

IN THE MATTER OF OWAIN DWYRYD JONES, solicitor

-AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Mr J N Barnecutt
Mr Lady Bonham Carter

Date of Hearing: 31st October 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 Mark Simon Barnett solicitor employed at the Office for the Supervision of Solicitors, Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 29th July 2002 that Owain Dwryd Jones of Deganwy, Conwy, Gwynedd, 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 was that the Respondent had been guilty of conduct unbecoming a solicitor in that he had been convicted of criminal offences involving dishonesty committed during the course of legal practice namely the Respondent had been convicted of two counts of procuring the execution of a valuable security by deception on 7th December 2000 at Merthyr Tydfil Crown Court. The Respondent was sentenced to six months imprisonment on each count to run concurrently.

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

The evidence before the Tribunal included a faxed communication received in the Tribunal's office on 30th October 2002 from the Respondent. The Respondent said he could not deny that he had been convicted on two counts of procuring execution of a valuable security by

deception but he made representations which are dealt with below under the heading "The Submissions of the Respondent."

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Order that the Respondent Owain Dwyrdd Jones of Deganwy, Conway, Gwynedd, solicitor be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment if not agreed between the parties.

The facts are set out in paragraphs 1 to 7 hereunder:-

1. The Respondent born in 1963 was admitted as a solicitor in 1991. At the relevant time the Respondent practised as an assistant solicitor with the firm of Guthrie Jones & Jones of Midland Bank Chambers, Eldon Square, Dolgellau, Gwynedd. The Respondent was employed by this firm from 1991 until 9th January 1998.
2. Following notice duly given to the partners of Guthrie Jones & Jones a Senior Investigation and Compliance Officer (the ICO) of the OSS ("the Officer") carried out an inspection of the firm's books of account. A report dated 10th November 2000 was prepared and was before the Tribunal.
3. During the course of the inspection, the partners told the ICO that there was an ongoing police investigation into the personal receipt by the Respondent of monies from clients of the firm.
4. Mr and Mrs H were clients of the firm. The firm's books of account included a ledger for these clients. The ledger showed a cash receipt of £1,248.44 on 29th September 1997 which was subsequently used to pay a disbursement. No further receipts were shown on the client account. The office column revealed that no bills of costs had been entered on the ledger prior to the departure of the Respondent from the firm.
5. Two cheques had been drawn on Mr and Mrs H's private bank account. The details of the cheques were as follows:-

<u>Date</u>	<u>Amount</u>	<u>Payee on Cheque</u>
27.02.97	£200.00	Dwyrdd Jones
21.11.97	£500.00	Capital Bank plc

6. Mr and Mrs H stated that the name of the payees on the cheques had been left blank at the Respondent's request when they were handed to him.
7. The Respondent was convicted on 7th December 2000 at Merthyr Tydfil Crown Court on two counts of procuring the execution of a valuable security by deception in respect of each of these cheques. He was sentenced to six months imprisonment on each count, to run concurrently.

The Submissions of the Applicant

8. It was accepted that the Respondent had been charged with twelve matters. He pleaded not guilty to all of them but was convicted on two counts only. The Respondent put forward a different view of the facts from that set out in the application but the Respondent had been convicted on two counts relating to offences involving dishonesty.
9. The Tribunal was invited to consider the sentencing remarks of the Learned Recorder at Merthyr Tydfil and in particular the following:-

"The amount involved is a not great, but greater still than any financial loss is that these clients, the H's, had their trust in you as their solicitor and indeed Mr H regarded you as a friend. Of course, the reputation of DJ, the late senior partner, who had practised for fifty years, was compromised by your attempt to attribute the diverting of the second cheque to him.

The repercussions do not end there. The fact as now established of dishonesty on the part of a solicitor at Guthrey, Jones & Jones, an institution no doubt local people compared to the bank, now seriously undermines their confidence and is likely to undermine their confidence not just in Guthrey, Jones & Jones but in solicitors in general. It goes without saying that in a case like this there is a wider public interest when a solicitor fails to meet the standards of honesty that that office demands. The firm of Guthrey, Jones & Jones has honourably, as I understand, written-off the debt to the H's.

Turning to your personal circumstances, you were not a partner, but neither were you by the time of these events a raw recruit, naïve and inexperienced. You had had five years experience post-qualification; you were the only solicitor working full-time at Dolgellau and therefore entrusted to work without supervision. No doubt it was believed that you could be entrusted to deal honestly with clients without supervision....

Still I take onboard that although – and this is a case because it is a serious breach of trust by a solicitor, it does cross the custody threshold. Allowing for the hardship it will bring to your family and your career, I keep the sentence as short as I think is compatible with my duty.

On each of these counts you will go to prison for six months to be served at the same time on each."

