

IN THE MATTER OF SUSAN CATHERINE WATERSTON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mrs E Stanley (in the chair)
Mr S N Jones
Mr M G Taylor CBE

Date of Hearing: 28th May 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 Andrew Miller solicitor employed by The Law Society at the Office for the Supervision of Solicitors of Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 7th January 2002 that Susan Catherine Waterston of Cuddesdon, Oxford, 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 that she had been guilty of conduct unbecoming a solicitor in that she had:-

- (i) contrary to Rule 11(5) of the Solicitors Accounts Rules 1991 (or, alternatively, Rule 32(7) of the Solicitors Accounts Rules 1998) failed to carry out bank reconciliations of her former firm's accounts not less than once in every five weeks;
- (ii) contrary to Rule 11(i) of the Solicitors Accounts Rules 1991 failed at all times to keep properly written up such accounts as are necessary to show all dealings with client money received or, alternatively, contrary to Rule 1(g) of the Solicitors Accounts Rules 1998, failed to keep proper accounting records to show accurately the position with regard to the money held for clients;

- (iii) contrary to Rules 7 and 8 of the Solicitors Accounts Rules 1991 (alternatively Rule 22 of the Solicitors Accounts Rules 1998) drawn money from client account other than in accordance with the said Rules;
- (iv) utilised clients' money for her own purposes;
- (v) failed to take reasonable steps for the protection of her clients in that she failed to effect land registration of conveyancing purchases promptly following completion of the purchase of the same;
- (vi) contrary to Section 34 of the Solicitors Act 1974 (as amended) failed to file accountants' reports with The Law Society as required by that section and the Rules made thereunder.

Prior to the substantive hearing the Tribunal considered an application for an adjournment by Ms Waterston.

Application for an Adjournment

Submissions of Ms Waterston

In a letter to the Tribunal dated 4th May 2002 Ms Waterston indicated that she was unable to attend the substantive hearing as she was obliged to attend her college leavers' course, details of which were not available when she sent her dates of availability to the Tribunal.

Following correspondence with Mr Miller on behalf of the OSS, Ms Waterston wrote to the Tribunal by letter dated 22nd May 2002 as follows:-

"Given the comments in Mr Miller's letter, I am seeking legal advice. However, as I feel it would be preferable for me to attend in person, whether or not I am legally represented at the hearing, I should be obliged if the matter is adjourned to facilitate this.

As I am no longer practising as a solicitor, and have no intention of doing so in the future, and as no loss has been sustained in any event, I would respectfully request that this request for an adjournment be favourably considered. This would enable a full explanation to be given to the Tribunal in any event."

The Submissions of Mr Miller on behalf of the OSS

Ms Waterston's application for an adjournment was opposed.

The substantive application originated from an inspection of Ms Waterston's books of account which commenced as long ago as June 2000. The Report of the Investigation & Compliance Officer was dated 31st October 2000.

The last communication from Ms Waterston to the OSS had been a letter dated 3rd October 2000. Nothing further had been received from her until her letters of May 2002.

Ms Waterston had had since October 2000 to give an explanation of her conduct and no substantive explanation had been given.

There had been no response to the notice served by Mr Miller asking Ms Waterston to identify facts in dispute.

Whilst it would be desirable for Ms Waterston to be present to face the serious allegations made against her, in Mr Miller's submissions it would be appropriate for the Tribunal to refuse her application for an adjournment in all the circumstances.

The decision of the Tribunal in relation to the application for an adjournment

The Tribunal considered the written submissions of Ms Waterston and the oral submissions of Mr Miller. Given Ms Waterston's age, the length of time since she had been admitted as a solicitor, the length of time during which she had had knowledge of the proceedings; the fact that she had been notified of the date of the hearing as long ago as March 2002 and the serious nature of the allegations, the Tribunal decided to proceed with the substantive hearing. Ms Waterston's application for an adjournment was refused.

The Substantive Hearing

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 28th May 2002 when Andrew Miller solicitor employed by The Law Society at the Office for the Supervision of Solicitors of Victoria Court, 8 Dorner 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 admission of the Respondent to allegations (i), (ii), (v) and (vi).

At the conclusion of the hearing the Tribunal ordered that the Respondent Susan Catherine Waterston of Cuddesdon, Oxford, solicitor be struck off the Roll of Solicitors and they further ordered that she do pay the costs of and incidental to the application and enquiry fixed in the sum of £7,038.66.

