

IN THE MATTER OF CHARLES THOMAS PHILLIPS, former solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Mr J C Chesterton
Mr M G Taylor CBE

Date of Hearing: 18th February 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 Gerald Malcolm Lynch solicitor and consultant with the firm of Messrs Drysdale of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea SS2 6HZ on 1st August 2002 that Charles Thomas Phillips whose address for service was care of Messrs Thomas Cooper & Stibbard of Ibex House, 42-47 Minories, London, EC3N 1HA (the Respondent subsequently being of PO Box 24483, London, W5 5BX and now of unknown address) 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 as follows:-

- (1) Contrary to the provisions of Rule 1 of the Solicitors Practice Rules 1988, the Respondent acted or continued to act in circumstances where his independence and/or integrity was compromised and the good repute of the Respondent and of the solicitors' profession impaired in that:
 - (a) he or employees and/or third parties retained by him acted or continued to act in circumstances where the solicitors' interests conflicted with the interests of the client;

- (b) failed to supervise or adequately supervise the activities of an employee and/or contractor employed by him in the execution of instructions undertaken by him as a solicitor in the preparation of a will;
 - (c) failed directly or indirectly through his employee and/or contractor to ensure that the client received independent advice in relation to a substantial bequest intended to be made by the client to the Respondent.
- (2) Failed to respond or adequately to respond to enquiry directed by solicitors acting on behalf of a co-executor in an estate.
- (3) By virtue of the aforementioned had been guilty of conduct unbecoming a solicitor.

Prior to the substantive hearing, the Applicant produced evidence of service in accordance with the Order for Substituted Service dated 24th September 2002. The Tribunal gave leave for the Applicant to proceed with his application.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 18th February 2003 when Gerald Malcolm Lynch solicitor and consultant with the firm of Messrs Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea SS2 6HZ appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the oral evidence of Mr Andrew Whatley solicitor and the oral evidence of Mr Bokhari.

At the conclusion of the hearing the Tribunal ordered that the Respondent Charles Thomas Phillips of unknown address (previously of PO Box 24483, London, W5 5BX) 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 fixed in the sum of £3,456.14.

The facts are set out in paragraphs 1 to 19 hereunder: -

1. The Respondent was admitted as a solicitor in 1980. At all material times he practised on his own account under the style and title of Phillips & Co at Poland Street, London, W1. The Respondent's name was removed from the Roll of Solicitors by The Law Society on 16th July 2002. The Respondent was believed to be resident and/or employed in the Republic of China.
2. On 12th June 2000 Messrs Whatley & Co solicitors of London wrote to the OSS in complaint against the Respondent and on behalf of their client who was a co-executor (with the Respondent) in relation to the Will of EH deceased who had died on 19th March 2000. In sub-clause 3(2)(a) of the Will there was provision for payment to the Respondent of the sum of £500 per month for as long as he continued to carry on the deceased's business. Messrs Whatley & Co wrote that the Respondent said that he did not personally draft the Will but had declined to inform the complainant firm whether the deceased had received independent advice prior to executing the Will. The complainant firm felt the benefit was substantial and that in the circumstances the Respondent should not have acted.

3. The complainant firm enclosed with their letter copies of relevant correspondence and also of the Will. The Will was endorsed as follows:

“Dated 11 November 1988
Will of EH
Messrs Phillips & Co
58/59 Poland Street
London W1V 3DF
Tel: 01734 8339/7617
Ref: Wills2 31-99”

