

IN THE MATTER OF MICHAEL AUBREY GORDON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr R B Bamford
Mr D E Marlow

Date of Hearing: 8th April 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 ("the OSS") by Geoffrey Williams of Queen's Counsel, solicitor and partner in the firm of Geoffrey Williams & Christopher Green Solicitor Advocates of 2A Churchill Way, Cardiff CF10 2DW on 14th October 2003 that Michael Aubrey Gordon whose address for service was c/o Peter Cadman Esq, Russell Cooke Solicitors, 8 Bedford Row, London WC1R 4BX might be required to answer the allegations contained in the statement which accompanied the application and that such orders 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 respects, namely:-

- (a) That he failed to maintain properly written books of account contrary to Rule 32 Solicitors Accounts Rules 1998;
- (b) That he drew monies out of a client account otherwise than in accordance with Rules 7 and 8 Solicitors Accounts Rules 1991 and latterly contrary to Rule 22 Solicitors Accounts Rules 1998;

- (c) That he used clients' funds for his own purposes;
- (d) That he caused false entries to be made on accounting documents;

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 8th April 2004 when Geoffrey Williams of Queen's Counsel appeared as the Applicant and the Respondent was represented by Peter Harland Cadman solicitor and partner in the firm of Russell Cooke solicitors of 8 Bedford Row, London, WC1R 4BX.

The evidence before the Tribunal included the admissions of the Respondent. The Tribunal heard oral evidence from Dr Peer.

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

The Tribunal order that the Respondent, Michael Aubrey Gordon c/o 8 Bedford Row, London, WC1R 4BX solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,500.

The facts are set out in paragraphs 1 to 21 hereunder:-

1. The Respondent, born in 1952, was admitted as a solicitor in 1977 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practice as a solicitor in partnership under the style of Gordon Shine & Co at 61/63 Chamberlayne Road, London, NW10 3NG. The Respondent resigned from the partnership on 22nd May 2002.
3. An inspection of the books of account of Gordon Shine & Co was commenced on 21st May 2002 by an Investigation Officer of the Forensic Investigation Department of the OSS. The resulting report dated 28th June 2002 was before the Tribunal.
4. On 21st May 2002 the Respondent voluntarily disclosed to his partner, Mr Shine, the existence of a shortfall on client account in excess of £45,000 as at 30th April 2002. The Tribunal was told that the Respondent's disclosure to his partner was triggered by the start of the inspection on the same day. On 22nd May 2002 the Respondent wrote to his partner resigning from the partnership, stating that he was making arrangements to repay the shortfall immediately and would make himself available to offer any assistance required. The cash shortage was replaced in full by the Respondent during the course of the inspection.
5. On 22nd May 2002 Mr Shine wrote to the OSS stating that the Respondent had informed Mr Shine that the Respondent had committed serious breaches of the Solicitors Accounts Rules which were totally unbeknown to Mr Shine. The conduct of Mr Shine has not been criticised by the OSS.
6. At a meeting with the Investigation Officer on 6th June 2002 the Respondent attributed the cash shortage on client account wholly to his actions in connection with

the matter of AW deceased. This was a probate matter in which the firm acted for the executors in connection with the administration of the estate of AW. The Respondent was one of three executors.

7. The Investigation Officer ascertained that there were two elements to the cash shortage as follows:-

i)	Misuse of funds held for one client for the benefit of another	£14,000.00
ii)	Personal payments	<u>31,943.70</u>
		<u>£45,943.70</u>

i) Misuse of funds held for one client for the benefit of another - £14,000.00

8. The Respondent explained that, acting under pressure from beneficiaries of the AW estate, he had, on 22nd March 2002, drawn a cheque for £5,000.00 payable to Miss LM who was a beneficiary under the AW estate. This payment from client bank account was, however, debited to the client ledger account for RL deceased where he was acting on behalf of the executors.

