

IN THE MATTER OF NIGEL COPELAND

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J P Davies (in the chair)
Mr A G Ground
Mr M C Baughan

Date of Hearing: 18th June 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 Stuart Roger Turner solicitor and partner of Lonsdales 342 Lytham Road, Blackpool, Lancashire FY4 1DW on 19th December 2001 that Nigel Copeland solicitor of Sale, Manchester, 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 the following circumstances, namely:-

1. That he breached Practice Rule 1 in that during the course of a retainer with a client his professional behaviour compromised or impaired or was likely to impair any or all of the following:
 - 1.1. The Respondent's independence or integrity;
 - 1.2. The Respondent's duty to act in the best interests of the client;
 - 1.3. The good repute of the solicitor or the Solicitors' Profession;
 - 1.4. The Respondent's proper standard of work.

2. That he misled a client;
3. That he failed to reply to correspondence from the OSS.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 18th June 2002 when Stuart Roger Turner solicitor and partner of Lonsdales of 342 Lytham Road, Blackpool, Lancashire FY4 1DW 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 contained in his letter dated 17th June 2002 to the Applicant, a copy of which was before the Tribunal.

At the conclusion of the hearing the Tribunal ordered that the Respondent Nigel Copeland of Sale, Manchester, 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 £1,669.19.

The facts are set out in paragraphs 1 to 11 hereunder: -

1. The Respondent born in 1933 was admitted as a solicitor in 1956.
2. At all material times the Respondent carried on practice either as a partner at Burton Copeland and Co solicitors or a consultant partner at Copeland Lyons solicitors or a consultant solicitor at Bermans solicitors and latterly as a consultant licensing solicitor.
3. A Mr M owned a night club which at the end of the 1980s was the subject of a compulsory purchase by the Local Authority (Manchester City Council). The Local Authority had agreed to store the Club's contents until he found alternative premises. Whilst they were being stored by the Local Authority they were stolen.
4. In or around 1990 Mr M instructed the Respondent to pursue a claim on his behalf to recover his losses. At the time the Respondent was a partner at Burton Copeland & Co solicitors. From 1st November 1993 the Respondent became a consultant partner with Copeland Lyons solicitors and from 6th March 1995 worked as a consultant at Bermans solicitors.
5. By 1996 Mr M had become dissatisfied with the progress of his claim against Manchester City Council and he terminated the Respondent's retainer and instructed new solicitors.
6. Upon taking the case over Mr M's new solicitors obtained on his behalf a settlement in his favour within a very short period of time.
7. Prior to the termination of the Respondent's instructions Mr M had become increasingly concerned about the lack of progress of his case. The Respondent had written to Mr M on 1st November 1995:-

"I write to confirm that proceedings against the Council are now going through in the High Court. This is dealt with by a Writ of Summons supported by a Statement of Claim because your claim is in excess of £11,000.

Unfortunately, I cannot give you an estimate as to when this will come before a Judge and it could be that the matter might be referred to arbitration. I appreciate that this has been long standing but you must be patient a little while longer and I will endeavour to push the matter as much as I can. I think you have to accept that it will be some time next year when there is a hearing because the Council will not admit liability."

8. On 1st February 1996 the Respondent wrote to Mr M:-

"I have to tell you that the offer made of £5,000 will not be increased."

9. Upon being instructed, Mr M's new solicitors subsequently discovered from the Local Authority that they had neither any record of proceedings having been issued nor any knowledge of an offer having been made.
10. On 14th July 2000 the OSS wrote to the Respondent regarding a complaint made by Mr M. The OSS did not receive a reply to the issues raised in the letter and wrote an additional letter on 8th August 2000 warning the Respondent of the consequences of his failure to reply. No reply was ever received.
11. On 27th March 2001 the Hybrid Sub-Committee resolved to refer the Respondent to the Solicitors' Disciplinary Tribunal.

The Submissions of the Applicant

12. The letters of 1st November 1995 and 1st February 1996 were totally fictitious. No negotiations had been entered into with the Local Authority by the Respondent. Furthermore a letter dated 24th March 1999 from M's new solicitor to the OSS stated that:-

"The writer took steps to approach Manchester City Council via their Legal Department to receive confirmation that they had no record of any proceedings ever having been issued in respect of this matter.

....As a result proceedings were issued by the writer a matter of days before limitation (6 years) expired."

13. The Respondent had admitted that he had not acted in a proper manner. An offer of £5,000 had not been made. The Respondent had been dishonest. Proceedings had either never been issued or certainly never served.
14. The Respondent's letter of 1st February 1996 could be construed as persuasion of Mr M by the Respondent to accept the offer which did not exist by pointing out difficulties in the case. For example:-

"You will see from this letter that the cost of litigation is somewhat high and I have to be frank and say that your case is not clear cut and there is some merit in the Council argument that you did nothing to mitigate your loss and that the value of some of the articles at the time was overestimated and that the condition of some of the articles was such that the replacement of such articles in their state at the time they were removed did not equal the figures that are being claimed."

15. The Respondent had further written that he was not happy with Mr M's witnesses and told Mr M of the expense of taking the case to court and then losing. The Respondent had asked Mr M to consider accepting the offer rather than "gamble on success."
16. Proceedings had been issued by Mr M's new solicitors a matter of days before the expiry of the limitation period and had been concluded with the sum of £11,000 being paid to the Respondent by the Local Authority by way of damages.
17. The Respondent had paid £4,000 to Mr M being the difference between the damages received from the Local Authority and the original claim of £15,000.
18. In the submission of the Applicant the way in which the Respondent had dealt with the matter was a breach of Practice Rule 1 and the Respondent had misled his client.
19. The Tribunal would perhaps be drawn to the inescapable conclusion that there had been an element of dishonesty in the Respondent's conduct.
20. The Applicant had advised the Respondent that if he had an explanation to offer he ought to attend the Tribunal and mitigate accordingly.
21. In fairness to the Respondent the Applicant asked the Tribunal to note that the Respondent was 69 years old and his wife was in ill health.