4. The correspondence enclosed included a letter from the complainant firm to the Respondent dated 3rd May 2000 specifically requesting the Respondent’s observation in relation to the gift to him in the Will. The Respondent replied by letter of 12th May 2000 but did not address the issue of the gift.
5. The complainant firm renewed their request in letters of 16th May 2000 and 25th May 2000.
6. A similar request was addressed to Miss CP on 25th May 2000. Miss CP had been an assistant solicitor in the Respondent’s firm at the relevant time. She was a co-executor and also included in the gift.
7. In a response of 2nd June 2000 the Respondent demanded delivery of documentation in relation to the administration of the estate. He wrote that the allegation that he had prepared the Will of EH and drafted benefits for himself was not only erroneous but also defamatory. He did not deal with the circumstances in which the gift had been made.
8. Copies of further correspondence were before the Tribunal.
9. On 4th December 2000 the OSS wrote to the Respondent in relation to the complaint and sought his observations. The relevant rules of conduct in force at the time were quoted.
10. On 15th December 2000 the Respondent wrote to the OSS. He denied refusing to inform the complainant firm as to whether or not EH had received independent advice prior to executing the Will or not. He did not deal with the question of conflict. He said that the clause referred to was in his opinion a burden, not a benefit and therefore not a gift.
11. On 18th December 2000 Miss CP wrote to the OSS confirming that the deceased and his company were clients of the Respondent in which firm she was an assistant solicitor from February 1984 to August 1989. She had not drafted the Will.
12. On 31st May 2001 the OSS wrote to Messrs Thomas Cooper & Stibbard, solicitors of London and at that time instructed for and on behalf of the Respondent and Miss CP. The letter requested details in respect of the estate.

13. On 9th June 2001 the complainant firm wrote to Messrs Thomas Cooper & Stibbard inter alia raising the question of benefits payable to the Respondent and Miss CP and stating that the Respondent had not made adequate answer to enquiry directed to him.
14. On 11th June 2001 Messrs Thomas Cooper & Stibbard responded to the OSS indicating inter alia that the Respondent had not received payment under the terms of the Will. This was confirmed by the Respondent in a letter of 20th June.
15. On 21st August the complainant firm wrote to the OSS to state inter alia that the evidence of their client, the co-executor, tended to suggest that Miss CP was attending on the deceased at about the time the Will was drafted. Copy correspondence from the co-executor indicated inter alia that the Respondent and Mr JS (referred to in paragraph 16 below) had visited him on 11th May 2000.
16. On 30th August 2001 Thomas Cooper & Stibbard made response to the allegations which had been levelled against the Respondent stating in summary that:
 - (a) The deceased had initially spoken to both the Respondent and Miss CP about making his Will;
 - (b) Neither the Respondent nor Miss CP had actually drafted the Will;
 - (c) Instructions had been given to Mr JS, a probate manager employed by another firm of solicitors, and recommended to the Respondent as someone with experience in complicated wills and JS drafted the Will. He had not been an employee of the Respondent;
 - (d) There had not been reference to the Respondent by JS in relation to the Will and he was not aware of the contents of it;
 - (e) In the circumstances, it was said that the Respondent was under no obligation to advise the deceased to seek independent legal advice.
 - (f) In relation to the allegation of failure to provide information, it was said that the Respondent had told the complainant firm that he had not drafted the Will. It was not possible for him to say whether EH had received independent advice.
17. The Respondent's solicitors enclosed a copy of a letter they had sent to the complainant firm dated 24th August reiterating the position.
18. The matter was considered by an adjudicator of the OSS. The adjudicator had considered the position and resolved to refer the conduct of the Respondent to the Tribunal. On 3rd December 2001 the Respondent's solicitors wrote in appeal against this decision.
19. On 12th February 2002 the Compliance Board duly appointed by the OSS considered the first instance decision which was taken on 29th October 2001 and resolved to dismiss the applications for review. The decision was notified to the Respondent's solicitors by letter of 15th February 2002.

The Submissions of the Applicant

20. The Applicant had received no response from the Respondent following notice of the proceedings. The Respondent's former solicitors were no longer instructed.

