

IN THE MATTER OF SELLAPPAH YOGARAJAH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A.N. Spooner (in the chair)
Mr. P. Kempster
Mr. M.C. Baughan

Date of Hearing: 3rd December 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 Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72/74 Fore Street, Hertford, Hertfordshire, SG14 1BY on 9th July 2002 that Sellappah Yogarajah solicitor of Norbury Crescent, London, 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 fit.

The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in each of the following particulars: -

- (i) That he failed to keep accounts properly written up contrary to Rule 32 of the Solicitors Accounts Rules 1998;
- (ii) That he paid monies into a client account other than as permitted by Rule 15 of the Solicitors Accounts Rules 1998;
- (iii) That he withdrew monies from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998;
- (iv) That he utilised clients’ funds for his own purposes;

- (v) That he breached a condition attached to his Practising Certificate;
- (vi) That he failed to take adequate steps to protect the interests of a client in a situation of potential conflict.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 3rd December 2002 when Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72/74 Fore Street, Hertford, Hertfordshire, SG14 1BY appeared as the Applicant and the Respondent did not appear and was not represented.

At the conclusion of the hearing the Tribunal ordered that the Respondent Sellappah Yogarajah of Norbury Crescent, London, 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 £6,586.12.

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

1. The Respondent, born in 1941, was admitted as a solicitor in 1975 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent was practising on his own account as Yogarajah & Co. at 125b Mitcham Road, London, SW17 9PE.
3. On 17th September 2001 Mr C, an Investigation Officer of The Law Society, commenced an inspection of the Respondent's books of account and other documents at his office address. A copy of the resulting report dated 26th November 2001 was before the Tribunal.
4. The report noted the matters set out below.

Allegation (i)

5. When Mr C first visited the Respondent's office on 17th September 2001 the books of account were with the Respondent's reporting accountants, T & Co., who also undertook the maintenance of client account bookkeeping records. The following day the Respondent was able to produce to Mr C the client cash book written up to 31st August 2001, but the clients' ledger was only written up to 28th February 2001 and the Respondent agreed that it had not been written up beyond that date. Mr C postponed the inspection to enable the situation to be rectified, but when he returned on 5th October 2001 he noted that a number of receipts and payments had been recorded on a client ledger account headed Yogarajah and not allocated to any individual accounts.

Allegation (ii)

6. Mr C found that on 9th April 2001, 27th July 2001 and 7th August 2001 the Respondent had paid into client account sums respectively of £8,070, £3,600 and £3,400. The Respondent told Mr C that these were his personal funds that he had paid into client account. These, along with four other payments, had been credited to an account headed Yogarajah, Of £12,072.33 which had been credited to this account on 1st December 2000, £11,603.78 were costs received on account in a legally aided matter. On 13th December 2000 a credit

to the same account was shown of £9,275.61 which the Respondent said could be costs in a criminal matter and on 26th February 2001 he paid into the account the sum of £19,000 which he said was his money received from a client, Mr TK. A payment of £1,200 credited to the same account on 16th August 2001 was said by the Respondent to be interest on a loan which he had advanced to a third party. None of these seven amounts should have been paid into client account.

Allegation (iii)

7. Because of the inadequate accounting records, Mr C was unable to express an opinion as to whether there were sufficient funds held in client bank accounts to meet liabilities to clients. The Respondent agreed with Mr C though that as at 31st August 2001 there was a minimum cash shortage of £72,956.15 in client account. This was caused by a combination of factors (set out on in the report). Incorrect transfers from client to office bank account made between 3rd October 2000 and 21st March 2001 totalled £63,176.55. The Respondent was unable to explain why this had happened but agreed with Mr C that it was a breach of the Solicitors Accounts Rules. Mr C also noted that on 6th September 2001 payments totalling £2,560 had been made in connection with a property transaction which the Respondent was carrying out for Mr T and Mrs I from client account in respect of stamp duty and Land Registry fees. There were no funds properly available for these payments on the relevant client ledger account and the resulting shortage was not rectified until 31st October 2001.

