

IN THE MATTER OF SEAN MARTIN, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Miss T Cullen (in the chair)  
Mr A G Ground  
Mr J Jackson

Date of Hearing: 29th July 2004

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**An application for an Order pursuant to  
Section 43 of the Solicitors Act 1974 (as amended)**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Geoffrey Williams of Queens Counsel solicitor and partner in the firm of Geoffrey Williams and Christopher Green, Solicitor Advocates of 2a Churchill Way, Cardiff, CF10 2DW on 5<sup>th</sup> April 2004 that an Order be made by the Tribunal directing that as from a date to be specified in such Order no solicitor should, except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Sean Martin of West Brompton, London, SW10 a person who was or had been employed or remunerated by a solicitor or that such other Order might be made as the Tribunal should think right.

The allegation against the Respondent was that he having been employed or remunerated by solicitors but not being a solicitor had in the opinion of The Law Society occasioned or been a party to with or without the connivance of the solicitors by whom he was or had been employed or remunerated acts or defaults in relation to those solicitors' practices which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be employed or remunerated by solicitors in connection their practices.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 29<sup>th</sup> July 2004 when Geoffrey Williams QC appeared as the Applicant and the Respondent did not appear and was not represented.

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

The Tribunal Orders that as from 29<sup>th</sup> day of July 2004 no solicitor shall, except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Sean Martin of West Brompton, London, SW10, a person who is or was a clerk to a solicitor and the Tribunal further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,012.55p

**The facts are set out in paragraphs 18 hereunder:**

1. Between 4<sup>th</sup> September 2000 and 12<sup>th</sup> May 2002 the Respondent was employed as a litigation clerk by Messrs Drysdales, solicitors of Cumberland House, 24-28 Baxter Avenue, Southend-on-Sea, SS2 6HZ. Thereafter and until 3<sup>rd</sup> July 2003 the Respondent was similarly employed by Messrs Sanders Witherspoon, solicitors of Knight Court, 51 Crown Street, Brentwood, Essex, CM14 4BE. No criticism of either firm was made in the proceedings.

The first complaint by Messrs Drysdales.

2. The Respondent acted for Mrs T in civil litigation. Mrs T was contesting the will of her late co-habitee. Proceedings were listed for hearing on 5<sup>th</sup> April 2002 in the Southend County Court. The claim was contested. A Court bundle had been prepared and Counsel had been briefed. The day before the trial the Respondent sent a draft Consent Order to the other parties under which Mrs T was to have a life interest in certain property rather than the beneficial interest previously sought.
3. On 28<sup>th</sup> May 2002 Messrs Drysdales complained to the OSS and in June 2002 Mrs T complained to and claimed against Messrs Drysdales.
4. The complaints indicated that:
  - (a) the Respondent arrived at the settlement without any reference to Mrs T;
  - (b) the Respondent arranged for a Consent Order to be made in the absence of any instructions from Mrs T;
  - (c) the Respondent subsequently attended upon Mrs T and discussed the case with her. He made no mention of the already concluded settlement. To the contrary the Respondent stated that a Court date had been cancelled;
  - (d) the Respondent attempted to persuade Mrs T to agree to settle on the basis of the concealed terms of the Consent Order.

The second complaint by Messrs Drysdales

5. The Respondent acted for BY in resisting a debt claim made the subject of High Court proceedings. BY was facing an application for Summary Judgment against him and the Respondent was advising settlement. It was clear from telephone calls from BY

and from his wife that BY was under financial pressure at the time and this was confirmed in a letter from the Respondent to the claimant's solicitors dated 9<sup>th</sup> November 2000. In the letter the Respondent referred to a risk that BY would be insolvent and that BY had indicated that the sum offered was the maximum he could afford.

6. The matter was resolved by a Consent Order. BY was subject to an Order for Costs against him and the Respondent participated in a detailed assessment leading to an Order against BY for costs in the sum of £8,312.83. The Order was dated 13<sup>th</sup> March 2002.
7. On 16<sup>th</sup> November 2000 BY had sent a cheque in full and final settlement of the debt owed. He had thanked the Respondent for his assistance and settled the firm's account.
8. On 19<sup>th</sup> April 2002 BY wrote to the Respondent as follows:

".....I am absolutely stunned to have received your fax informing me of the statutory demand for costs for GMAC.

- 1) This case goes back some 18 months and we paid GMAC in full and final settlement.
- 2) You never informed me, at that time, or since, either verbally or in writing that I would be liable for any costs.....
- 4) Why after 18 months? Why suddenly issue a statutory demand when I have received no communication from GMAC in 18 months?

I would appreciate a telephone call first thing Monday morning please. I cannot afford for this matter to continue, it is very distressing for my wife who is in remission and worry such as this is unacceptable".

9. On 22<sup>nd</sup> April 2002 BY's wife wrote to the firm as follows:  
"....It now transpires that we have a legal bill of some £8,000 for GMAC's costs which are a bolt from the blue. When this matter was settled, it should have been in full and final settlement. After B's conversation with Mr Martin this morning, it appears that this was not the case. We never received any correspondence from Mr Martin informing us that we should expect a bill for their costs, B's final words to Mr Martin in a phone call from New York, when we agreed to the terms and payment were 'that's it then, in full and final settlement', Mr Martin's reply was 'yes'."
10. The Statutory Demand was served on BY on 24<sup>th</sup> April 2002. The costs liability of BY was settled by Messrs Drysdals.
11. In a letter dated 26<sup>th</sup> September 2002 to the OSS Messrs Drysdals wrote that the Respondent had not advised BY of his costs liability and that a disciplinary enquiry had taken place arising out of this matter leading to the Respondent's dismissal. Messrs Drysdals also wrote:

"...Mr Martin was a Fellow of the Institute of Legal Executives and as indicated above, he had recently undertaken a number of examinations and is seeking to be admitted to the Role of Solicitors. Mr Martin had an extensive experience of litigation matters, having practised for approximately 10 years...."

