

IN THE MATTER OF JOHN LESLIE HALES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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

Date of Hearing: 2nd December 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 Victor Lissack, Roscoe & Colman, solicitors of 70 Marylebone Lane, London W1U 2PQ on 3rd August 2004 that John Leslie Hales solicitor of Kettering, Northants, solicitor 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 were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:

- (a) that whilst working as a self-employed assistant solicitor with Messrs Lawrence Hamblin, solicitors of Concept House, 9-11 Greys Road, Henley on Thames, Oxon, he acted as a solicitor without there being in force a current Practising Certificate contrary to Sections 1 and 1A of the Solicitors Act 1974;
- (b) that whilst working as a self-employed assistant solicitor with Messrs Lawrence Hamblin, solicitors of Concept House, 9-11 Greys Road, Henley on Thames, Oxon, he falsely represented to his employers that he himself was renewing his Practising Certificate;

- (c) that he failed to deal promptly and substantively with correspondence from the OSS.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Robert Simon Roscoe appeared as the Applicant and the Respondent did not appear and was not represented. The evidence before the Tribunal included a letter sent to the Tribunal by the Respondent dated 28th November 2004 which arrived shortly before the hearing.

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

The Tribunal Orders that the Respondent, John Leslie Hales of Kettering, Northants, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 2nd day of December 2004 and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,938.50.

The facts are set out in paragraphs 1-10 hereunder:

1. The Respondent, born in 1942, was admitted as a solicitor in 1965. His name remained on the Roll of Solicitors.
2. The Respondent's last Practising Certificate was terminated on 20th March 1995. The Respondent has not held a Practising Certificate since.
3. In 1998 and 1999 the Respondent worked as a self-employed locum solicitor in the Henley office of Messrs. Hamblin, solicitors (the firm).
4. In 1999 the firm decided to open a new branch office in Northampton. The partners approached the Respondent and invited him to work for them at their new office as the conveyancing fee earner, together with an unadmitted personal injury fee earner and two secretaries. All financial matters were to be dealt with at the Henley office. The Respondent was to be the only solicitor regularly in attendance at the Northampton office and was to be the solicitor responsible for managing the office on a day to day basis. The Respondent accepted the invitation and worked at the Northampton office between April 2000 and November 2001. He said that he did not man the office.
5. When the Respondent was a self-employed locum at the firm he had been responsible for his own professional tax and financial arrangements. When the firm opened the Northampton office the Respondent was invited to become a full-time employee. The Respondent declined that offer and indicated that he preferred to retain his self-employed status and was designated a consultant. The Respondent said he did not agree to act as a consultant.
6. In late 2000 the senior partner of the firm again invited the Respondent to become an employee and offered to apply for the Respondent's Practising Certificate at the same time as he applied for the Practising Certificates for the other solicitors in the firm. The Respondent again declined to become an employee and told Mr Hamblin that he would apply for his own Practising Certificate. He did not have sufficient funds to pay the fee.

7. In August 2001 the senior partner spoke to the Respondent about his Practising Certificate. At that stage, and for the first time, the Respondent admitted that he did not have a Practising Certificate for the current year. The senior partner offered to assist the Respondent to regularise the position. Between September and November 2001, the senior partner pressed the Respondent to complete the appropriate forms and return them to him so that he could submit them to The Law Society to cover the period 2000-2001. Despite reminders the Respondent did not return the forms to the senior partner until shortly before 26th November on which date the senior partner forwarded them to The Law Society.
8. The Respondent was taken to hospital on or about 25th November 2001 and did not return to the firm.
9. When it was clear that the Respondent was not to return to the firm, the senior partner cleared the Respondent's desk and discovered that the Respondent had worked for the firm as a solicitor without a Practising Certificate. The senior partner asserted that the firm would not have employed the Respondent had he been aware that he was uncertificated.
10. Letters were sent to the Respondent by The Law Society seeking an explanation for his conduct. No response was received from the Respondent. The Applicant accepted that because the Respondent had not been at the addresses to which the letters had been sent, he had not received them.