21. The Tribunal was referred to the relevant practice rules in force at the time the Will was drawn and to Principle 9/08 of the 4th Edition of the Guide to Professional Conduct of Solicitors which stated:

“Where a client intends to make a gift inter vivos or by Will to his solicitor or to the solicitor’s partner or a member of staff or the families of any of them and the gift is a significant amount either in itself or having regard to the size of the client’s estate and the reasonable expectations of prospective beneficiaries the solicitor must advise the client to be independently advised as to that gift and if the client declines must refuse to act”.
22. Principle 24/02 (note 6) in the said Guide provided that a statement as to execution of a Will should be made by a solicitor to any person who inter alia had a reasonable claim under the Will. If acting in administration the solicitor would need to consider the question of conflict.
23. In the submission of the Applicant £500 per month was a substantial amount of money to be a gift in a Will. EH should have been given independent advice or the Respondent should not have acted for him.
24. The Respondent had said that he had not drafted the Will but that JS had done so. JS had declined to contact the Applicant.
25. The endorsement of the Will was manifest. It was fundamental to the case that the Will was without question prepared by Phillips & Co.
26. In the submission of the Applicant the Will was represented to have been in response to instructions given to the Respondent’s firm and in circumstances where the Respondent was responsible for adequate supervision of work done for and on behalf of him. In referring EH to JS the Respondent did or should have ascertained the intentions of the client and satisfied himself that it was appropriate to make the reference on. If the deceased instructed JS to prepare his Will it was as a result of direct recommendation of and under the auspices of and for and on behalf of the Respondent’s firm.
27. If the Will had been made by an unconnected firm or individual the position would have been different. The Will had, however, been drafted as a result of instructions given to Phillips & Co.
28. The correspondence developed the whole of the background and indicated that the Respondent had been closely involved throughout in circumstances where a Will had been made and where the Respondent had been caught by the Rules in conduct.
29. Even if JS had been involved in drafting the Will he had to have been under the control of the Respondent.
30. In the submission of the Applicant the facts and documentation established the following:-
 - (a) The deceased was a client of the Respondent at all material times and had sought advice in relation to his will;

- (b) The deceased had been referred to a third party who was acting under the auspices of instructions given and recommendation made. As solicitor for the deceased the Respondent should in any event have satisfied himself that the deceased's wishes in regard to the Will were being observed by the third party;
 - (c) The third party did not act on his own behalf but for and on behalf of the Respondent. The Will was made in the name of and for the Respondent whose name was appended to the Will as the solicitor concerned;
 - (d) The circumstances were such where the Respondent should have supervised to a greater extent than he sought to do;
 - (e) There was no indication that at any time prior to reference by the complainant firm to the OSS that the Respondent sought to deal with the question of conflict which had been clearly raised at the outset by the complainant firm.
31. The conflict situation was plain and there was ample evidence to enable the Tribunal to conclude that an order under Section 47(2) of the Solicitors Act 1974 should be made.
32. The submissions of the Applicant were supported by the oral evidence of Mr Whatley and Mr Bokhari, both of whom gave evidence to confirm that their written statements which were before the Tribunal were accurate and true to the best of their knowledge and belief.
33. Mr Whatley in his written statement said inter alia that EH had shown him the original of his Will which EH had advised Mr Whatley had been drawn up for him by the Respondent. At no time had EH mentioned the name of JS.
34. Following correspondence with the Respondent Mr Whatley had contacted the firm employing JS at the relevant time. They had said that JS had been employed as a trust administration manager and had left them close to the period in question in 1988. He had not been entrusted to draft Wills by the firm and had no legal qualifications.
35. In his witness statement Mr Bokhari gave details of his employment with EH.
36. Mr Bokhari said in his statement inter alia that prior to going into hospital for surgery EH was having his Will drawn up and Miss CP then of Phillips & Co used to bring in the draft Will to discuss with EH and then bring it back with amendments.
37. Mr Bokhari also recollected Miss CP bringing in the final Will and delivering it to EH.