Allegation (iv)

8. Mr C's inspection revealed that during the second half of August 2001 thirteen payments totalling £3,336.66 had been made from client bank account but not allocated to individual accounts in the clients' ledger. They were noted on the account headed "Yogarajah" and the Respondent admitted to Mr C that these payments had been made to staff in respect of salaries. Mr C also noted that during the same period three other improper payments totalling £1,150.12 had been made from client account for the Respondent's own purposes and the Respondent admitted that this was the case.

Allegation (v)

9. As a result of a Law Society Committee Ruling, as from 17th October 2001 there was a condition on the Respondent's Practising Certificate that he should only practise either in an approved partnership or in approved employment. At the conclusion of the inspection on 29th October 2001 Mr C observed that the Respondent continued to practise alone in breach of this condition.

Allegation (vi)

10. During the inspection Mr C noted that the Respondent had acted for Mr and Mrs U in connection with a property sale which had been completed on 20th April 2001 for £262,500. He noted that thereafter the relevant client ledger account had been charged with 14 payments totalling £54,475.12 to various individuals. The Respondent's explanation for the making of these payments was that Mr U had authorised him to make private loans from the net proceeds of sale at an interest rate not less than 2% above bank rates. He produced a letter from Mr U purporting to authorise this but conceded that he had not at any stage advised Mr and Mrs U to take independent legal or other professional

advice. Enquiries made of Mr U by the OSS about the situation had not met with any response.

11. On 7th March 2002 the Adjudication Panel resolved, inter alia, to intervene into the Respondent's practice and to refer his conduct to the Tribunal.

The Submissions of the Applicant

12. The Applicant had served the usual notices on the Respondent on 12th August 2002 asking him to notify any points of dispute. There had been no response from the Respondent.
13. On 24th October 2002 the Applicant had served a Notice to Admit documents and a Civil Evidence Act notice in respect of the evidence of Mr C on the Respondent, but there had been no response.
14. None of the letters had been returned. The letter of 24th October 2002 had been sent by recorded delivery.
15. The Applicant would therefore seek to prove the allegations on the basis of the documents before the Tribunal.
16. The Applicant had made clear in the letter of 24th October 2002 to the Respondent that he could not present the allegations without alleging dishonesty.
17. All the allegations arose out of the findings made by Mr C during the inspection.
18. In relation to allegation (ii), over £56,000 had been paid into client account which should not have been so paid.
19. In relation to allegation (iii), the Tribunal was asked to note the Respondent's explanation set out in his letter of 10th January 2002 to the OSS, a copy of which was before the Tribunal.
20. In that letter the Respondent said that the transfers were made out of a suspense account containing monies which belonged to the Respondent.
21. In the submission of the Applicant, however, allegation (iv) was beyond doubt. Those payments should not have been made from client account.
22. In relation to allegation (v), the Respondent's explanation had been that he was "winding up" rather than practising.
23. In relation to allegation (vi), the Respondent ought to have advised the clients to take independent advice. In his letter of 10th January 2002 the Respondent had said that Mr U had taken independent advice from his accountant.

The Findings of the Tribunal

24. Having considered the documentation, including the explanations set out in the Respondent's letter of 10th January 2002 and the submissions of the Applicant, the Tribunal found the allegations to have been substantiated. The Tribunal also found that

dishonesty had been established in this matter. The Respondent had clearly used clients' funds for his own purposes including the payment of staff salaries and other payments which the Respondent had admitted to Mr C had been made for his own benefit.

25. The Respondent had had two previous appearances before the Tribunal.

Hearing on 14th July 1982

26. Following a hearing on 14th July 1982, the Tribunal by Findings dated 25th August 1982 had found the following allegations to have been substantiated against the Respondent, namely that he had:-

1. Failed to comply with the Solicitors Accounts Rules 1975 in that he:
 - a. notwithstanding the provisions of the Solicitors Act 1974 deposited clients' money with a Bank which was not a Bank within the meaning of Section 87 (1) (b) of the Act;
 - b. notwithstanding the provision of Rule 11 of the said Rules failed to keep written up such books and accounts as are so required by such Rule;
 - c. notwithstanding the provisions of Rule 8 of the said Rules, drew out of client account money other than as permitted by Rule 7 of the said Rules;
 - d. notwithstanding the provisions of Rule 12 of the said Rules failed to produce at a time and place fixed by the Council of The Law Society the books and documents specified by such Rule for inspection by a person appointed by the Council.
2. Failed to comply with the provisions of Section 34 of the Solicitors Act 1974 in that the accounting period specified in the several Accountant's Reports delivered by him on 25th February 1982 (with the exception of that certificate relating to the period ending 18th December 1981 all terminated more than six months before the date of their delivery).
3. Been guilty of conduct unbecoming a solicitor in that he:
 - a. utilised for his own purposes money held and received by him on behalf of clients
 - b. utilised money held and received by him on behalf of certain clients for the purposes of other clients.

