

IN THE MATTER OF HOWARD NEIL McCARTNEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R J C Potter (in the chair)
Mr I R Woolfe
Mr G Fisher

Date of Hearing: 20th January 2004

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 Ian Paul Ryan a director in the firm of Bankside Law Ltd, Thames House, 58 Southwark Bridge Road, London, SE1 OAS on 14th August 2003 that Howard Neil McCartney of Grange Over Sands, Cumbria, 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 that he had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:-

- (i) that he failed to deliver Accountant’s Reports for the years ending 30th June 2001 and 30th June 2002 as required by Section 34 of the Solicitors Act 1974 or alternatively that he failed to deliver a final Report as required by Rule 36(5) of the Solicitors Accounts Rules 1998 (the 1998 Rules).
- (ii) that he failed to retain accounts records for a minimum of six years as required by Rule 32(9) of the 1998 Rules;
- (iii) [withdrawn with the consent of the Tribunal].

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 20th January 2004 when Ian Paul Ryan appeared as the Applicant and the Respondent did not appear and was not represented.

The Respondent sent to the Tribunal a letter dated 17th January 2004 containing his submissions and copy correspondence. This having been shown to the Applicant on the morning of the substantive hearing, the Applicant submitted a further bundle of correspondence between himself and the Respondent.

Immediately prior to the hearing the Tribunal heard evidence as to the service of a Notice to Admit documents by the Applicant on 13th January 2004 with a letter requesting the Respondent to waive the time limits for the service of the Notice. The Respondent having taken no issue on the point and the Tribunal being satisfied that he had received all the documents in August 2003 in any event, the Tribunal gave leave for the abridgement of the time limit.

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

The Tribunal Order that the Respondent, Howard Neil McCartney of Grange Over Sands, Cumbria, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 20th day of January 2004 and they further Order that he do pay the costs of and incidental to this application and enquiry to be subject to detailed assessment unless agreed.

The facts are set out in paragraphs 1 to 5 hereunder: -

1. The Respondent, born in 1954, was admitted as a solicitor in 1980. At all material times the Respondent carried on practice on his own account under the style of McCartney & Co of Windermere Business Centre, Oldfield Court, Windermere, Cumbria, LA23 2H.
2. The Accountant's Reports for the former firm of McCartney & Co for the period ending 30th June 2001 and 30th June 2002 were both outstanding. The first Report was due to be delivered to The Law Society on or before 31st December 2001 and the second Report was due to be delivered to The Law Society on or before 31st December 2002. Alternatively, if the Respondent ceased to hold client's money prior to either of these dates a final Report should have been lodged but no final Report had been received.
3. The OSS were informed by the Respondent's Accountants in a letter dated 8th February 2002 that save for client account bank statements, client ledger and some individual client ledger cards, all the Respondent's other records were destroyed in a flood. As a result of the Accountant's Report being incomplete The Law Society were unable to ascertain whether the Respondent had ceased to hold clients' money and he was therefore required to file a final Report or the usual annual Accountant's Report. In the event, none of these Reports had been lodged.
4. The OSS wrote to the Respondent for an explanation on 15th March 2002. The Respondent replied on 15th April 2002 and 10th June 2002 confirming that "all files

were completely destroyed". The Respondent said that his practice had been closed. He said that he could not recall the exact date or circumstances of the loss of the files but that there had been no request subsequently for the files or any information contained in them. He was not aware of any client suffering any loss. The Respondent also gave details of his personal circumstances at the time the practice was closed.

5. The matter was considered by an Adjudicator of The Law Society on 9th December 2002 when a decision was made to refer the Respondent's conduct to the Tribunal.

The Submissions of the Applicant

6. The Applicant referred the Tribunal to the letter from the Respondent to the Applicant dated 4th November 2003 in which the Respondent said that he would be admitting some but not all of the facts and would contend that the facts admitted did not justify the disciplinary charges. The Respondent had said that he would deal with the matter by way of a letter with attachments but despite requests from the Applicant such letter had not come hence the Applicant's Notice to Admit documents sent to the Respondent on 13th January 2004. The Applicant would therefore seek to prove the allegations and would seek to do so on the basis of the documentation.
7. The Applicant submitted that allegations (i) and (ii) were clearly shown by the documents which were before the Tribunal. Nothing had been received from the Respondent which disproved them.
8. The Accountant's Reports were still outstanding and the Respondent had not taken the alternative course of lodging a final Report.
9. The Respondent had failed to deal properly with the formalities surrounding the closure of his practice and The Law Society had therefore not been able to carry out its regulatory duties to check whether there were any risks or loss to clients.
10. This was a serious matter. The Respondent had not been cooperative and the OSS was not clear regarding the position. It had been open to the Respondent to lodge a final Report.