9. The Respondent said that on 15th April 2002, he had drawn a cheque for £50,000.00 on client bank account which was again debited to the client ledger account for RL deceased. He said that the cheque purported to be a payment to Miss BL on account of her entitlement under her mother's estate. He said that the cheque stub showed Miss L as the payee but that the cheque itself was made payable to the firm and subsequently credited to the client ledger account for AW deceased and shown on the paying in slip as a payment received from Barclays Bank plc for the benefit of the AW estate.

10. The Respondent said that on 15th April 2002, from the £50,000 now standing to the credit of the client ledger account for AW, he made three payments to beneficiaries of the AW estate, totalling £9,000.

11. In a written note provided to the Investigation Officer, the Respondent confirmed that he had wrongfully paid out to four beneficiaries under the AW estate the sum of £14,000 (£5,000 and £9,000) from monies which he was holding for the L estate.

ii) Personal payments - £31,943.70

12. The Respondent said that he had demanded and collected rents in connection with an investment property in London N4, which was one of the assets of the AW estate. The property comprised a shop let on a commercial lease at an annual rent of £10,750 and three residential flats. He said that the flats had all been sold on long leases prior to AW's acquisition of the property, each at a fixed annual ground rent of £100.

13. The Respondent said that during Mr W's lifetime he collected the rents and paid them over initially direct to Mr W and latterly direct to Mr W's bank account.
14. The Respondent admitted that in six instances, following Mr W's death, he had used for his own purposes the rents received from the investment property, totalling £31,943.70.
15. The Respondent told the Investigation Officer that in all of the six instances cheques were drawn on client bank account and the requisition slips and cheque stubs showed the payee as 'AW' but that the actual cheques themselves were made payable to him and banked in his own account.
16. The Respondent's detailed written explanation of 6th June 2002 to the Investigation Officer was before the Tribunal.
17. In the note to the Investigation Officer the Respondent made full admissions regarding the misuse of funds and personal payments. The Respondent also explained that AW had been the Respondent's then wife's uncle who during his lifetime had assisted to a large extent with the payment of fees for a specialist boarding school attended by the Respondent's son who was severely dyslexic and whose education could not have been undertaken through the mainstream education system.
18. On the death of AW the Respondent had found himself in difficulties meeting the school fees and under that pressure the Respondent had resorted to using the rents received for his own purposes.
19. The Respondent also said that around the time of AW's death he had been undergoing marital difficulties.
20. The Respondent also confirmed that the total shortage on client funds had been repaid by him with the aid of family loans on 24th May 2002.
21. The Respondent further wrote that there had been no irregularities on any other matters with which he had dealt during the 20 years since the firm was established. The Respondent also explained that his partner, Mr Shine, had known nothing of these matters until the Respondent had disclosed them to him on 21st May 2002, nor could he have known.

The Submissions of the Applicant

22. The Respondent, who had admitted the facts and allegations, was no longer in practice.
23. The Applicant asked the Tribunal to note that no criticism was made of Mr Shine.
24. The case had sad features, but allegations (b) to (d) were examples of dishonest conduct by the Respondent over a period of time.

25. The method used by the Respondent to obtain the funds showed some covering of his tracks in relation to the personal payments.
26. The Tribunal was referred to the Respondent's letter to his partner of 22nd May 2002 in which he expressed his untold remorse. He spoke of his personal difficulties over the last few years and his devastation at what he had done.
27. While the misuse of funds held for one client for the benefit of another was of no direct benefit to the Respondent it was a manifestly improper use of the client account and again showed some covering of tracks. It was the covering of tracks which was the basis for allegation (d).
28. There had been six instances of funds from the estate of AW being used to pay school fees over a period from 1998 to 2002. This meant that the Respondent had been making dishonest payments for his own purposes over a four year period.
29. The facts were straightforward but the Applicant accepted that the background was sad. The Respondent had nevertheless acted improperly and in a dishonest way over a long period of time and had taken steps to disguise what he had done from his partner and from anyone inspecting the accounts documents.
30. The Respondent had agreed the Applicant's costs and the costs of the inspection in the sum of £5,500.