The Submissions of the Respondent

22. The submissions of the Respondent were contained in his letter to the Applicant dated 17th June 2002 in which the Respondent accepted the details of the Applicant's costs and gave information regarding his wife's current serious ill health. The Respondent further wrote:-

"I retired from practice with effect from 31st May 2002 and I have surrendered my certificate to the Society. This was done on 21st May.

I cannot deny the allegations. What I did was not right and for this I am deeply sorry. After 46 years and five years working articles it is a very sad position for me. I have already paid to my former client £4,000 and costs of £1,000. These were not paid by Bermans. It is difficult to explain why it happened and to blame others but when one is in charge the man at the top carries the can. Partnerships are like a marriage and one cannot be lucky all the time. At the moment my wife's health is foremost and that is why I shall not attend.

I hope I have not caused you too much inconvenience and offer my apologies to the Tribunal."

The Findings of the Tribunal

23. On the basis of the facts presented and the documentation the Tribunal found the allegations to have been substantiated and indeed they had not been challenged by the Respondent
24. The Tribunal had been disturbed by the letters which the Respondent had seen fit to write to his client saying that the Respondent had been involved in negotiations and seeking to persuade Mr M to accept £5,000 when the claim was worth three times as much and there had been no negotiations. In the absence of any explanation by the Respondent the Tribunal found the letters of 1st November 1995 and 1st February 1996 to have been deceitful, indeed the Respondent had woven an elaborate tissue of lies. The Respondent's conduct had clearly been dishonest.

Previous appearances before the Tribunal

Hearing - 11th October 1984

25. Following the above hearing, by Findings dated 29th November 1984 the following allegations were found substantiated against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in that he had:-
 - (a) been guilty of delay in progressing the affairs of his clients;
 - (b) misled his clients;
 - (c) failed to answer letters from the Manchester Law Society;
 - (d) failed to answer letters from The Law Society.
26. On that occasion the Tribunal noted that a condition had been imposed by The Law Society on the Respondent's Practising Certificate that he should in effect practise only in approved partnership or employment. The Tribunal said that the Respondent had evidently failed to pay sufficient heed to the warning given by that condition. The Tribunal said that the Respondent had to realise that failure on the part of a solicitor to deal with matters with reasonable expedition and to answer enquiries tarnished the image of the profession as a whole. The Tribunal accepted that the Respondent had been subjected to many strains in his personal life and had suffered ill health over many years otherwise they might well have thought it appropriate to impose a more severe penalty. They hoped that the Respondent would take heed of this further warning. The Tribunal imposed a fine of £1,500 upon the Respondent together with costs.

Hearing - 26th June 1986

27. Following the above hearing, by Findings dated 17th September 1986 the following allegations were found substantiated against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in that he had:-

1. Failed to apply for a remuneration certificate the application forms for which had been forwarded to him by The Law Society on 4th May and 31st May 1984;
 2. Failed to answer correspondence from The Law Society between 22nd August 1984 and 6th November 1984;
 3. Failed to deal promptly or at all with correspondence from a professional colleague namely Messrs Elliot & Co and failed to hand over promptly deeds and documents in his possession belonging to his former client B & C Limited and Mr RC.
 4. Failed to carry out with due despatch the instructions of the Midland Bank plc regarding the registration of the second charge by A Limited and failed to deal with correspondence and enquiry addressed to him by the Midland Bank plc;
 5. Failed with due promptitude to carry out the terms of an undertaking to use his best endeavours to deal with requisitions from the Land Registry raised in connection with a property in Longsight, Manchester and failed to reply to correspondence addressed to him in that regard by Messrs Gorna & Co;
 6. Delayed and/or failed to reply to correspondence from The Law Society in the matter of Elliot & Co., the Midland Bank plc and Gorna & Co.
28. The Tribunal in 1986 regretted that the allegations had not been brought before them at the same time as the allegations heard in 1984 as it was clear that they resulted from the same course of difficulty. The Tribunal noted that the Respondent had taken the step of entering into partnership thus ensuring that he had appropriate support and someone to check that correspondence and telephone calls did not fall into arrears. Although the Tribunal took a very serious view of the matters alleged, if the additional matters had been brought before the Tribunal during the earlier proceedings they would not have been likely to have imposed a greater penalty than they did. No client had suffered loss nor been severely prejudiced by the attitude of the Respondent. The Tribunal ordered that the Respondent pay a fine of £2,500 together with costs.
29. At the hearing on 18th June 2002 the Tribunal had found that the Respondent's conduct towards the client had been dishonest and had prejudiced the position of the client. The only evidence before the Tribunal from the Respondent was his letter of 17th June 2002 which contained a suggestion that the Respondent might wish to blame others for what had happened. The Respondent had not however given any explanation of this or indeed any explanation as to why he had behaved as he had. He himself had said that what he had done was not right. His dishonest conduct could not be tolerated within the profession. The Tribunal had considered the personal circumstances outlined in the Respondent's letter but despite those circumstances and despite the fact that the Respondent was aged 69 and was no longer in practice the Tribunal had concluded that the appropriate penalty was a striking off in the interests of the protection of the public and the reputation of the profession.

30. The Tribunal ordered that the Respondent Nigel Copeland of Sale, Manchester, 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 £1,669.19.

DATED this 24th day of September 2002

on behalf of the Tribunal

J P Davies
Chairman