

IN THE MATTER OF ANN LESLEY CHARLTON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J Colin Chesterton (in the chair)
Mr P Kempster
Mr M C Baughan

Date of Hearing: 10th April 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 Linda Louise Rudyard solicitor employed at the OSS at Victoria Court, 8 Dorner Place, Leamington Spa, Warwickshire, CV32 5AE on 20th December 2002 that Ann Lesley Charlton of Codsall, Wolverhampton, West Midlands, 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 allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following respects namely:-

- (a) that she misused monies held subject to a Power of Attorney;
- (b) that she utilised monies belonging to a client for her own purposes.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Linda Louise Rudyard appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the facts and the allegations by the Respondent. The Respondent at the hearing handed up a letter from her general practitioner dated 16th December 2002, an article "There's an Art to Surviving Cancer", an

article "Easing the Strain", a letter dated 25th March 2003 from the Principal lawyer at Coventry City Council. A letter dated 19th March 2003 had been addressed to the Tribunal by Mr WT Bainbridge, a former partner of the Respondent.

At the conclusion of the hearing the Tribunal made the following Order.

The Tribunal Order that the respondent, Ann Lesley Charlton of Codsall, Wolverhampton, West Midlands, solicitor, be struck off the Roll of Solicitors and they further Order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,060.84.

The facts are set out in paragraphs 1 to 10 hereunder: -

1. The Respondent, born in 1947, was admitted as a solicitor in 1984. At the material time she practised as a partner in the firm of Lanyon Bowdler of Brodie House, Town Centre, Telford, TF3 4DR. At the time of the disciplinary hearing the Respondent was employed as a locum solicitor with Coventry City Council.
2. The Respondent acted on behalf of Mrs B in connection with a number of matters including the preparation of her will and an enduring power of attorney. Mrs B had been introduced to the Respondent by her granddaughter and her husband Mr and Mrs P who were existing clients of the firm.
3. In February 1992 Mrs B appointed the Respondent to act as her attorney for the purposes of the Enduring Powers of Attorney Act 1985 with general authority to act on her behalf in relation to all her property and other affairs. The power of attorney was signed by Mrs B on 24th February 1992.
4. Mrs B died on 22nd March 2000 aged 91 years. At the time of her death and for several years before that she resided at a nursing home in Market Drayton. During this period the Respondent administered Mrs B's affairs under the powers conferred upon her by the enduring power of attorney. Mrs B maintained an account with NatWest Bank, Newport. During the period from 7th April 1999 to 8th March 2000 the Respondent withdrew a total of £41,550 from that account by way of 29 cheques all of which were made payable to cash.
5. On 8th August 2001 Mr P telephoned the Respondent's senior partner to complain about inordinate delay and lack of response from the Respondent with regard to the winding up of Mrs B's estate.
6. Following the preliminary investigation, the senior partner telephoned the Head of the Monitoring & Investigation Unit of the OSS to report his concerns. Documentary evidence followed.
7. On 29th August 2001 an Investigating Officer of the OSS ("the IO") commenced an inspection of the Respondent's firm's books of account and other documents. The IO's Report dated 10th December 2001 was before the Tribunal.

8. During the course of her investigation, the IO interviewed the Respondent on 26th November 2001. When asked if all the cash withdrawals were made for her own personal benefit the Respondent stated:-

"...the majority of these would have been for my personal benefit but some monies would have been used to pay [the care home].....

I intended to repay fully. I never intended to deprive anyone of the monies. I knew I had to put it back and always wanted and meant to but mentally once I had started I was unable to face up to my actions and address the situation".

9. The Respondent said that she had not kept any records. When asked why she had dealt with Mrs B's matter outside the firm's books and records the Respondent said:-

"It must have been because I was not keeping proper accounts and did not want to put the matter on computer until it had been resolved".

10. She did not know exactly how much money she owed on this matter. She thought at the time she left the firm on 13th August 2001 the sum owing was £40,000-£50,000 but that having thought about it further she had come to think that £60,000-£65,000. In a letter to the OSS dated 7th February 2002 the Respondent's senior partner confirmed that the final deficit was thought to be in the region of £90,000.

The Submissions of the Applicant

11. The Applicant accepted that when the Respondent was confronted with what she had done she immediately volunteered that there was a deficit, accepted what she had done and indicated her intention to repay. The Respondent knew at all times that what she was doing was wrong. She had not offered any reasonable explanation.
12. The Respondent's behaviour had been dishonest. It amounted to serious misconduct on the part of a solicitor. The Respondent had acted with conscious impropriety. She had been trusted by an elderly client and had breached that trust. The Respondent had dealt with the matter outside the firm's books and records. That went to the very heart of the fiduciary relationship existing between a solicitor and his client. Civil proceedings were underway at the time of the disciplinary hearing. Mr and Mrs P had been caused much distress as a result of the Respondent's actions.

The Submissions of the Respondent

13. The Respondent admitted the facts and the allegations. She told the Tribunal that she appeared in person before them to apologise publicly both to Mr and Mrs P and the solicitors' profession. The Respondent confirmed that she had not sought to be represented and had not taken advice, feeling as she did that she could make the best explanation of her extenuating circumstances in person before the Tribunal. The Respondent fully appreciated the seriousness of the allegations. The Respondent realised that what she had done was wrong. When the matter came to light she left her partnership. She could offer no real explanation for what she had done. She had considered obtaining a psychiatric report but did not wish to hide behind that.

