

IN THE MATTER OF CHRISTOPHER EDWARD CARMO, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J N Barnecutt (in the chair)
Mrs H Baucher
Mr J Jackson

Date of Hearing: 1st June 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 Inderjit Singh Johal a barrister employed by The Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 27th November 2003 that Christopher Edward Carmo solicitor of Wimbledon, London, 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 unbecoming a solicitor in each of the following respects:-

- (i) that he practised as a solicitor in breach of a condition of approved employment;
- (ii) that he practised as a solicitor when there was no Practising Certificate issued to him in relation to such practice.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 1st June 2004 when Inderjit Singh Johal appeared as the Applicant and the Respondent did not appear and was not represented.

Immediately prior to the commencement of the substantive hearing the Tribunal heard evidence from the Applicant as to due service of the proceedings and of notice of the date of the hearing and ordered that the substantive hearing should proceed.

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

The Tribunal order that the Respondent, Christopher Edward Carmo of Wimbledon, London, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 1st day of June 2004 and they further order that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £898.40.

The facts are set out in paragraphs 1 to 13 hereunder:-

1. The Respondent, born in 1959, was admitted as a solicitor in 1984 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practice as a part-time assistant solicitor with B & Co. The firm employed the Respondent from November 2000 until he was dismissed in February 2003.
3. On 7th August 2000 an Adjudicator at the OSS resolved to grant the Respondent a Practising Certificate on conditions, inter alia, of approved employment.
4. The Adjudicator also resolved to approve the Respondent's employment with PHY of London and as solicitor advocate with BJB & Co.
5. The Respondent failed to make an application to renew his Practising Certificate and consequently his Practising Certificate was terminated on 5th June 2001.
6. On 18th February 2003 Mr Blatt of Murdochs Solicitors wrote to the OSS on behalf of Mr B-J of B & Co solicitors. He informed the OSS that the Respondent had worked for B& Co as a consultant since November 2000 and was recruited to assist on a consultancy basis. He carried out preparatory work on criminal cases but never attended Court. He went on to say that Mr B-J only discovered that the Respondent did not have a current Practising Certificate two weeks ago. He also informed the OSS that when questioned by Mr B-J the Respondent said he was still on the Roll of solicitors and was entitled to practise as a fee earner. Mr B-J immediately dispensed with the Respondent's services. In summary Mr Blatt commented that the Respondent misrepresented his professional position to Mr B-J and that he may have practised in breach of conditions on his Practising Certificate.
7. The OSS wrote to the Respondent seeking his explanation of the matters set out in Mr Blatt's letter, including, inter alia, why he failed to apply for a Practising Certificate following the termination of his last certificate for the practice year 1999/2000. He was also requested, on a later occasion, to explain why he failed to apply to the OSS for approval of his employment with B & Co prior to joining them.
8. The Respondent initially replied to the OSS requesting additional time in which to reply. He then wrote to the OSS on 3rd May 2003 in which he posed questions for

the caseworker. His queries were answered by a reply from the OSS on 16th June 2003.

9. The Respondent sent a further letter to the OSS on 25th July 2003 in which he admitted having practised at B & Co without a Practising Certificate. He said that “further to our telephone conversation, and based on what you said, I accept that I should have worked for B & Co with a Practising Certificate in place.” The Respondent also enquired as to whether he could split his substantive explanation into two sections, one dealing with the factual situation regarding B & Co and the other with personal matters.
10. The OSS sent a letter to the Respondent on 29th July 2003 informing him that he could reply to the OSS in the manner suggested but he would have to indicate whether he wanted the replies to be disclosed to B & Co. If he did not want the replies to be disclosed he would have to provide reasons.
11. The Respondent replied to the OSS on 5th August 2003 raising concerns as to his replies being disclosed to B & Co via the caseworker’s report to the Adjudicator, which would in due course be disclosed to B & Co. The OSS caseworker replied to the Respondent’s letter on 6th August 2003 in which she stated that her intention was to include within her report, which would be sent for Adjudication, issues concerning both the conduct of B & Co and the Respondent.
12. On 19th May 2003 the OSS wrote to Mr Blatt making further enquiries as to the type of work that the Respondent undertook for B & Co and an explanation was sought as to why over a 20 month period B & Co’s office procedures failed to reveal that the Respondent did not have a Practising Certificate under which he could properly practice. Mr Blatt replied on behalf of B & Co on 5th August 2003. He said that B & Co always checked the Practising Certificates of employed solicitors but it was not the practice to check the Practising Certificates of locum solicitors who were contractors to the practice. He went on to say that B & Co’s Office Manual had been amended so that all locum and permanent solicitors were now obliged to present a copy of their current Practising Certificates whilst undertaking work at the firm. No criticism of Mr B-J was made in the application.
13. On 19th September 2003 an Adjudicator at the OSS resolved to refer the conduct of the Respondent to the Tribunal.