The Submissions on behalf of the Respondent

31. The Respondent had made a full and frank disclosure of the exact position to the Investigation Officer in June 2002.
32. Discovery had been inevitable almost from the first day the wrongdoing had occurred and the matter had certainly been hanging over the Respondent since June 2002.
33. The Respondent had immediately resigned from his former practice but the Tribunal was asked to note that the first reference in the bundle of references provided on behalf of the Respondent was from his former partner. The Respondent had assisted his former partner in running down the Respondent's area of the practice.
34. The Respondent had been highly regarded in his local area and that was evident from the references. There had been no complaint against the firm and the Respondent could have expected but for these matters to have come through his life as a reputable member of the profession.
35. The Respondent had a hyperactive child who had been deemed at the age of five not to be capable of mainstream education. Fees of £5,500 per term had therefore been incurred in a special school.
36. During his lifetime AW, the Respondent's uncle by marriage, had assisted with the school fees. At around the time of AW's death the Respondent's wife had left him. She had subsequently been diagnosed with cancer and there had been a reconciliation.

The cancer had gone into remission and there had been a subsequent final separation and divorce.

37. These events had occurred during the period in question. Following the death of AW the Respondent had had to find school fees of £16,500 per annum.
38. The Respondent had admitted that his actions had not been honest. They were however totally out of character.
39. The Tribunal was asked to note that the Respondent's former partner had said in his reference that he was willing to employ the Respondent as an assistant solicitor. The relationship between the partners had been repaired. The Tribunal was referred to the remaining references including that of Dr Peer. Dr Peer was now the Respondent's second wife but the reference had been prepared prior to the marriage.
40. The Tribunal was asked to note from the letter of reference from Mrs P, a client, that the Respondent had informed her some two years ago of his wrongdoing.
41. The Respondent could not complain if the Tribunal said that when a solicitor stepped away from total honesty the consequence could only be a striking of his name from the Roll. There were however unusual circumstances as set out above and it was submitted that a period of suspension would properly uphold the duty of the Tribunal to uphold the reputation of the profession and of the public.

Oral evidence of Dr Peer

42. Dr Peer, now the Respondent's wife, referred the Tribunal to her report of 9th August 2003. The nature of his child's difficulties was such that he was hyperactive, suffered hallucinations, was aggressive and did not sleep. Unusually it had been decided as early as the age of five that he could not be educated in mainstream school. The Respondent's first wife had told Dr Peer of how difficult it had been to cope. She had also suffered illness.
43. The Respondent's son was now more independent and the Respondent's efforts had kept him out of the penal system where many people with such difficulties found themselves.
44. The Respondent and Dr Peer had been married in December 2003. She had been fully aware of the allegations, of which the Respondent had told her in her role as friend and psychologist. The Respondent had been utterly traumatised by the events.
45. Dr Peer as a non-lawyer recognised how important it was for people to know that solicitors were responsible people of integrity but in her view the Respondent was such a person. He would do anything to help people both personally and professionally.
46. The family circumstances of the Respondent and his first wife had meant that they had no-one to turn to.

47. The Respondent had been held in the highest esteem and people had been very shocked at what had happened. Dr Peer hoped that at some time it would be possible for the Respondent to return to the practice of law.

The Decision of the Tribunal

48. The Tribunal found the allegations to have been substantiated, indeed they were not contested. This was a very sad case and a personal tragedy for the Respondent who had been held in high esteem by clients and colleagues. Regrettably however this had been a serious case of dishonest behaviour pursued over a period of time and associated with a degree of concealment. This was a sad falling from grace for the Respondent but the integrity of the profession had to come before individual tragedy and the Respondent's behaviour was not such as could be tolerated in the solicitors' profession. The Tribunal had considered carefully all the points made in mitigation on behalf of the Respondent and the stresses and difficulties he had undergone but given the seriousness of the Respondent's dishonest behaviour the appropriate order was to strike the name of the Respondent from the Roll of Solicitors.
49. The Tribunal made the following order:-

The Tribunal order that the Respondent, Michael Aubrey Gordon c/o 8 Bedford Row, London, WC1R 4BX solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,500.

Dated this 25th day of May 2004
On behalf of the Tribunal

A G Ground
Chairman