The Findings of the Tribunal

38. The Tribunal considered carefully the submissions of the Applicant, the witness statements of Mr Whatley and Mr Bokhari confirmed as true and accurate by their oral evidence and the other documentation. In the absence of the Respondent, the Tribunal had carefully considered his comments in the correspondence contained in the Applicant's bundle. The Respondent had not appeared before the Tribunal nor arranged representation and the evidence of the witnesses had not been challenged. Even if, as asserted by the Respondent through his solicitors in correspondence,

Mr EH's Will had been drafted by JS the Tribunal accepted the submission of the Applicant that EH had been a client of the Respondent and had sought advice in relation to his Will and that JS, in drawing up the Will, had been under the control of the Respondent. The Tribunal considered the endorsement of the Will in the name of Phillips & Co to be proof that JS was acting under the auspices of instructions from the Respondent. The Tribunal being satisfied of that fact, the Tribunal found the allegations to have been substantiated. The Tribunal considered that the £500 per month to the Respondent for continuing to run the deceased's business was a gift for the purposes of Principle 9/08 even though in the event the Respondent had not actually received the gift. There was, therefore, a conflict of interest between the Respondent and Mr EH. The Respondent should have ensured that Mr EH had received completely independent advice but instead the Respondent or JS retained by him had continued to act in the preparation of the Will. There was no evidence that Mr EH had received independent advice and the Tribunal found that the Respondent had failed to supervise JS and failed to ensure that the necessary independent advice had been received.

39. It was essential that solicitors were scrupulous in ensuring that any client intending to make a gift to a solicitor obtained totally independent legal advice. Failure to do this damaged the reputation of the profession.

Previous appearance before the Tribunal

40. On 18th April 1996 the following allegations had been substantiated against the Respondent namely that he had:
- (i) failed to deliver or delivered late Accountant's Reports notwithstanding Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
 - (ii) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
 - (iii) contrary to Rule 8 of the Solicitors Accounts Rules 1991 drew money out of client account other than as permitted by Rule 7 of the said Rules;
 - (iv) utilised clients' funds for the purposes of other clients;
 - (v) utilised clients' funds for his own purposes;
 - (vi) failed, on being required to do so, to produce his books of account for inspection by the Investigating Accountant of the Law Society contrary to Rule 27(2) of the Solicitors Accounts Rules 1991;
 - (vii) failed to account and/or delayed in accounting for sums held by him as a solicitor.
41. The Tribunal on 18th April 1996 had had some sympathy for the Respondent who had had difficulties in his personal life and in his office. The Tribunal considered, however, that the Respondent was perhaps over-confident. It was hard to understand how a sole practitioner thought he might run his practice whilst away from it abroad on other business for long periods of time. A solicitor might not delegate his considerable responsibilities. The actual accounting discrepancies were small. They had been explained and had been put right. There had been no actual shortfall, no loss to clients or the profession and the Tribunal readily accepted that there had been no dishonesty on the part of the Respondent.
42. The Tribunal in 1996 said that it was right that the Law Society should be greatly concerned if a solicitor failed to produce his books of account when notice of an

inspection by the Law Society's Investigation Accountant had been given. It was not surprising that the Law Society resolved to intervene into the Respondent's practice. However the Tribunal accepted that the consequences of intervention were very great. It placed the Respondent in a most difficult position and the costs to be borne by him were considerable. The Tribunal had taken all of that into account and had borne in mind the most unusual circumstances. The Tribunal believed they were exercising some leniency in imposing a financial penalty on the Respondent but to mark the seriousness with which they viewed the allegations they ordered him to pay a fine of £4,000 together with costs. The Tribunal recommended that if a practising certificate was granted to the Respondent in the future it should be subject to the condition that he not be permitted to practise as sole practitioner.

43. By the hearing on 18th February 2003 the Respondent's name was no longer on the Roll of Solicitors and the Tribunal considered that in the circumstances it was appropriate to make the order sought by the Applicant and ordered the Respondent to pay the Applicant's costs.
44. The Tribunal ordered Respondent Charles Thomas Phillips of unknown address (previously of PO Box 24483, London, W5 5BX) 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 fixed in the sum of £3,456.14.

DATED this 30th day of April 2003
on behalf of the Tribunal

D J Leverton
Chairman