The Submissions of the Applicant

11. With regard to allegation (c) the Applicant accepted that, because the Respondent had moved about, letters addressed to him by The Law Society had not been received by him. In view of this the Tribunal was invited to make no finding that the Respondent had failed to deal promptly and substantively with correspondence addressed to him by the Office for the Supervision of Solicitors.
12. With regard to allegation (b) the Respondent in his letter addressed to the Tribunal agreed that he did tell the firm that he would renew his Practising Certificate, but had failed to do so owing to lack of funds. The Tribunal was invited to take that as an admission of allegation (b). The Applicant referred the Tribunal to paragraph 14 of the Respondent's letter. The Respondent accepted that what the senior partner said in paragraph 2 of his affidavit (namely that the Respondent had been recommended as a solicitor who might be available as holiday cover) was true but he said he did not warrant that he was a practising solicitor. In paragraph 14(vii) of his letter the Respondent said that he did say he would apply for a Practising Certificate if it was required. He had already explained why he did not.
13. With regard to allegation (a) the Respondent disputed that he acted as a solicitor and said that he acted whilst working at the firm as a clerk. The Tribunal had before it the affidavit evidence of the senior partner which indicted to the contrary.
14. The Applicant had served a Civil Evidence Act Notice on the Respondent in August 2004 and no Counternotice had been served so that the attendance of the senior partner at the hearing to give oral evidence had not been required. The Tribunal was invited to accept the senior partner's affidavit evidence.

The Submissions of the Respondent

15. The Respondent in his letter pointed out that he had not received correspondence addressed to him by The Law Society.
16. The main thrust of the Respondent's argument was that he had not worked as a solicitor at the firm but had been a conveyancing clerk. He said that he had not held himself out as a solicitor.
17. The Respondent said that he had indicated that he would renew his Practising Certificate but had not done so because he did not have sufficient funds.
18. The Respondent's father had been admitted as a solicitor in 1922 and practised for at least 50 years. His grandfather had been a solicitor's clerk. The Respondent had been admitted in 1965 at the age of 23 and had enjoyed an unblemished career in the law until 1995.
19. The Respondent incurred debts when he failed to recognise the weakness of the property market.
20. The Respondent was adjudicated bankrupt and faced having no employment, no pension, no transport and no home. He had only incapacity benefit. His marriage came to an end. The Respondent was disabled by arthritis and suffered mental health problems.
21. The Respondent told the Tribunal that he was unable to attend the hearing as his mobility was very poor. Three further surgical operations would be required in order materially to improve his position. He remained confined to a wheelchair for a large part of the time.
22. The Respondent knew of no reason why a Practising Certificate should not have been granted to him. The Respondent said that he did not run the office at Northampton. The firm was happy with his work. He put in long hours.
23. The Respondent had not considered that a Practising Certificate had been necessary. His insolvency was no longer an issue and the Respondent could readily have located two solicitors to testify to his suitability.
24. The Respondent said that he did complete the Practising Certificate form when the firm agreed to pay the fee and he sent the form to the senior partner in mid September 2001. By that date the arthritis in the Respondent's hips and knees had worsened. He had an accident at home. He did not return to the office after that.

The Findings of the Tribunal

25. The Tribunal found allegations (a) and (b) to have been substantiated. As invited by the Applicant the Tribunal made no finding with regard to allegation (c).

The Tribunal's decision and its reasons

26. The Tribunal recognised that the Respondent had had a very difficult time. Not only had he encountered problems in his professional and private life, he had also suffered a disabling illness.
27. The Respondent does accept that he had indicated to the firm where he was working that he would make his own application for a Practising Certificate and he also said that he had not done so because he was not able to pay the fee. Although the Respondent might not deliberately have lied to the senior partner of the firm, he did tell him that he was to obtain his own Practising Certificate, quite possibly intending so to do, but the fact remained that he did not.
28. With regard to allegation (a) the thrust of the Respondent's case is that he was not working as a solicitor but rather as a clerk. In making this submission the Respondent has misdirected himself. At the material times the Respondent remained on the Roll of Solicitors. He himself confirmed that he undertook the conduct of conveyancing matters. There is no doubt that such work does amount to the delivery of legal services and a solicitor, that is to say a solicitor on the Roll, is required when delivering legal services to hold a current Practising Certificate. It is not open to a solicitor to be a member of that profession when it suits him and to decline to be a member when it does not. The Tribunal found allegation (a) to have been substantiated.
29. The Tribunal concluded that, taking into account all of the matters dealt with in the long letter which the Respondent helpfully submitted to the Tribunal, it would be right to suspend the Respondent from practice until such time as he was able to demonstrate that he was a fit person to act as a solicitor and that he could and would ensure his compliance with all regulatory obligations.
30. The Tribunal ordered that the Respondent be suspended from practice for an indefinite period to commence on 2nd day of December 2004 and further ordered him to pay the costs of and incidental to the application and enquiry in the fixed sum sought by the Applicant. That figure for costs was reasonable and it would be right that the delays and further costs of a detailed assessment should not be incurred.

DATED this 17th February 2004

on behalf of the Tribunal

H Baucher

Chairman