The Submissions of the Applicant

14. The Respondent had told the Applicant in a telephone call that the allegations were not contested and that he would write in mitigation. The Respondent had not done so. The Applicant had sent to the Respondent all appropriate notices including a Notice to Admit Documents and a Civil Evidence Act Notice. The Applicant would treat the matter as not admitted and would seek to prove the allegations on the documents.
15. It appeared that the Respondent had worked as a solicitor at B & Co for approximately 20 months without a Practising Certificate and had also worked in breach of the condition of approved employment for approximately 28 months.

16. The Respondent had failed to provide a substantive reply to the allegations.
17. The Tribunal was referred to the Respondent's letter of 25th July 2003 and the Respondent's comments therein.

The Findings of the Tribunal

18. The Tribunal had considered carefully the documents before it and on the basis of those documents the Tribunal found the allegations substantiated.

Previous appearance of the Respondent before the Tribunal

19. At a hearing on 13th March 2001 the following allegations had been substantiated against the Respondent, namely that he had been guilty of conduct unbecoming a solicitor in each of the following respects:-
 - (i) The Respondent had acted in breach of the Solicitors Accounts Rules 1991 in the following particulars:-
 - (a) he had drawn from clients' account monies other than in accordance with provisions of Rule 7 and 8 of the aforesaid Rules and had improperly utilised the same for his own benefit alternatively for the benefit of other persons not entitled thereto;
 - (b) he had acted in breach of Rule 11 of the aforesaid Rules in that no reconciliations of client ledger balances held in client bank account had been available since 30th April 1998. Further he had failed to keep accounts properly written up for the purpose of Rule 11 of the Solicitors Accounts Rules 1999;
 - (ii) [Not substantiated]
 - (iii) the Respondent had failed to comply with the provisions of Rule 31.1 of the Solicitors Indemnity Rules 1998 in that he had allowed arrears to accumulate of his insurance contributions to the Solicitors Indemnity Fund;
 - (iv) the Respondent, contrary to Section 44B of the Solicitors Act 1974 had failed within the time allowed to comply with a direction from the OSS to produce his file of papers in relation to a Mr MDB for whom he acted in a Statutory Demand and Bankruptcy proceedings.
 - (v) the Respondent had failed to reply promptly and substantively to correspondence from the OSS.
20. The Tribunal in 2001 had considered all the evidence extremely carefully. There were a considerable number of admitted allegations. The Tribunal accepted in relation to allegation (i) (a) that the modest amount of money had been inadvertently used due to incompetence. The Respondent had then compounded the error by taking no action to rectify it for six months. The Tribunal noted that the Respondent had made realistic decisions about his own strengths and weaknesses in relation to

practising as a solicitor. The Tribunal had taken account of the statement of BP, the regret expressed by the Respondent in his statement and his plans for the future and the testimonials submitted in support of the Respondent.

The Tribunal recommended to the Law Society that it should consider placing appropriate conditions on the Respondent's Practising Certificate. The Tribunal accepted the Respondent's wish to be a solicitor-advocate and took the view that this should be encouraged. It was not the Tribunal's intention that its recommendation in respect of conditions would stand in the way of that aim but rather that the conditions should take account of what had happened before the Tribunal. The Tribunal on that occasion ordered that the Respondent pay a fine of £9,000 together with costs in the sum of £6,000.

Hearing on 1st June 2004

21. The Tribunal considered the correspondence from the Respondent contained in the documents. That correspondence did not provide an explanation for the Respondent's conduct nor had he come before the Tribunal to give an explanation. The Tribunal noted that the division of the Tribunal sitting on 13th March 2001 had given the Respondent an opportunity to continue in practice subject to the recommended conditions. The Respondent had failed to follow those conditions. It was essential that solicitors comply with conditions imposed on their Practising Certificates in the interests of the public. The Respondent had failed to comply with the conditions on his Practising Certificate, despite the gravity of the allegations substantiated against him at the previous hearing, and the Tribunal did not consider that the Respondent should be allowed to continue in practice. The Tribunal made the following order:-

The Tribunal order that the Respondent, Christopher Edward Carmo of Wimbledon, London, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 1st day of June 2004 and they further order that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £898.40.

Dated this 22nd day of July 2004
on behalf of the Tribunal

J N Barnecutt
Chairman