officer telephoned the Respondent to ask why he had not forwarded the evidence of the replacement. The Respondent again said that this would be forwarded immediately. However, the evidence of the replacement of the shortage was only received on 15th October 1999 and it showed that the replacement was not made until 24th September 1999 by transfer from office to client bank account.

Cause of the Cash Shortage - £2,961.21

5. The cash shortage arose thus:-

(i)	Stamp duty and Land Registry fees lodged in office bank account	£2,120.00
(ii)	Incorrect transfers from client to office bank account April 1998	717.21
(iii)	Overpayment	20.00
(iv)	Book difference (shortage)	104.00

		<u>£2,961.21</u>

Stamp Duty and Land Registry fees lodged in office bank account - £2,120

6. The Respondent acted for Mr O in connection with his purchase of a property at Llandudno. The solicitor acting for the vendor of the property, Mr D, was a Mr Neil Taylor and it was noted that The Law Society intervened into his practice on 22nd December 1998. Correspondence from Mr Taylor, however, in connection with this matter indicated that he was still practising from his home address. When the Investigation and Compliance Officer asked the Respondent if he was aware of any problems with Mr Taylor he replied "Not at the time of the transaction but I am aware of the problems now".
7. On 24th June 1999 the Respondent wrote to Mr D thus:-

"I write to acknowledge receipt of your cheque for £2,520 paid in furtherance of your agreement with our client, Mr O, that you will be responsible for his legal fees, Stamp Duty and Land Registry fees and disbursements in his purchase of (the property at Llandudno)".

The completion statement showed the following:-

Purchase price		£192,000.00
Semmens & Co's fees	£300.00	
Local search fee	90.00	
Land Registry fee	200.00	
Land Charges searches	10.00	
Stamp duty	<u>1,920.00</u>	<u>2,520.00</u>
		194,520.00
Less mortgage advance from Abbey National		179,980.00

		£14,540.00
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8. The Respondent did not act for Abbey National plc. However, a letter from Neil Taylor dated 11th May 1999 (some five months after intervention into his practice) was before the Tribunal. The letter suggested a purchase price of £190,000 and the copy correspondence on the relevant client matter file recorded that Abbey National plc were lending a net sum of £180,000 against a purchase price of £190,000 and that the funds would be available from 29th March 1999. No purchase monies passed through the Respondent's account.
9. The relevant account in the clients' ledger did show, however, that an amount of £2,520 was paid into the firm's office bank account on 23rd June 1999 and this included Stamp Duty of £1,920 and a Land Registry fee of £200, both of which remained unpaid as at 31st July 1999.
10. Upon notice duly given to the Respondent a further inspection of his books of account was carried out by the Forensic Investigation Unit of the OSS. A copy of the report dated 11th September 2001 was before the Tribunal. The following matters were revealed by that report.

Books of Account

11. The books of account were not in compliance with the Solicitors Accounts Rules for the reasons noted below.

Liabilities to Clients

12. A list of liabilities to clients as at 31st July 2001 was produced for inspection which totalled £58,927.18 after adjustment. The items on the list were in agreement with the balances shown in the clients' ledger. Additional liabilities, however, which were not shown by the books totalling £2,109.63 existed at 31st July 2001 and a comparison of the total liabilities with cash held on client bank account at that date after allowance for uncleared items showed the following position:

Liabilities to clients shown by the books	£58,927.18
Liabilities to clients not shown by the books	2,109.63

	£61,036.81

Cash available	58,851.68

Cash shortage	£2,185.13
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Cause of the Cash Shortage - £2,185.13

13. The cash shortage arose as follows:-

(i)	Transfers from client to office bank account where bills of costs have not been delivered	£1,949.63
(ii)	Land Registry fees lodged in office bank account	80.00
(iii)	Client money retained in office account	80.00
(iv)	Incorrect payment from client bank account	75.00
(v)	Book difference	.50

		<u>£2,185.13</u>

Action taken in respect of the cash shortage - £2,185.13

14. The Respondent agreed the existence of the cash shortage. He issued and delivered bills of costs in respect of the transfers made that were properly due for costs but where no bills had been delivered. The Respondent said that he would be able to replace the remaining cash shortage of £235.50 (£2,185.13 - £1,949.63) in the next few days when he received funds in respect of bills he had recently issued to various clients. The Respondent added that he would send evidence of this rectification to the OSS.

Transfers from client to office bank account where bills of costs had not been delivered - £1,949.63

15. The Respondent acted for Mr C in connection with property transactions of Plots 2, 4 and 5 at FW. The following transfers were made from client to office bank account in respect of these matters:-

	Total Transfer	Disbursements	Costs
Plot 5 9 th March 1999	£2,000.00	£500.00	£1,500.00
Plot 4 6 th September 1999	375.00	115.37	259.63
Plot 2 18 th October 1999	190.00		190.00
	<u>£2,565.00</u>	<u>615.37</u>	<u>1,949.63</u>

16. The Respondent said that he had made the above transfers from client to office bank account when costs were properly due to the firm. However, he had not “got around” to issuing and delivering bills due to his illness.
17. The Respondent issued and delivered bills in respect of the above transfers on 28th August 2001 and 6th September 2001.

The Submissions of the Applicant

18. The facts supporting the admitted allegations justified the making of the prohibition order sought. The Respondent himself had agreed to that course of action. The Applicant recognised that the Respondent’s mental health continued to give grave cause for concern.

The Submissions on behalf of the Respondent

19. The Respondent had not made submissions in respect of these allegations but the Tribunal did take into account a letter, undated but received on 20th May 2003, from the Respondent’s wife explaining the nature of the Respondent’s mental illness. The Tribunal has taken due note of this but considered it inappropriate to repeat the full text of that letter here. It expresses its gratitude to Mrs Semmens for writing as she has done.

The Findings of the Tribunal

20. The Tribunal found allegations (a), (b), (f), (g), (h), (i) and (j) to have been substantiated, indeed they were not contested. It recognised that the Respondent was at the time of the hearing wrestling with serious health problems but this did not expunge the need on the part of a solicitor to comply punctiliously with the Solicitors Accounts Rules and to handle clients’ money in a fair and proper way. Any breaches of those Rules by a solicitor and a failure to exercise a proper stewardship over clients’ funds was a serious matter. The Tribunal had no doubt that the substantiated allegations justified the making of the order sought. The Tribunal, therefore, ordered that the Respondent be prohibited from having his name restored to the Roll of Solicitors except by order of this Tribunal and the Tribunal further ordered that the Respondent should pay the costs of and incidental to the application and enquiry, to include the costs of The Law Society’s Investigation Accountant, to be subject to a detailed assessment if not agreed between the parties.

DATED this 3rd day of July 2003
on behalf of the Tribunal

K Todner
Chairman