

IN THE MATTER OF PHILIP ELKINS,
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr S N Jones (in the chair)
Mr A G Ground
Mr G Fisher

Date of Hearing: 12th October 2004

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Robert Simon Roscoe solicitor and partner in the firm of Victor Lissack, Roscoe & Coleman, solicitors of 70 Marylebone Lane, London, W1U 2PQ on 22nd June 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 Mr Philip Elkins of Hammersmith, London W6, a person who was or had been a clerk to a solicitor, was that such other Order might be made as the Tribunal should think right.

The allegations against the Respondent were that he had been guilty of conduct of such a nature that in the opinion of the Society it would be undesirable for him to be employed by a solicitor in connection with his or her practice. The particulars were that whilst employed as an unadmitted solicitor's clerk with Messrs Bulcraigs, solicitors, of 2 Replingham Road, Southfields, London, SW18 5LS, the Respondent:-

- (i) deliberately misled clients of the firm as to the true position in connection with litigation he was supposed to be carrying out on their behalf;
- (ii) deliberately misled his employers as to the true position in connection with litigation he was supposed to be carrying out on behalf of the firm's clients;
- (iii) took cash from the firm's clients, purportedly on behalf of the firm and dishonestly kept the cash for his own use;
- (iv) dishonestly made false claims from his employers for disbursements he purported to have incurred on behalf of the firm's clients.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 12th October 2004 when Robert Simon Roscoe appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the written admissions of the Respondent.

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

The Tribunal Orders that as from 12th day of October 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 Philip Elkins of Hammersmith, London, W6, 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 £1,638.25.

The facts are set out in paragraphs 1 to 14 hereunder:

1. The Respondent was employed as a legal clerk by Messrs Bulcraigs, solicitors, from 1987. During the course of his employment the Respondent carried out litigation work on behalf of clients of the firm.
2. On 4th October 2001 a client of the firm, P Ltd, contacted the senior partner of the firm Mr S, who was informed that notwithstanding reports provided by the Respondent, advising them of the successful conduct by the firm of litigation conducted on behalf of P Ltd at the Wandsworth County Court, their own enquiries indicated that the information provided to them by the Respondent was untrue.
3. Mr S spoke to the Respondent on 5th October 2001. The Respondent admitted that the case of P Ltd had been dismissed by the Court three years earlier. He admitted he had misled P Ltd about its case. The Respondent was dismissed by the firm for serious misconduct. Mr S reported the matter to The Law Society on behalf of the firm.
4. Enquiries made by Mr S subsequently revealed that the Respondent had similarly misled other clients of the firm.

Misleading clients as to the progress and/or outcome of their individual cases

P Ltd

5. Prior to 1995 the firm had been instructed by P Ltd in connection with a litigation matter in the Wandsworth County Court. In 1995 the Respondent received a letter

from the solicitors instructed by the other party advising that the matter had been disposed of by a Consent Order with a Costs Order against P Ltd.

6. In November 1999 the Respondent wrote to P informing them that the matter had been resolved in their favour and that he had secured a Costs Order on their behalf. Between 1999 and 2001 the Respondent corresponded with P about the steps he was taking to enforce the Order.
7. In September 2001 P contacted the Court themselves and ascertained the correct position and notified the firm.

Mrs F

8. In January 2001 Mrs F saw the Respondent and instructed the firm to conduct divorce proceedings on her behalf. Mrs F was given the impression by the Respondent that the divorce proceedings were progressing. In fact no work had been done on the matter. Following the Respondent's dismissal, Mrs F spoke to Mr S who confirmed the true situation to her. Mrs F told Mr S that she had paid the Respondent £30 in cash on account of disbursements to be incurred on her behalf. Mr S ascertained that the money had not been paid into any of the firm's accounts by the Respondent.

