

IN THE MATTER OF DAVID HAMILTON BENHAM, former solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss T Cullen (in the chair)
Mr J P Davies
Mrs S Gordon

Date of Hearing: 6th May 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 (the "OSS") by Linda Louise Rudgyard solicitor of the OSS at Victoria Court, 8 Dormer Place Leamington Place, Warwickshire CV32 5AE on 1st November 2002 that David Hamilton Benham whose last known address was Southwark, London, SE1, (now of address unknown) might be required to answer the allegation contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegation against the Respondent was that he had been guilty of conduct unbecoming a solicitor in that he had been convicted upon indictment of eleven Counts of Theft.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 6th May 2003 when Linda Louise Rudgyard solicitor employed by The Law Society at the OSS at Victoria Court, 8 Dormer Place Leamington Place, Warwickshire CV32 5AE appeared as the Applicant and the Respondent did not appear and was not represented.

The Applicant submitted an email to the Tribunal dated 2nd May 2003 from the Respondent's solicitor consenting to abridgement of the time for service and consenting to the matter proceeding on 6th May 2003. The Tribunal was satisfied that the matter should proceed.

The evidence before the Tribunal included the admission of the Respondent. At the conclusion of the hearing the Tribunal ordered that the Respondent David Hamilton Benham of address unknown but formerly of Southwark, London, SE1 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 £832.50.

The facts are set out in paragraphs 1 to 3 hereunder:-

1. The Respondent, born in 1942, was admitted as a solicitor in 1970. The Respondent voluntarily removed his name from the Roll of Solicitors on or about 5th June 2001.
2. At all material times the Respondent practised as a consultant with Blick & Co of 6 Artillery Passage, London, E1 7LJ.
3. The Respondent appeared at the Crown Court at Winchester on 8th October 2001 and was tried and convicted upon indictment of eleven Counts of Theft contrary to Section 1 (1) Theft Act 1968. On 7th December 2001 Mr Recorder J J Wright sentenced the Respondent to a period of six months' imprisonment in respect of each of those offences, such sentences to run concurrently. On the same date the Respondent was also ordered to pay compensation in the sum of £73,229.76. There was no appeal.

The Submissions of the Applicant

4. The Respondent's current address was unknown to the Applicant and the Respondent's solicitor had no instructions to release his current address.
5. In the submission of the Applicant the Respondent had been convicted of serious offences of dishonesty which involved the theft of money from the Respondent's elderly aunt who had appointed him under a power of attorney.
6. The Tribunal was referred to the sentencing remarks of Mr Recorder Wright who had said:-

“You are a solicitor, and albeit the power of attorney came to you in part because you are related to your aunt, I have no doubt that it came to you as a solicitor. You broke the trust that was imposed in you....”
7. It was clear that the power of attorney had come to the Respondent not only because he was related to his aunt but also as a solicitor who could be trusted. Such conduct clearly amounted to conduct unbecoming a solicitor and brought the profession into disrepute.
8. The Applicant sought her fixed costs. She had served a breakdown of the costs on the Respondent's solicitor who had received no instructions.

The Submissions of the Respondent

9. The Respondent's submissions were contained in two emails from his solicitor dated 8th April and 2nd May 2003 in which the allegation was admitted, the documents exhibited to the Rule 4 Statement were admitted and consent was given to an order that the Respondent's name should not be restored to the Roll of Solicitors except by order of the Tribunal.

The Findings of the Tribunal

10. The Tribunal found the allegation to have been substantiated, indeed it was not contested.
11. The Respondent had been convicted of offences of dishonesty resulting in a custodial sentence. The Respondent had breached the trust placed in him. Dishonest conduct on the part of a solicitor damaged the reputation of the profession and undermined public confidence. The Respondent having removed his name from the Roll it was appropriate that an order be made prohibiting him from having his name restored to the Roll without the consent of the Tribunal.
12. It was also right that the Respondent pay the Applicant's fixed costs details of which have been served upon his solicitor. The Tribunal ordered that the Respondent David Hamilton Benham of address unknown but formerly of Southwark, London, SE1 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 £832.50.

DATED this 16th day of June 2003
on behalf of the Tribunal

Miss T Cullen
Chairman