

IN THE MATTER OF ALAN LYNCH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A N Spooner (in the chair)

Mr J P Davies

Mr M G Taylor CBE

Date of Hearing: 9th March 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Iain George Miller, solicitor and partner in the firm of Wright Son & Pepper of 9 Gray's Inn Square, London, WC1R 5JF on 11th August 2004 that Alan Lynch of Warrington, Cheshire, whose address for service was c/o Peter Cadman, Russell-Cooke Solicitors, 8 Bedford Row, London, WC1R 4BX, might be required to answer the allegation contained in the statement that accompanied the application and that such order might be made as the Tribunal should think right.

Certain allegations against the Respondent were set out in the Rule 4 statement and the Applicant sought and received the consent of the Tribunal to allow those allegations to lie on file.

By a supplementary statement of Iain George Miller dated 27th September 2005 it was alleged against the Respondent that he was guilty of conduct unbecoming a solicitor in that on 9th June 2005 he was convicted at Warrington Crown Court of 10 counts of false accounting.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Iain George Miller appeared as the Applicant and the Respondent was represented by Peter Cadman, solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London, WC1R 4BX.

The evidence before the Tribunal included the admission of the Respondent.

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

The Tribunal Orders that the Respondent Alan Lynch of Warrington, Cheshire, solicitor, be struck off the Roll of Solicitors and they further Order that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £20,000.

The facts are set out in paragraphs 1 to 6 hereunder:-

1. The Respondent, born in 1953, was admitted as a solicitor in 1978 and his name remained on the Roll of Solicitors.
2. The disciplinary proceedings were commenced against the Respondent in August 2004 based upon a forensic investigation report dated 28th March 2002 prepared by an Investigation Accountant of the Law Society. The report had been forwarded to the Police for consideration. On 9th November 2004 Warrington Police charged the Respondent on 11 counts of false accounting in respect of some of the matters contained in the Investigation Accountant's report.
3. On 14th December 2004 an adjournment of the disciplinary proceedings against the Respondent was granted by the Tribunal until the conclusion of the criminal proceedings.
4. The criminal trial against the Respondent took place at Warrington Crown Court in June 2005. The Respondent pleaded guilty to 10 counts of false accounting.
5. A copy of the Judge's sentencing remarks was before the Tribunal, in which it was noted :-

“this is a case of a solicitor in breach of trust to his clients and in breach of trust repeatedly.”

6. A copy of the Certificate of Conviction provided by Warrington Crown Court was before the Tribunal. The Respondent was sentenced to three months' imprisonment suspended for 12 months.

The Submissions of the Applicant

7. This was a conviction involving dishonesty in connection with the Respondent's practice as a solicitor. It involved a course of conduct which was repeated, and the Tribunal was asked to note the comment of the trial Judge (paragraph 5 above).
8. Mr Cadman on behalf of the Respondent would make a submission to the Tribunal with respect to the Respondent's future in the profession under a Section 41 application. It was a matter for the Tribunal whether or not they wished to comment. The Applicant's position was neutral.
9. All funds had now been restored to clients and the accounting exercise completed.

The Submissions on behalf of the Respondent

10. The Respondent was present before the Tribunal out of respect for the profession he had let down. He was expecting to be struck off the Roll and knew that his professional career as a solicitor would end today. In view of the guidelines in the case of Bolton -v- The Law Society 1994 1 WLR 512 he would not be readmitted. The Tribunal was invited however to consider making a comment which would allow him to continue to work as a clerk in the firm where he had worked since September 2002. This employment had been with the permission of the Law Society in the full knowledge of the charges and then of the conviction. The Tribunal was referred to the reference from his current employer. The Law Society had this week carried out an inspection of his current employer which had lasted half a day and had been clear.
11. Once the Respondent had been struck off the Roll he could not be employed in a solicitor's practice until permission had been received from the Law Society which could take some time. Further, this matter had been hanging over the Respondent's head for a long time. The Tribunal was asked to recommend that the Law Society look favourably upon the Respondent's application to work as a clerk.
12. The matters which were the basis of the conviction occurred between 2000 and 2001. The inspection had been in September 2001 with the resulting report in March 2002. The Respondent had admitted his wrongdoing on the first day of the inspection and since then had known that he faced a possible criminal conviction and an inevitable appearance before the Tribunal. The resolution referring him to the Tribunal had been in 2004 and had included a referral in respect of his partners. They had sought a review which had been successful and therefore only the Respondent appeared before the Tribunal.
13. The Respondent had been a busy and successful conveyancer who had been overworked. He had taken money for searches but then not carried them out. This had been negligent. This had left him with client account balances which he had wrongfully and dishonestly and improperly transferred to office account. His benefit from this had been 7% of the benefit to the firm, but also the payment of VAT on the bill and the payment of tax.
14. All the matters had been resolved and no client had actually been prejudiced. Clients had been repaid by the firm out of the Respondent's drawings.