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

1. The Respondent born in 1959 was admitted as a solicitor in 1986. Her name remained on the Roll of Solicitors.
2. From July 1997 or thereabouts the Respondent practised as a sole principal as Waterstons, solicitors at West House, Lombard Street West, West Bromwich, West Midlands B70 8EG. The Respondent ceased to practise on or about 31st October 2000.
3. Upon due notice to the Respondent an Investigation & Compliance Officer of The Law Society carried out an inspection of the Respondent's books of account commencing 19th June 2000. A copy of the Officer's Report dated 31st October 2000 ("the Report") was before the Tribunal.
4. The Investigation and Compliance Officer concerned with the preparation of the Report found that the Respondent's books of account contained no entries later than 7th January 1999.
5. Further it was found that the Respondent had carried out no client bank reconciliations since 30th November 1998. The reconciliations were brought up to May 2000 during in the course of the inspection.

6. The Investigation and Compliance Officer computed and agreed with the Respondent a list of client liabilities totalling £55,539.07 after adjustment. Comparing this with available cash at bank in client account he computed a cash shortage of £17,015.07. He further prepared a breakdown of the £17,015.07 shortfall which comprised an improper transfer of £6,440, an "unidentified shortage" of £10,100.61 and four debit balances totalling £474.46. Because of the lack of written up books of account he found himself unable further to identify the client ledgers or individual transfers which comprised the "unidentified shortage."
7. It was noted in the Report that on 28th March 2000 the Respondent transferred the sum of £6,440 from client account to her firm's office business reserve account. This transfer enabled the Respondent to make a payment of £6,330.68 that same day to the credit of her personal mortgage account with the Yorkshire Building Society. In interview with the Investigation and Compliance Officer the Respondent confirmed that the purpose of the transfer was to enable the mortgage payment to be made and that she was aware this had resulted in a shortfall on client account.
8. The Report further disclosed that the Respondent had failed promptly to effect Land Registration applications on behalf of clients as detailed in the Report.
9. For the purposes of filing annual accountant's reports under Section 34 of the Solicitors Act 1974, the accounting year of the Respondent's firm Waterstons ended on 30th June. Accordingly the Respondent's accountant's report for the year ending 30th June 1999 was due to be filed with The Law Society no later than 31st December 1999. No report for that or any subsequent accounting period had been filed by the Respondent with The Law Society.
10. On 31st January 2001 The Law Society's Professional Regulation Casework Sub-Committee resolved to refer the conduct of the Respondent to the Tribunal and further resolved to intervene into her practice. On 5th April 2001 an Office Adjudicator further resolved that the matter of the Respondent's outstanding accountant's report for the period ending 30th June 1999 be referred to the Tribunal.

The Submissions of the Applicant

11. In relation to the lack of entries in the books of account it appeared that the Respondent just wrote notes on slips in the files. There were no other accounting records later than January 1999.
12. The lack of accounting records meant that over £10,000 of the shortage on client account could not be identified by the Investigation & Compliance Officer.
13. Potentially the most serious allegation against the Respondent was the misuse of clients' funds. At the time of the transfer of £6,440 it was significant that the office current account was at the limit of its overdraft facility.
14. The transfer enabled the Respondent to make a payment in respect of her mortgage.

15. At the time the Respondent was under extreme pressure and facing the threat of repossession proceedings.
16. The Respondent's replies to the Investigation & Compliance Officer set out in his Report showed a clear and deliberate transfer of client money in satisfaction of a personal liability of the Respondent.
17. In fairness to the Respondent the Applicant drew the attention of the Tribunal to the fact that from the sale of her own property two months later the Respondent held back and transferred to client account the sum of £11,000. The Report also dealt with other steps taken by the Respondent to deal with the cash shortage.
18. The Report contained a schedule of arrears in relation to registrations in respect of property purchases. The delays were periods ranging from 26 days to 20 months.
19. In the submission of the Applicant it was vital to protect the interests of clients by submitting applications for registration promptly to prevent priority periods from expiring.
20. The Respondent was also in arrears in respect of the filing of her accountant's report. The report for the period ending 30th June 1999 and any subsequent periods remained to be filed.
21. The Applicant's reading of the Respondent's letter of 27th May 2002 was that she was making admissions to all the allegations except allegation (iv) and possibly allegation (iii).
22. The Respondent had served notification at an early stage asking the Respondent to identify the facts in dispute but she had not replied.
23. The Applicant asked the Tribunal to accept the statement of the Investigation & Compliance Officer dated 25th March 2002 which spoke to the veracity of his Report.
24. The documentation from the Yorkshire Building Society clearly identified the Respondent's mortgage credit. The Respondent's answers to the Investigation & Compliance Officer also supported the allegations.
25. In an interview with the Investigation & Compliance Officer on 6th July in response to questions regarding the transfer of £6,440 from client account and the payment of £6,330.68 on the same date the Respondent had said she would need to check.
26. However in an interview on 5th September 2000 when asked whether she had only withdrawn part of the sum due to her from the sale of her property because she knew that there was a shortage of client funds the Respondent replied:-

"I knew there was a shortage of at least £6,000 which I had paid to the Yorkshire Building Society."
27. The Respondent had had since October 2000 to comment further and to offer further explanation. She had not done so.