The Submissions of the Respondent

11. The Respondent's submissions were contained in his letter of 17th January 2004 to the Tribunal. In that letter the Respondent said in summary that the loss of his files and records were due to circumstances beyond his control but his small practice had ceased in August 2000 and only a small number of files still existed which simply contained his files notes and working papers. Over three years had elapsed since the closure of his practice with no record of any claim.
12. The Respondent had accepted The Law Society's recommended action of placing a restriction on any future practising certificate but had no intention of returning to the profession.

13. Due to the loss of records it was impossible for him to file Accountant's Reports and it was not necessary for him to file a Report for the year ending 30th June 2002. He said that this had been dealt with by way of correspondence.
14. The Respondent said that he had accepted the recommended course of action and had repeatedly indicated his objection to paying any costs. He found the proceedings unnecessary and said that he would not pay any costs awarded against him.

The Findings of the Tribunal

15. The Tribunal found the allegations substantiated from the documentation. The Respondent had not filed the Accountant's Report nor taken the alternative route of filing a final Report. He had not retained his accounts records as required by the Rules. The delivery of Accountant's Reports and the maintenance of accounts records was extremely important for the protection of the public. That could be seen from the Accountant's Report for the period ending June 2000 where the accountants could not report fully due to the lack of records. The public could therefore not be reassured that the Respondent had been a proper custodian of monies entrusted to him. The Respondent appeared not to have sought information from other sources such as his former bank to enable him to comply with the regulatory requirements.

Previous Appearance on 6th December 1984

16. At a hearing on 6th December 1984 the following allegations were substantiated against the Respondent namely that he had:
 1. Omitted and/or neglected and/or failed to deliver Accountants' Reports to The Law Society as by Section 34 of the Solicitors Act 1974 are required:
 2. Acted in breach of the provisions of the Solicitors Accounts Rules 1975 in that he notwithstanding the provisions of Rule 7 and 8 of the said Rules drew from a client account money not permitted to be so drawn and utilised the same improperly so drawn for his own benefit and/or for the benefit of other clients not entitled thereto;
 3. In breach of Rule 11 of the Solicitors Accounts Rules 1975 failed to keep properly written up books of accounts as by the said Rule required and further failed to cause the balance of his clients' cash book or clients' column of his cash book to be agreed with his clients' bank statements as therein required;
 4. By virtue of the aforementioned been guilty of conduct unbecoming a solicitor.
17. The Tribunal on that occasion said that the Respondent had been guilty of recklessness and irresponsibility in relation to the accounts of the practice. It was not sufficient for him to say that because he was a rich man and no client had lost any money no harm had been done. The Tribunal was by no means satisfied with the arrangements which he had evidently made for the keeping of his books of account in future and the Tribunal ordered that the Respondent be suspended from practice as a solicitor for a period of two years from 17th January 1985.

Hearing on 20th January 2004

18. The Tribunal on 20th January 2004 noted the previous findings made against the Respondent. Although these were from a long time ago the Tribunal noted the similarity of the first allegation to the present proceedings. It appeared that the Respondent had not dealt sufficiently with the lessons which he should have learnt from his previous misdemeanour. The Tribunal had considered carefully the comments of the Respondent contained in the documents but the Respondent was in continuing breach of the regulatory requirements necessary on the closure of the practice and it was not sufficient for a solicitor simply to say that his records had been destroyed and take no further action. In all the circumstances the appropriate penalty was an indefinite suspension and the Tribunal considered it right that the Respondent pay the Applicant's costs.
19. The Tribunal ordered that the Respondent, Howard Neil McCartney of Grange Over Sands, Cumbria, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 20th January 2004 and they further ordered that he do pay the costs of and incidental to this application and enquiry to be subject to detailed assessment unless agreed.

DATED this 5th day of March 2004

on behalf of the Tribunal

R J C Potter
Chairman