#### The Respondent's explanations

12. The Respondent wrote to the OSS in respect of both complaints. His first letter was received on 20<sup>th</sup> November 2002. Whilst contending that the settlement for Mrs T was favourable the Respondent accepted that she had not been informed. He also conceded that he was not frank with her when he subsequently attended her at home. He wrote:

"...It is not denied that the claim of Mrs T was settled. This was a favourable term to her something she would be unlikely to have expected had the matter gone to trial.

Mrs T knew my view on this. I did not wish to see her be unsuccessful in her claim and left with very little if anything. It was a matter settled with Mrs T's best interests being considered. She has not suffered any loss.

I did attend her at her home sometime later to discuss matters and put my hands up. However for reasons which will become apparent the matter did not turn out this way. It is not a matter of any wilful intent to have dealt with the matter in the way expressed by Drysdale (which I consider to be painting the blackest picture they can).

The claim was settled and Mrs T not informed. Matters got out of hand and I did not know which way to turn. With hindsight I can see the logical and correct course to have taken. Regretfully I did not take this course at the time...."

13. With respect to the case of BY the Respondent wrote:

"...I deny totally that BY was unaware of the terms proposed for settlement...."

The assessment procedure was undertaken without reference to BY. However BY has not suffered any loss and suffered no detriment."

14. The Respondent's second letter was received by the OSS on 21<sup>st</sup> February 2003. The Respondent again asserted that BY was aware of his costs liability but conceded that BY was never sent a copy of the Order. Further the Respondent accepted that he failed to advise BY of his liability as assessed by the Court. He repeated the previously offered explanation with respect to Mrs T. He also referred to his difficult personal circumstances at the time.

#### The complaint by Messrs Sanders Witherspoon ("SW")

15. On 23<sup>rd</sup> July 2003 SW complained to the OSS about the conduct of the Respondent. The complaint related to a conveyancing transaction. SW wrote that the Respondent

had been employed as a litigation legal executive and was not employed or authorised by the firm to undertake conveyancing matters. SW further wrote:

"...He failed to notify the firm he was undertaking such work, failed to seek advice from our conveyancing department and perhaps worse still undertook the work personally (in the main by e-mails which have only during the past three weeks been discovered). It appears he typed letters without using his own secretary, putting false references on those letters to show his secretary as having typed them, and when in fact we are satisfied that she did not. These included undertakings that were given by Mr Martin which he was clearly and to his knowledge not authorised to give either by the client or this firm...."

16. The Respondent was acting for the vendor of a property in a sale to Mr TR. In the course of the transaction the Respondent gave undertakings to TR's solicitors as follows:
- (a) to remove a caution;
  - (b) to repay £162,000 of the purchase monies back to TR's solicitors or to a nominated third party.

Both undertakings were given without any authority from SW and contrary to the procedures set out in SW's office manual.

17. SW enclosed with their letter a copy of a note from TR to the Respondent from which it appeared that the Respondent was to an extent taking instructions from TR.
18. The Respondent did not provide any explanation in relation to this matter. At the time of the relevant OSS correspondence his whereabouts were unknown.

### **The Submissions of the Applicant**

19. The Applicant did not criticise either of the employing firms.
20. In the matter of Mrs T the client had wished to proceed to trial even though she was aware of the risks involved. The Respondent had settled without her knowledge and had then tried to persuade her to agree to the terms of the Consent Order without making her aware that it was too late.
21. In the matter of BY the Respondent had been aware that BY was under financial pressure. The Respondent had asserted that BY was aware of his costs liability but this was not accepted. BY had not been advised of his costs liability nor of the detailed assessment. All the relevant correspondence was totally silent on the matter of costs but in contrast the Respondent had made several references to his firm's costs.
22. The fact that BY had sent the Respondent a cheque expressed to be "in full and final settlement" was consistent with BY being under the impression that he had nothing further to pay. It was clear from the correspondence that the Costs Order and the subsequent enforcement action had taken BY and his wife completely by surprise.

23. In relation to the complaint by SW the undertakings had been given without authority and the second undertaking was in the submission of the Applicant highly suspicious. The Respondent had also taken his instructions from the purchaser when acting for the vendor.
24. The Respondent in his second letter had set out his personal difficulties but the Tribunal was asked to note that he was employed by supportive firms offering proper procedures. The Respondent had "gone off the rails" in three cases to the detriment of his clients and of his employers. In the submission of the Applicant the protection of the public required the making of an Order under Section 43 of the Solicitors Act.
25. The Applicant sought his costs in the sum of £5,012.55.

### **The Findings of the Tribunal**

26. The Tribunal considered carefully the documentary evidence noting that this had been served on the Respondent by a notice pursuant to the Civil Evidence Act 1968 and that no counternotice had been served by the Respondent. The Tribunal was satisfied that the allegation was substantiated. The Tribunal noted the reference by the Respondent in correspondence to his personal difficulties at the time but also noted that no criticism was made against his employing firms who had had the appropriate procedures and support in place. The Tribunal was satisfied that the protection of the public required the making of the Order sought. This would enable The Law Society to control any future employment of the Respondent within the profession.
27. The Tribunal ordered that as from 29th day of July 2004 no solicitor shall, except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Sean Martin of West Brompton, London, SW10, a person who is or was a clerk to a solicitor and the Tribunal further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,012.55.

DATED this 30<sup>th</sup> day of September 2004

on behalf of the Tribunal

Miss T Cullen  
Chairman