28. There had been a clear and deliberate misuse of clients' funds. The Applicant was not claiming that there had been a permanent intention to deprive clients of funds, indeed the Respondent had sold her own property shortly afterwards.
29. The Applicant gave to the Tribunal details of the claims on the compensation fund in respect of the Respondent.

The Submissions of the Respondent

30. The Respondent's submissions were contained in a letter to the Tribunal dated 27th May 2002 which at the request of the Respondent was only made available to the Tribunal after they had refused her application for an adjournment.
31. The letter stated:-

"At no time have I deliberately formed any intention to use client's money for my own ends. I accept that I failed to keep adequately written up accounts, a matter which I have already acknowledged to Mr Ireland. Nonetheless, as I was working on my own, I also knew how much was owed in costs from clients and transfers were made on that basis. This is not to deny the action I took was foolhardy – it was; however it was due to pressure of work, and as I confirmed to Mr Ireland with hindsight it would have been more prudent to employ someone to do the book keeping for me. I regret not doing so. It is my admission that it was through foolishness rather than any deliberately thought out action that this failed to happen.

I also accept that I failed to submit a few applications for registration to HM Land Registry on time; however all applications were made finally and the deeds returned to their owners. To my knowledge, no loss was sustained as a result. I believe this is accepted by Mr Ireland in his report.

I voluntarily ceased practising as a solicitor two years ago, and in closing my practice was careful to ensure that clients' monies were all accounted for once the accounts were written up. No loss has been sustained by any clients.

I regret any inconvenience caused by my actions and accept that I shall be responsible for certain costs as a result. Would it be possible to have a breakdown of these, please?

At all times when practising as a solicitor I have tried to put my clients' interests first – which resulted in long hours, but on the whole, satisfied clients; this was reflected in the "thank you" cards and letters later received. I have cooperated in Mr Ireland's enquiry fully. Please take this into consideration when reaching your decision."

The Findings of the Tribunal

32. The Tribunal found allegations (i), (ii), (v) and (vi) to have been substantiated. Indeed they were not contested.

33. Allegations (iii) and (iv) had not been admitted by the Respondent in recent correspondence and the Tribunal therefore treated them as contested. The Tribunal considered the submissions of the parties and the documentation. It was clear from the documentation that the Respondent had transferred a sum from client account to her office business reserve account and on the same day had made a payment of almost the whole amount for a personal liability in respect of her mortgage. This was clearly other than in accordance with the Solicitors' Accounts Rules (allegation (iii)) and was equally clearly a use of clients' money for the Respondent's own purposes (allegation (iv)). The Tribunal found allegations (iii) and (iv) proved on the documentation before it.
34. Six allegations had been found proved against the Respondent of which allegations (iii) and (iv) were the most serious. The Respondent had said in her submissions that she had not deliberately formed any intention to use clients' money for her own ends and that she had at all times tried to put her clients' interests first. In the view of the Tribunal, whether or not the Respondent had intended permanently to deprive clients of their funds, and that had not been alleged against her by the Applicant, she had deliberately used clients' money for her own purposes thereby putting that money at risk. Such an action did not demonstrate an intention to put her clients' interests first. On the contrary such actions demonstrated a lack of probity and integrity in the Respondent which was totally unacceptable in a solicitor and unacceptable to the profession as a whole. Clients' funds were sacrosanct whatever the personal financial difficulties of a solicitor. The Respondent had fallen so far below the standards of probity and integrity expected of solicitors that she should not be allowed to continue as a solicitor.
35. The Tribunal ordered that the Respondent Susan Catherine Waterston of Cuddesdon, Oxford, be struck off the Roll of Solicitors and they further ordered her to pay the costs of and incidental to the application and enquiry fixed in the sum of £7,038.66.

DATED this 4th day of September 2002

on behalf of the Tribunal

Mrs E Stanley
Chairman