

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

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. P. Kempster (in the chair)
Mr. R. J. C. Potter
Mr. D. Gilbertson

Date of Hearing: 2nd August 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 Geoffrey Williams of Queen's Counsel of 2a Churchill Way, Cardiff, CF10 2DW on 28th September 2004 that an order be made by The Tribunal directing as from a date to be specified in such order no solicitor should except in accordance with the 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 Michael Shorsbree of Khilkoff-Boulding & Co, of 54a High Street, Gravesend, Kent DA11 0AY a person who was or who had been employed or remunerated by a solicitor or that such other order might be made as the Tribunal should think right.

The allegation was that the Respondent 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 their solicitors' practices which involved conduct on his part of such a nature that in the opinion of The Law Society it would be undesirable for him to be employed or remunerated by solicitors in connection with their practices.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Geoffrey Williams of Queen's Counsel appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admission of the Respondent who accepted the facts but did not accept that he had been dishonest. The Applicant confirmed that he did not pursue any allegation of dishonesty.

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

The Tribunal Orders that as from 2nd Day of August 2005 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by The Law Society for such 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, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Michael Shorsbree of Khilkoff-Boulding & Co, 54, High Street, Gravesend, Kent, DA11 0AY a person who is or was a clerk to a solicitor and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,750.00

The facts are set out in paragraphs 1 to 8 hereunder:-

1. At all material times the Respondent who was not a solicitor had been employed by Messrs Khilkoff-Boulding & Co ("the firm") solicitors of 54A High Street, Gravesend, Kent, DA11 0AY. He was described as a "Conveyancing Executive" on the firm's notepaper.
2. The Law Society carried out an investigation following a complaint made on 31st October 2002 by Mr and Mrs L for whom the Respondent acted in connection with their purchase of leasehold property.
3. At the outset the Respondent issued an indication of the fees to be charged. Profit costs were estimated at £320.00.
4. As the matter progressed the Respondent had difficulty in computing the stamp duty to be paid by his clients. Mr and Mrs L were not content with the services being provided to them.
5. On 22nd October 1999 the Respondent sent to his clients:-
 - (a) a fee note setting out profit costs of £320.00. The narrative included all post completion matters;
 - (b) a completion statement indicating that £2,490.00 stamp duty was required.
6. Mr and Mrs L queried the amount of stamp duty which the Respondent's employer addressed in correspondence.
7. The conveyancing transaction was completed on 28th October 1999. The relevant client ledger contained the following entries:-

- (a) 28th October 1999: receipt of £21,649.46 from Mr and Mrs L;
 - (b) 28th October 1999 £383.00 transferred from client account to office account for costs;
 - (c) 8th November 1999 payment of stamp duty, £2,490.00;
 - (d) 9th December 1999 a refund of stamp duty received, £470.00 paid into client account;
 - (e) 14th December 1999 transfer from client account to office account of costs of £470.00.
8. When Mr and Mrs L required their file of papers in January 2000 the Respondent replied stating that he would release the file only upon payment of the sum of £528.75 being a photocopying fee. Mr and Mrs L did not receive the file until 8th July 2003, three and a half years after it was requested and did not receive the refund of overpaid stamp duty until 4 years after it had been taken as costs.

The Submissions of the Applicant

9. The request for stamp duty was in an excessive amount. The costs transfer of £470.00 made on 14th December 1999 was the precise amount of the overpayment of stamp duty.
10. The stipulation relating to the release of the file was entirely improper. EL and AL were entitled to their file having paid the costs billed to them.
11. The overpayment of stamp duty made by Mr and Mrs L was the property of Mr and Mrs L and not of the firm.
12. The Respondent was an experienced conveyancer. The only proper course was to refund that sum to Mr and Mrs L promptly on receipt. Instead the Respondent treated it as the firm's costs. The bill prepared was not addressed and the file revealed no attempt properly to calculate any additional charges. In any event the Respondent had not been entitled to charge any further fees. The improper fee note had not been sent to Mr and Mrs EL. Effectively the Respondent kept Mr and Mrs L entirely in the dark about the refund which was due to them. He merely swept up the remaining client account credit balance by drawing up a "dummy" or "internal" bill.

The Submissions of the Respondent

13. The Respondent said that he admitted the facts and accepted that an order pursuant to Section 43 of the Solicitors Act 1974 should be made in respect of him. He recognised the effect of such order.
14. The Respondent said that he was leaving the United Kingdom within a few days in order to live abroad. He had not worked for the previous couple of months. He had resigned his position with Messrs Khilkoff-Boulding. Originally his employer had agreed to fund the Respondent's representation but had gone back on that agreement. The Respondent accepted that a costs order would be against him for which he would be personally liable. He was about to leave the country and hoped that he might be given time to pay as he did not have finances available in the United Kingdom. He did not argue with the amount of the costs sought by the Applicant.

The Tribunal's Decision

15. The Tribunal found the allegation to have been substantiated, indeed it was not contested. The Respondent accepted that the order sought should be made in respect of him and the Tribunal agreed that that was appropriate. It made the order pursuant to Section 43 of the Solicitors Act 1974. The level of costs sought by the Applicant was not contested. The Tribunal therefore ordered that the Respondent pay the costs of and incidental to the application and enquiry in the agreed fixed sum of £4,750.00.
16. The Tribunal made the following Order:-

The Tribunal Orders that as from 2nd Day of August 2005 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by The Law Society for such 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, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Michael Shorsbree of Khilkoff-Boulding & Co, 54, High Street, Gravesend, Kent, DA11 0AY a person who is or was a clerk to a solicitor and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,750.00

DATED this 16th day of September 2005
on behalf of the Tribunal

P Kempster
Chairman