27. The Tribunal on that occasion had accepted that the Respondent had not been dishonest but they considered that his conduct had been inexcusable and such as to be regarded as deplorable. The Tribunal considered that he was either ignorant of or deliberately ignored the provisions of the Solicitors Accounts Rules and the Accountant's Report Rules. The Tribunal had said that it had to be considered unfortunate that although after setting up in practice in 1978 he delivered no Accountant's Reports until February 1982 The Law Society evidently took no action in this respect until August 1981 when the Investigation Accountant started his inspection. It went on to say that on the Respondent's own

admission he never looked at such accounts as were being maintained. Had there been proper accounts the payments incorrectly made for his benefit from client account in October 1979 would have been disclosed and could have been rectified. The Tribunal had said the Respondent in fact was extremely reckless. It had doubted whether he could shoulder his professional responsibilities. The Tribunal had had to consider whether it was appropriate that his name should continue to remain on the Roll of Solicitors. They had been prepared in all the circumstances to take a lenient view and ordered the Respondent to be suspended from practice for a period of two years commencing on 1st October 1982. They ordered him to pay the then applicant's costs.

Hearing on 2nd August 2000

28. At a hearing on 2nd August 2000 the Tribunal found the following allegations to have been substantiated against the Respondent and another, namely that they had been guilty of conduct unbecoming a solicitor in each of the following particulars in that they had:-
- (i) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991
 - (ii) contrary to Rule 8 of the Solicitors Accounts Rules 1991 drawn money out of client account other than as permitted by Rule 7 of the said Rules
 - (iii) delivered late Accountant's Reports notwithstanding Section 34 of the Solicitors Act 1974 and the Rules made thereunder.
29. At the determination of the hearing in August 2000, the Tribunal had considered it particularly unfortunate that the Respondent had admitted allegations broadly similar to those which had been substantiated against him in 1982. The Tribunal was very concerned that the Respondent had regressed into his earlier bad habits. The Tribunal had however noted that the Respondent had had problems with his bank which changed the name of his office bank account to Yoga & Co and were refusing to accept payments into that account in the correct name of Yogarajah & Co. He had been obliged to pay all monies received including office money into the client bank account first and then transfer office money to office account. The Tribunal had also given the Respondent credit for the fact that his more recent Accountant's Reports had been filed on time and accepted his assurance that his bookkeeping had been brought up to date. In all of the circumstances the Tribunal in August 2000 had considered that the imposition of a fine at a level to mark the seriousness with which they viewed the Respondent's shortcomings would be an appropriate sanction, and a fine of £5,000 was imposed together with an order that the Respondent pay the then applicant's costs.

Hearing on 3rd December 2002

30. The Tribunal on 3rd December 2002 noted the Respondent's previous appearances before the Tribunal when on both occasions similar allegations had been substantiated against the Respondent. Even had dishonesty not been proved on the present occasion, the allegations were extremely serious. In addition to the Accounts Rules matters the Respondent had breached a condition on his Practising Certificate. A very serious allegation of failure to protect a client's interest in a situation of conflict had been substantiated against the Respondent. His explanation of that matter in his letter of 10th January 2002 did not address his total failure to follow the correct procedure to protect clients where there was a

potential conflict of interest with their solicitor. In relation to the Respondent's treatment of his client account, the Tribunal had been satisfied to the required high standard of proof that the Respondent's conduct had been dishonest. The reputation of the profession was damaged by such conduct on the part of a solicitor and it was essential that the public be protected from him. The Respondent should not be allowed to continue as a member of the profession.

31. The Tribunal ordered that the Respondent Sellappah Yogarajah of Norbury Crescent, London, 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 £6,586.12.

DATED this 4th day of February 2003
on behalf of the Tribunal

A N Spooner
Chairman