Submissions as to Costs

15. The Applicant sought costs in the sum of £4,700 legal costs and £19,000 for the Investigation Accountant. This had been a substantial forensic exercise in which 200 files were looked at.
16. The Tribunal was referred to paragraphs 8 and 14 of the report. The report had primarily been directed towards the Respondent. The investigation had been in respect of all partners but disciplinary proceedings had only been brought against the Respondent. There was no jurisdiction to obtain costs from the other partners. Any culpability of the other partners was much less than that of the Respondent and consisted only of their liability as partners without any direct involvement.

17. If the Respondent did not pay costs then the profession would pay. The investigation had followed after the firm had found problems with the Respondent's files. It was accepted that the Respondent had made an early admission but the Law Society had to complete its investigation. If the investigation had been curtailed on day one and then the Respondent had changed his admission or it had not been substantiated before the Tribunal, the Law Society would be criticised for not investigating it fully. On any analysis the submission on behalf of the Respondent that he should pay only a seventh of the costs of the inspection was not right.
18. It was submitted on behalf of the Respondent that the report had been sent to all the partners in the firm and the Adjudicator had agreed that all the partners should be referred to the Tribunal. The other partners had appealed and despite the view of the Law Society that all should come before the Tribunal the Appeal Committee had granted their appeal.
19. The Respondent had admitted his misconduct at the first opportunity and a list of clients had been produced. All the partners had been involved in the firm's business. The Tribunal was asked to summarily assess the costs and to order that the Respondent pay one-seventh of the costs of the inspection together with all of the legal costs.
20. The Tribunal was given details of the Respondent's current financial position.
21. The number of hours spent by the Investigation Officer was not challenged, nor was the professional obligation of the Law Society to continue with the inspection and check the veracity of the Respondent's admission and whether it had been full and frank. The issue was whether the total cost of that check should fall on the Respondent. The Respondent would now be unemployed for a period.

The Findings of the Tribunal

22. The Tribunal found the allegation contained in the supplementary statement to have been substantiated, indeed, it was not contested. The Tribunal agreed that the allegations contained in the first Rule 4 statement should lie on file.
23. This was a serious case involving dishonesty in the course of a solicitor's practice and a conviction in the Crown Court. In such a case, other than in the most exceptional circumstances, the Tribunal would strike a Respondent's name from the Roll of Solicitors and indeed the Respondent had accepted this through his representative. The Respondent's dishonesty had damaged both the reputation of the profession and the public's confidence in the profession.
24. The Tribunal had considered carefully the submissions in relation to costs. The in-depth investigation by the Investigation Officer had come about because of the Respondent's misconduct. No other partners in his former firm were before the Tribunal. As the Respondent had accepted, it had been right for the Law Society to continue with its investigation even after his admissions. It was right that the Respondent pay the costs of that investigation and also the legal costs of the Applicant. Having considered the points made in submissions, including the

Respondent's co-operation, the Tribunal would exercise its discretion and order him to pay costs fixed in the sum of £20,000.

25. The Tribunal made the following Order:-

The Tribunal Orders that the Respondent Alan Lynch of Warrington, Cheshire, solicitor, be struck off the Roll of Solicitors and they further Order that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £20,000.

Dated this 12th day of May 2006

On behalf of the Tribunal

A N Spooner
Chairman