

IN THE MATTER OF CHARLES NICHOLAS FREEMAN &
RESPONDENT 2 – NAME REDACTED, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mr A Gaynor-Smith
Mr D E Marlow

Date of Hearing: 6th January 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An Application was duly made on behalf of The Law Society by Stephen John Battersby Solicitor and Partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts, SG14 1BY on 20th April 2004 that Charles Nicholas Freeman of North Crawley, Newport Pagnell, Buckinghamshire, MK16 and *RESPONDENT 2* of C C Bell & Son, 48-50 Harpur Street, Bedford, MK40 2QT be required to appear before The Solicitors Disciplinary Tribunal to answer the allegations contained in the Statement which accompanied the application and that the Tribunal might make such order as it thought fit.

The allegation against Mr Freeman (the first Respondent) was that (i) he had been guilty of conduct unbecoming a solicitor in that he had been convicted of a criminal offence involving dishonesty for which he was sentenced at Luton Crown Court on 1st August 2003 [the other allegations against the first Respondent were withdrawn with the consent of the Tribunal].

The allegations against the second Respondent were that he had been guilty of conduct unbecoming a solicitor in each of the following particulars:-

(ii) He failed to comply with the decision of an Adjudicator made on 9th June 2003.

(iii) He failed to file an Accountant's Report when the same became due.

The Application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 6th January 2005 when Stephen John Battersby appeared as the Applicant, the first Respondent did not appear and was not represented and the second Respondent was represented by Jack Friend, Solicitor of Jack Friend & Co., 11 Sudbury Hill Close, Wembley, Middlesex, HA0 2QR.

The evidence before the Tribunal included the admissions of the Respondents. During the hearing a bundle of letters of reference in support of the Second Respondent were handed to the Tribunal.

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

The Tribunal Order that the Respondent, Charles Nicholas Freeman of North Crawley, Newport Pagnell, Buckinghamshire, MK16, 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 £1,603.31.

The Tribunal Order that the Second Respondent, of Bedford, MK40, solicitor, do pay a fine of £500.00, such penalty to be forfeit to Her Majesty the Queen, and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

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

1. The first Respondent born in 1940 was admitted as a solicitor in 1969. The second Respondent born in 1945 was admitted as a solicitor in 1971. The names of both Respondents remained on the Roll of Solicitors.
2. At the material time the Respondents practised in partnership together as Fairley & Co at 64a St Loyes Street, Bedford, MK40 1EZ. There was also a branch office at 37a Bedford Road, Barton-le-Clay, Bedford, MK40 1EZ.

Allegation against the First Respondent

3. On 10th July 2003 the First Respondent appeared before the Magistrates Court at Luton and entered a guilty plea to an allegation of theft of cash to the value of £5,152.50 belonging to Fairley & Co Solicitors. His case was committed to the Crown Court at Luton for sentence and the matter was disposed of on 1st August 2003. The sentencing remarks of his Honour Judge Gosshalk were before the Tribunal.

Allegations against the Second Respondent

4. On 13th November 2002 the firm submitted a proposal form to join the Assigned Risks Pool for the indemnity period 1st September 2002 – 31st August 2003. They were informed under cover of a letter dated 20th November 2002 that they were covered and told that a debit note would follow. The debit note, indicating a total premium of £59,789.91 was issued on 26th November 2002. The debit note set out a

schedule of how the premium was to be paid, namely an immediate payment of £14,947.50 representing the instalments for September, October and November and thereafter payments of £4,982.49 each month from 1st December 2002 to 1st August 2003 inclusive.

5. The premiums due were not paid, despite reminders sent, until on 26th February 2003 a payment on account of £9,000 was sent, this being acknowledged under cover of a letter dated 5th March 2003 which expected the firm to make by return, proposals for settling the balance of the premium. The matter was reported to the Office for the Supervision of Solicitors by the Assigned Risks Pool on 6th March 2003.
6. The failure to make payment of the premium was contrary to Rule 16 of the Solicitors Indemnity Insurance Rules 2002 and on 9th June 2003 an Adjudicator found that the firm had breached that rule. She expected them within 14 days of notification of the decision to pay the outstanding premium and confirm to the OSS that they had done so. Failing that, their conduct was to be referred without further notice to be Tribunal.
7. Despite the Order of the Adjudicator the payment was not made by the due date. The Second Respondent paid the outstanding premium in October 2003.
8. The Accountant's Report for the Respondents' firm for the period ending 31st January 2003 should have been delivered to The Law Society by 31st July 2003. It was not delivered, and on 11th August 2003 The Law Society wrote accordingly to the Respondents. The Second Respondent replied on 15th September 2003 explaining that he had problems in supplying the accountants with the documentation they needed, but hoped to be able to do so within a short time.
9. No report was received and on 22nd March 2004 a Senior Law Society Officer authorised the inclusion of the matter in the existing proceedings. An unqualified Accountant's Report was filed with The Law Society on 12th October 2004.

