

IN THE MATTER OF DMYTRO TORKONIAK, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr A H Isaacs (in the chair)
Mr R J C Potter
Mr D E Marlow

Date of Hearing: 4th May 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 Ian George Miller solicitor of Wright Son & Pepper of 9 Gray's Inn Square, London WC1R 5JF that Dymtro Torkoniak of Greetwell Road, Lincoln, solicitor 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.

By letter of 30th March 2004 the Respondent notified the Tribunal that his address had changed to Ashbourne, Derbyshire.

The allegation was that the Respondent had been guilty of conduct unbecoming a solicitor in that on 13th November 2003 he was convicted in the Lincoln Crown Court on 14 counts of theft, 4 counts of obtaining property by deception, false accounting, making a false instrument and perjury.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Ian George Miller appeared as the Applicant and the Respondent did not appear and was not represented.

The Tribunal was reminded that the Respondent had sought an adjournment of the substantive hearing of this case which was dealt with by a different division of the Tribunal on 9th March 2004.

Respondent's Submissions regarding Adjournment

On 4th May 2004 the Tribunal had before it the Respondent's two letters dated 17th March 2004 and 30th March 2004. In his letter of 17th March 2004 the Respondent said that in the light of crucial information recently obtained he had asked for a full trial transcript. Legal advice would then be obtained and an appeal against conviction might follow. The documentation would not be received before 4th May 2004. There would be no prejudice to any party if this matter were adjourned until such time as the outcome of his appeal is known. He was currently in custody and was not practising. He said that he was obtaining advice from leading counsel dealing with new evidence and an appeal against conviction might follow. If an appeal against conviction succeeded that might have a bearing on The Law Society's application. He accepted that if his appeal failed then the disciplinary hearing should proceed.

In his letter of 30th March 2004 the Respondent said that an appeal was initially lodged against sentence. That was before new evidence which recently had come to light. He believed that the new evidence had been withheld by the prosecution. He said advice from leading counsel was being sought to appeal against the conviction. He also said that given the manner in which the prosecution and Messrs Wright Son & Pepper initiated their proceedings it would not be proper to divulge the nature of the evidence that he was waiting for. He repeated that an adjournment would not prejudice any party.

The Applicant had made enquiry of Messrs Irwin Mitchell Solicitors who confirmed that they had acted for the Respondent only in relation to the confiscation proceedings. They said they were aware that the Respondent's application for leave to appeal against sentence had been listed for Friday 7th May 2004. Irwin Mitchell did not represent the Respondent in connection with that matter.

Mr Wright told the Tribunal that it was his view that there was no current appeal against conviction. The Respondent had a 28 day period in which to appeal and was now out of time. With regard to the Respondent's assertion that new evidence had become available, the Applicant had received no confirmation that such new evidence had come to light. The assertion had been made by a man convicted of perjury and the Tribunal was invited not to give undue weight to his assertion. A number of charges had been proved against the Respondent. He had been found to have stolen money from clients. It was difficult to perceive of any revelation that would cast doubt on such a finding.

The Respondent had been convicted and was serving a custodial sentence. It was open to the Respondent to apply to the Tribunal for Restoration to the Roll inviting the Tribunal to take account of any change in his position.

The Tribunal's Decision

The Tribunal said it was satisfied that it was not appropriate to adjourn the case. The Tribunal's duties were to protect the public and the good reputation of the solicitors' profession. The Tribunal took into account the Respondent's submission that he was serving

a custodial sentence and was no danger to the public. However the Tribunal's duty to maintain the good reputation of the solicitors' profession was an important one and it would damage the profession in the eyes of the public if a solicitor who had been convicted of serious criminal offences involving dishonesty, and in particular involving dishonesty with monies held by him on behalf of clients, were not to be dealt with by his own professional disciplinary tribunal without undue delay. The Tribunal accepted Mr Wright's submission that should the Respondent's position materially change then it was open to him to make application to the Tribunal for the matter to be reconsidered. The Respondent was not therefore unduly prejudiced by the Tribunal's decision to proceed to the substantive hearing.

At the conclusion of the hearing the Tribunal made an Order that the Respondent be struck off and that he pay the costs of the application.