The Submissions of the Respondent

10. In his fax to the Tribunal dated 30th October 2002 the Respondent said he would like to have appeared before the Tribunal to make representations in person but he was not able to afford to travel to London. His absence was not intended to demonstrate disrespect for the Tribunal.
11. The Respondent could not deny that on 8th December 2000 he was convicted at Merthyr Tydfil Crown Court on two counts of procuring the execution of a valuable security by deception and given a custodial sentence. The Respondent stood by his version of events.

12. He had always maintained that he received a cheque from Mr and Mrs H in the sum of £200 in February 1997 by way of a personal loan to carry out repairs on his motor car. The second cheque for £500 was passed on to him by the senior partner at Guthrie Jones & Jones at the time, who had completed the Respondent's details on the cheque and instructed the Respondent to pay the cheque into his account as payment of expenses he had incurred on behalf of the firm. The senior partner was aware of the personal loan and had indicated to the Respondent that the amount involved could be taken into account when the clients' final bill was to be prepared. Unfortunately the senior partner died early in 1998 and his evidence was not available.
13. The Respondent was acquitted by the court of ten similar charges where the jury accepted his explanation against the version given by the prosecution witnesses, including two further allegations made by Mr and Mrs H.
14. The Respondent accepted that he behaved in an unacceptable and stupid manner in accepting a loan from a client in those circumstances and also accepting a client account cheque from a partner in the firm without receiving written confirmation that the monies received were lawfully his. He would not act in the same way again.
15. The Respondent had not had experience of private practice before his employment with Guthrie Jones & Sons and had believed that their methods and practices represented the norm which he came to realise was not the case after working in a more up-to-date firm.
16. Following his release from prison the Respondent was offered part time work by Mark Jones & Partners assisting in the preparation of defence cases. The OSS did not give its approval. The Respondent had been very disappointed. The Tribunal was invited to give due weight to the letter of support from Mark Jones.
17. The Respondent first received notification of the disciplinary proceedings by letter dated 1st May 2001 addressed to his employer Mark Jones & Partners. He expected to hear further within a short period of time. He received further correspondence from The Law Society but no further reference was made to the disciplinary proceedings. As time went by he began to think, and to a large extent expected, that no further action was being taken against him especially in view of the fact the OSS Report was prepared in November 2000 and he was convicted in December 2000. The Respondent first received notification that his conduct was to be referred to the Tribunal on 29th July 2002. He was not given an explanation as to the delay. He had always been led to believe that cases of this nature were dealt with swiftly and expeditiously. The Respondent had been waiting since 1997 to find out what was going to happen to him and to wonder whether any disciplinary action would be taken.
18. When he received details of the exact allegation made against him on 6th August 2002 he had less than twelve weeks to prepare his case and only a period of 25 days from the date of the preliminary hearing. The Respondent made attempts to obtain advice from a solicitor included in the list of solicitors who regularly conduct cases before the Tribunal. He received quotes of upwards of £200 per hour from solicitors he approached. The Respondent has been out of work, and could not afford to pay for advice and representation.

19. The law had been the Respondent's life since he started his degree course in law. He had been able until recently to maintain his young family by working in the legal profession. He accepted that he had been found guilty of an offence of dishonesty and that the Tribunal would consider this to be serious misconduct by a solicitor. The Respondent had worked for solicitors practices for about three years since 1997 when he had been convicted, without any complaints. He has learned from his mistake and would ask the Tribunal to act as compassionately as it can in the circumstances.

The Findings of the Tribunal

20. The Tribunal find the allegation to have been substantiated, indeed it was not contested. The Tribunal has taken into account the representations made by the Respondent.
21. It is a sad matter when a young solicitor behaves in an unacceptable manner. The Tribunal notes that the Respondent was found not guilty of a number of other charges made against him but cannot ignore the fact that the Crown Court at Merthyr Tydfil found him guilty of two counts of procuring a valuable security by deception. The Tribunal also note the explanation given by the Respondent, but it would be only in the most exceptional circumstances that the Tribunal would think it right to go behind the conviction. The Tribunal does not consider that any such exceptional circumstances prevail in this case nor did the Tribunal consider that the delay in preparing the proceedings and bringing them before the Tribunal was in all the circumstances unreasonable.
22. Despite the sympathy which the Tribunal has for this young solicitor and the recognition it has that his future inability to practise as a solicitor will have a detrimental effect upon his capacity to earn a living for himself and his young family, the Tribunal has to pay close attention to its primary duties to protect the interests of the public and the good reputation of the solicitors' profession and to this end it would not be right for it to permit a solicitor who has been convicted of offences of dishonesty and who has served a custodial sentence to remain on the Roll of Solicitors.
23. The Tribunal ordered that the Respondent be struck off the Roll of Solicitors. Upon the application of the Applicant to make a summary assessment of the costs, the Tribunal did so, such costs including the costs of the Investigation Accountant of the OSS. The Tribunal ordered that the Respondent should pay the costs fixed in the sum of £4,927.41 which was a fully inclusive figure.

DATED this 13th day of December 2002

on behalf of the Tribunal

A H Isaacs
Chairman