

IN THE MATTER OF PATRICK DANILE KANE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mrs E Stanley
Ms A Arya

Date of Hearing: 11th March 2003

SENTENCING HEARING

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

1. At a hearing on 6th February 2003 a Division of the Tribunal had found substantiated against the Respondent Patrick Danile Kane of Creative Colour Typrographical Ltd., 69-85 Tabernacle Street, London, EC2A 4BD solicitor certain allegations contained in an application dated 28th August 2002 made on behalf of the Office for the Supervision of Solicitors by Emma Grace, solicitor and partner in the firm of Nelson & Co., St Andrews House, St Andrews Street, Leeds, LS3 1LF.
2. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in that he had:-
 - (i) Failed to deliver (or alternatively delayed in delivering) an Accountant's Report for the period ending 31st May 2000 contrary to Section 34 of the Solicitors Act 1974 (as amended) and Rule 35 of the Solicitors Accounts Rules 1998;
 - (ii) Failed to comply with a decision of an Adjudicator dated 18th April 2002.
3. The facts and allegations had been admitted by the Respondent.

4. At the hearing on 6th February 2003 the Tribunal had accepted the Respondent's assurances that he would be able to regularise his position by the end of February 2003 and had reserved the sanction to be imposed and the issue of costs until a further hearing date fixed for 11th March 2003.

Application for an Adjournment

Submissions by Mr Kane in relation to the Application for an Adjournment

5. On 11th March 2003 Mr Kane (the Respondent in the substantive matter and referred to as "the Respondent" throughout) made an application for an adjournment.
6. The Respondent had written to the Applicant, with a copy to the Tribunal, a letter dated 10th March 2003 setting out the reasons for seeking an adjournment.
7. In summary, the Respondent was awaiting further information which he needed to enable his accountants to prepare a Final Report. He had been unable to respond previously due to a period of ill health.
8. He had written to various people for information and the Report would be filed as soon as possible.
9. If the Tribunal did not grant the adjournment and was minded to make an order for suspension the Respondent asked that this not take effect for four weeks to allow him to obtain the information.

Submissions of Ms Grace in relation to the Application for an Adjournment

10. Ms Grace ("the Applicant") on behalf of the Office for the Supervision of Solicitors opposed the application for an adjournment.
11. The matter was before the Tribunal for sentencing, the Respondent having admitted the allegations on 6th February 2003.
12. On that occasion the Respondent indicated that his Report would be filed by the end of February which was the reason the Tribunal on that occasion had adjourned the matter until today.
13. The Respondent had not filed his Report and now sought a further adjournment.
14. In the submission of the Applicant, the sentencing hearing should proceed. It was not unusual for the Tribunal to make a decision on sentencing in circumstances where a respondent had not yet filed a Report.
15. To adjourn the matter and give the Respondent further time would incur further costs.
16. In his letter of 10th March 2003 the Respondent had said that he had at no time breached the Solicitors' Accounts Rules. In the submission of the Applicant, the

Respondent had breached the Solicitors Accounts Rules by not filing his Accountant's Report.

17. While no dishonesty had been alleged against the Respondent, this was a serious matter. The filing of Accountant's Reports was for the protection of the public.

Decision of the Tribunal in relation to the Application for an Adjournment

18. The Tribunal refused the application for an adjournment. The matter had been adjourned for sentencing on 6th February 2003 because the Respondent had said that his Report would be ready by the end of February. He had already been given more time. The Tribunal understood why the Respondent was seeking an adjournment but noted that the letter to a Swedish law firm which the Respondent had enclosed with his letter of 10th March 2003 and in which he had sought information he needed for his Report was dated only 10th March 2003, i.e. the day before today's hearing. These were matters which should have been put right long ago. No medical evidence had been submitted in support of the Respondent's application. The sentencing hearing would proceed.

Sentencing Hearing

The Submissions of the Respondent

19. The Tribunal having indicated to the Respondent the sentence which it was considering imposing, subject to submissions, the Respondent said that he was grateful for the opportunity given by the sentence for a further period in which to file his Report. The Respondent said that four weeks should be enough to enable him to get his Report in to The Law Society.

The Submissions of the Applicant

20. The Applicant said that costs in the sum of £2,229.53 set out in her schedule of costs had been agreed by the Respondent.

The Decision of the Tribunal

21. The Tribunal had before it and had made available to the parties the Findings of the Division of the Tribunal which had considered this matter on 6th February 2003. The Tribunal today relied on the findings of fact of the earlier Tribunal, which facts were not in dispute. The Tribunal noted the submissions made on 6th February 2003 and the further submissions made on 11th March 2003. The Findings of 6th February 2003 made clear how seriously the Tribunal regarded failure to file Accountant's Reports. The filing of such Reports was essential in order to protect the interests of the public. The Tribunal's order would give the Respondent a last opportunity to regularise his position. If he failed to do so he would be suspended from practice. If he filed his Report after the suspension had taken effect it would then be up to the Respondent, if he wished to do so, to return to the Tribunal to ask for that suspension to be lifted. If, however, he filed his Report within the time specified in the order the suspension would not take effect and the Respondent would instead pay a fine.

22. The Tribunal ordered that unless the Respondent Patrick Danile Kane of Creative Colour Typrographical Ltd., 69-85 Tabernacle Street, London, EC2A 4BD solicitor do file his outstanding Accountant's Report with The Law Society by 22nd April 2003 he shall be suspended from practice as a solicitor for an indefinite period to commence on 23rd April 2003.
23. If the Respondent files the Report by 22nd April 2003 the Tribunal order that he do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen.
24. The Tribunal ordered that the Respondent do in any event pay the costs of and incidental to the application and enquiry fixed in the sum of £2,229.53.

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

R B Bamford
Chairman