Mrs S

9. Mrs S instructed the firm to conduct possession proceedings on her behalf. That part of her case was apparently successful. Subsequently, in March 1996, Mrs S instructed the Respondent to recover arrears and costs. The Respondent misled Mrs S about the state of the proceedings by sending her copies of letters that had not been sent and by giving her false reports on the progress of her case to the extent that, in November 1999, the Respondent told Mrs S that the court had awarded her £6,000 plus interest and costs. There was no evidence that any such proceedings were commenced nor that any such Order was ever made.

Mrs E

10. In December 1992 Mrs E saw the Respondent and instructed the firm to pursue a claim for damages against the London Borough of Wandsworth on her behalf. The Respondent applied unsuccessfully for legal aid on Mrs E's behalf and also obtained Counsel's opinion, although that advised against further action. Nevertheless, the Respondent appeared to continue to conduct Mrs E's case and corresponded with her as though Court proceedings had been commenced. In September 1998 the Respondent advised Mrs E that an Order in her favour for damages had been made by the Court. There was no evidence that any such proceedings were commenced nor that any such Order was ever made.

Mrs W

11. In December 1989 Mrs W saw the Respondent and instructed the firm to pursue a claim for damages against the London Borough of Wandsworth on her behalf following an accident. The Respondent applied successfully for legal aid on Mrs W's behalf. Despite the fact that Mrs W's claim was struck out by the Court in 1994, the Respondent continued to correspond with Mrs W as though the matter were progressing through the Court. In November 1999 the Respondent reported to Mrs W that the matter had been resolved in her favour with an award of £7,500 damages. There was no evidence that any such proceedings continued beyond 1994 nor that any such Order was ever made.

Theft of monies from clients

12. Following the dismissal of the Respondent, the firm audited the files conducted by the Respondent and ascertained that in a number of instances clients had paid cash to the Respondent, ostensibly in connection with their legal fees. In the instances set out below, the Respondent had stolen the money, totalling £2,340 having failed to account for it to either his employers or to their clients:

	£
Mr C	260.00
Mr Cr	1,000.00
Mrs E	800.00
Mrs F	30.00
Mr B	250.00

Court fees and travel expenses dishonestly claimed by the Respondent

13. The audit of the files conducted by the Respondent also revealed that in a number of instances disbursements had been dishonestly claimed from the firm by the Respondent, ostensibly in connection with the legal work carried out by him but in fact where no such disbursement had been incurred. In effect the Respondent had stolen money from his employers totalling £1,740.90 by this means.
14. The Respondent had accepted his culpability and paid compensation to the firm.

The Submissions of the Applicant

15. The Respondent had indicated to the Tribunal in writing that he admitted the allegations.
16. Proceedings had been commenced against the Respondent by the firm but these had been settled and the Respondent had repaid all the monies.
17. The Tribunal was referred to the Respondent's letter of 18th July 2002, addressed to The Law Society in which he had indicated that he had personal problems which had affected his judgment and for which he had been receiving treatment. While the Respondent had not submitted any medical evidence the Applicant did not seek to contradict the Respondent's assertion.
18. The Respondent had responded promptly to correspondence from the Applicant.
19. The Applicant sought his fixed costs in the sum of £1,638.25.

The Decision of the Tribunal

20. The Tribunal found the allegations substantiated indeed they were not contested. This was a sad case where the Respondent had worked for the firm for a considerable number of years in a position of trust and had taken advantage of that position. The Tribunal had noted the Respondent's comments in correspondence regarding his personal difficulties but in the interests of the public it was right that the Order sought be made. It was also right that the Respondent pay the Applicant's costs.
21. The Tribunal ordered that that as from 12th day of October 2004 no solicitor should, except in accordance with permission in writing granted by the Law Society for such

a 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 Philip Elkins of Hammersmith, London, W6, a person who was or had been a clerk to a solicitor and the Tribunal further Ordered that he pay the costs of and incidental to the application and enquiry fixed in the sum of £1,638.25.

DATED this 6th day of January 2005
on behalf of the Tribunal

S N Jones
Chairman