The Submissions of the Applicant

10. The First Respondent had admitted the allegation against him. Given the seriousness of that allegation the Applicant sought and obtained the consent of the Tribunal to withdraw allegations (ii) and (iii) in respect of the first Respondent who had indicated that he would contest them.
11. The First Respondent had produced wills for the clients of the firm who had paid him in cash. Instead of putting the money through the firm's accounts he had kept it. The sum of £5,152.50 comprised many different small amounts over a number of years. A Community Punishment Order had been made in respect of the First Respondent.
12. The allegations against the Second Respondent did not involve any dishonesty. It was accepted that the insurance premiums had now been paid and that the Accountant's Report had now been filed. The Second Respondent had put right the wrongs.
13. The Applicant had agreed costs with the Second Respondent in the sum of £1,000. The Applicant's total costs were £2,603.31p

The Submissions on behalf of the Second Respondent

14. The Tribunal was given details of this Respondent's family background and professional history. In particular, the Tribunal was told of the difficulties faced by the Respondent during the 1980s when the Senior Partner in the firm in which he was then a partner was arrested because of defects in the accounts. The Second Respondent had been left in charge of 8 offices but had been able to trade out of the firm's debts.
15. The recession of the 1990s followed.
16. In 1994 the Second Respondent had offered the First Respondent a position as an Assistant Solicitor but the First Respondent had insisted on a partnership. The Second Respondent had raised £50,000 to pay the firm's indebtedness during the recession. The First Respondent had made no financial contribution to the firm.
17. In 2000 the Second Respondent's wife was diagnosed with a serious illness and the First Respondent had been asked to take a greater profile in the firm but had not done so. The Second Respondent had eventually served a notice of the termination of the partnership. The First Respondent had offered the prospect of raising cash and the partnership had continued. The First Respondent had not provided any money.
18. The Second Respondent in due course became aware of the theft by the First Respondent. He also discovered that the firm's indemnity premium had not been paid. The Second Respondent did not seek to blame the First Respondent for this as the Second Respondent had been overwhelmed with domestic and practice problems.
19. The Second Respondent had relocated to a new firm but had had to work extremely long hours to deal with matters arising from the former practice as well as his work in the new firm. During this period his wife had suffered a relapse.
20. The bank had released money for the outstanding premium in October 2003 and the Second Respondent had paid £50,000. There had been no contribution from the First Respondent.
21. The Second Respondent had been anxious to be seen to accept his proper responsibilities and the Tribunal was referred to his letters of 26th February 2003 to Eastgate Insurances Limited and of 11th May 2003 to The Law Society. These were responsible letters and full professional replies.
22. The failures had not been of the Second Respondent's deliberate making. He suffered the misfortune of being involved twice with dishonest professional colleagues and had been left to pick up the pieces. It was a source of regret to the Second Respondent that he had been unable to do that as quickly as his professional body required. He had not however run away from his responsibilities.
23. The Tribunal was asked to note that the firm had throughout been indemnified and that the Accountant's Report that had been filed was an unqualified report. It had been paid for entirely by the Second Respondent.

24. The Second Respondent had to prioritise his available time and money and had concentrated on maintaining current files. The delays in other matters were understandable if not forgivable.
25. The Second Respondent had struggled to do what was right and the Tribunal was asked not to add unnecessarily to the burden he carried, to note the financial costs the Second Respondent had already paid and to give him credit for his pleas and his open, frank and professional responses.
26. The Second Respondent had not taken advantage of the absence of his former partner, to blame him for everything but had been badly let down by the First Respondent. The Second Respondent had been decent in his attitude towards the First Respondent. When asked to contact the Court as a victim he had sought to spare the First Respondent from prison.
27. The Second Respondent wished to express his regret to the Tribunal.
28. The Tribunal was asked to note the impressive references submitted on behalf of the Second Respondent who was a past president of Bedfordshire Law Society.

The Submissions of the First Respondent

29. The submissions of the First Respondent were contained in his letter of 30th December 2004 to the Tribunal in which he accepted keeping cash paid for wills. He had reimbursed the firm. He had co-operated with The Law Society and the Police and had admitted the offence at the first opportunity. No client had suffered any financial loss. The First Respondent asked that his attendance at the Tribunal be excused and apologized to the Tribunal for his dishonesty and for the trouble caused to the Second Respondent, The Law Society, the Police and the Court.

The Findings of the Tribunal

30. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
31. The First Respondent had been found guilty of an offence of dishonesty having stolen money from the firm in which he was a partner on a number of occasions over a protracted period. It was not right that he remain a member of the profession in those circumstances and the Tribunal would order that he be struck off the Roll. It was right that the First Respondent should pay the balance of the Applicant's costs.
31. The allegations substantiated against the Second Respondent were both breaches of requirements of The Law Society without which The Law Society could not regulate the profession in the interests of the public. The appropriate penalty for these important breaches was a fine. The Tribunal had however taken account of the difficult and exceptional circumstances which had led to the defaults by the Second Respondents, the financial responsibilities he had already met and the impressive references submitted on his behalf. The Tribunal felt that in all the circumstances it

would be right, exceptionally, to impose a low fine, together with the Applicant's agreed costs.

32. The Tribunal made the following Orders:-

The Tribunal Order that the Respondent, Charles Nicholas Freeman of North Crawley, Newport Pagnell, Buckinghamshire, MK16, 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 £1,603.31.

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Dated this 21st day of February 2005

On behalf of the Tribunal

R B Bamford
Chairman