The Tribunal made the following Order:-

The Tribunal Ordered that the Respondent be struck off the Roll of Solicitors and they further Ordered that he should pay the costs of and incidental to the application and enquiry, to include the costs of The Law Society's Investigation Accountant, such costs to be subject to a detailed assessment if not agreed between the parties.

The facts are set out in paragraphs 1 to 2 hereunder:-

1. The Respondent, born in 1967, was admitted as a solicitor in 1992. On 14th January 2000 The Law Society resolved to intervene into his practice on the basis of the Report prepared by an Investigation Accountant of The Law Society dated 14th January 2002.
2. The Tribunal had before it a certificate of conviction which demonstrated that the Respondent had on 13th November 2003 been convicted in the Crown Court at Lincoln of the following offences and sentenced as follows:-

tried and convicted upon indictment of

- (1) Theft x 13
- (2) Theft
- (3) Obtaining Property by Deception x 4
- (4) False Accounting
- (5) Making False Instrument
- (6) Perjury

On 13th November 2003

[he] was sentenced to

- (1) 3 years Imprisonment Concurrent on each count but consecutive to No. 2
- (2) 4 years Imprisonment
- (3) 3 years Imprisonment Concurrent on each count
- (4) 3 years Imprisonment Concurrent
- (5) 3 years Imprisonment Concurrent
- (6) 1 year Imprisonment Consecutive

TOTAL SENTENCE 8 YEARS IMPRISONMENT

The Submissions of the Applicant

3. The Applicant invited the Tribunal to note the sentencing remarks of His Honour Judge Teare in the Crown Court at Lincoln and in particular when he said:- “at the time of the offences you were a solicitor of the Supreme Court and you abused that high position in order to line your own pockets to the tune of hundreds of thousands of pounds. The public are entitled to put their trust in solicitors and when that trust is wilfully abused so that the solicitor can enrich himself the public are justified in calling for a severe punishment”.
4. He went on to say that, as Lord Justice Steyn said 10 years ago:- “It is a privilege to practise law and lawyers who have abused their position of trust will receive very severe sentences. Such offences are calculated to damage public confidence in the legal system and that is a very serious matter. Damage to the public confidence in the legal system potentially affects the reliance that members of the public will place in the legal profession. It is therefore a matter of the greatest public interest that the Court should take a very severe and stern view of such offences”.

“What is clear from a number of the witnesses in this case is that they trusted you for that very reason, that you were a solicitor, and that it may be that they would not have accepted your word without your speaking it from that position. The abuse of that trust was appalling. You have deceived the vulnerable, the injured, the disadvantaged and in at least two cases you have deceived people with little or no English. On three occasions you stole from the Estates of the dead including that of your own Godfather”.

“The worst case was that of SB...He was a man who had fallen from a girder trapped by a cleat holding his ankle. He remained suspended in the air some 25 ft above the ground while people below him panicked until something snapped in his ankle and he fell to the ground sustaining multiple injuries, fractures and tremendous pain... He suffered severe post traumatic stress disorder.He was a wreck of a man and you knew that. You were successful in negotiating no less than £100,000.00 in compensation for him but when he came to collect it you kept at the very least £75,000.00 for yourself. You pretended to him that about £18,000.00 was all that he had been awarded and you put £75,000.00 in an offshore bond in your own name. That is an act of unparalleled wickedness. You stole from a physical and mental cripple. It is tantamount to stealing the clothes off a beggar’s back and it deserves severe punishment by itself.... You tried to cover up your dishonesty not only by lying on oath but by removing index cards, files and cheque book stubs. During the course of the fraud you made false entries in the books, misled clients and dictated fictitious letters and file notes to cover up your thefts. Your dishonesty over a period of nearly three years netted you over £300,000 on the indictment, and almost certainly a great deal more”.

The Submissions of the Respondent

5. The Respondent made no submissions.

The Findings of the Tribunal

6. The Tribunal find the allegations to have been substantiated. The damage done by the conviction and sentence of the Respondent to the good reputation of the solicitors' profession is incalculable. A solicitor who behaves in such a manner cannot be permitted to remain a member of the solicitors' profession.

DATED this 21st day of June 2004

on behalf of the Tribunal

A H Isaacs
Chairman