14. At the time the Respondent had no real personal problems and she had not used the money for any specific purpose. She had acted as a spendthrift and a compulsive waster.
15. The Respondent had suffered from cancer from 1990. She had been treated, including operations. She had struggled to come to terms with her situation and the Tribunal was invited to take into account the letter from her own doctor and the article "Surviving Cancer" which explained how difficult it was for a cancer sufferer to function normally after being diagnosed and treated.
16. The Respondent had been running a small branch office and had been subjected to extreme pressure of work.
17. There had been enormous strains within the partnership and the Respondent had come to appreciate the impact that the stress in the partnership and her physical ill health had had upon her. The Respondent had suffered from another illness in 1993 which caused her to be in great pain. Eventually it was diagnosed and treated. The Respondent had been unable to lift things and found driving extremely difficult. The Respondent's partnership pressures continued and a number of partners left either because they could not cope with the stress or they had been diagnosed as suffering from mental breakdowns. Some 13 or 14 out of 21 partners left.
18. The Respondent consulted a barrister about her partnership position.
19. The Respondent had suffered from difficulties in her family life and her marriage. Her father had been diagnosed with a terminal illness which required her on a number of occasions to be called out in the middle of the night.
20. The Respondent had faced up to what she had done and at the time of the disciplinary hearing she felt physically and mentally much better.
21. The Respondent had first written out a cheque to cash on the late Mrs B's NatWest bank account early in 1995 when someone in distress had gone to the Respondent to ask for a loan of money.
22. At the hearing the Respondent told the Tribunal that she needed to provide financially for herself. She had been taken on by Coventry City Council as a locum solicitor. She was entirely open, telling them that she had been dishonest in her firm. She had worked at the same job for some time and there had been no complaint about her professional ability. She had worked very hard. She worked long hours in the child care sphere. She dealt with children who had been abused and felt she had been able to make up for some of the damage caused to those children. The Respondent invited the Tribunal to take the view that she did not pose a risk to the solicitors' profession. She had no access to funds and her contact with members of the public was limited. She had intentionally sought a position where this would be the case.
23. Since August 2001 the solicitors' profession had had 17 months in which it could have prevented the Respondent from working. In the submission of the Respondent to deny her her ability to practise in April 2003 would amount to shutting the door after the horse had bolted. The Respondent was trying to put something back into her

profession. She urged and requested the Tribunal to permit her to continue with the work which she was doing in order that she might put something back into society. The Respondent fully accepted that any practising certificate issued to her should restrict what work she could undertake.

24. At the time of the disciplinary hearing the Respondent had no means to pay either the deficiency or the Applicant's costs, the Respondent having agreed the figure.
25. Mr and Mrs P had decided to take the matter through the civil courts and it was right that the figure involved was not greater than £90,000. The Respondent had offered in the civil proceedings to negotiate. The Respondent did have some money in her capital account with her former firm. A part of that money had been paid over but the firm continued to retain some. The Respondent had her interest in her matrimonial home. Her intention was that she would repay every penny.
26. The Respondent said that if she were permitted to earn her living she would not be in a position where she would have to fall back on the state for financial support.

The Findings of the Tribunal

27. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
28. The Tribunal gave the Respondent credit for appearing before them in person when she spoke eloquently and gave an explanation for her conduct in which she did not seek to go behind the allegations.
29. The Tribunal have noted that she started to take money belonging to Mrs B when she sought by so doing to help another person. The Respondent had been in an unhappy partnership, had suffered serious illness and had been subjected to great pressure of work and personal problems. The Tribunal further noted that the Respondent had worked well in her current position for a period exceeding 17 months. She had deliberately sought employment where she did not have access to client money and had limited contact with the public. Further she was working in an area where she was trying to put something back into society. It was right that the Respondent should also be given due credit for all of those aspects of the matter.
30. Whilst having great sympathy for the trauma suffered by the Respondent as a result of her serious illness and the treatment she received for it, the Tribunal has before it no evidence that at the time the Respondent took Mrs B's money she did not know that what she was doing was wrong.
31. The bald fact was that the Respondent had been entrusted with the management of the financial affairs of an elderly and vulnerable client. Not only was the Respondent as a solicitor in a position of trust but that position of trust was heightened by the fact that she had been appointed as Mrs B's attorney. In taking Mrs B's money for her own purposes, the Respondent had been guilty of conscious impropriety which amounted to serious misconduct at the highest end of the scale. The Tribunal have also taken into account the distress caused to Mr and Mrs P, who ought to have been able to trust a solicitor "to the ends of the earth." They had been badly let down.

32. In order to protect the public and the good reputation of the solicitors' profession it was right that the Respondent should be struck off the Roll of Solicitors and the Tribunal ordered her to pay the costs of and incidental to the application and enquiry in an agreed fixed sum.

DATED this 16th day of May 2003

on behalf of the Tribunal

J C Chesterton
Chairman