

IN THE MATTER OF JOSEPH HERBERT HENRY WAITE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

M J P Davies (in the chair)
Mr A G Gibson
Mr M G Taylor CBE

Date of Hearing: 13th October 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 Inderjit Singh Johal, a barrister employed by The Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 23rd December 2004 that Joseph Herbert Henry Waite of Ryhill, Wakefield, 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 respects:

- (i) that he withdrew money from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998;
- (ii) that he utilised clients' funds for his own purpose;
- (iii) that he misappropriated clients' funds which for the avoidance of doubt is an allegation of dishonesty;
- (iv) that he failed to remedy Rule breaches promptly upon discovery in breach of Rule 7 of the Solicitors Accounts Rules 1998;

- (v) that he failed to keep his accounting records properly written up contrary to Rule 32 of the Solicitors Accounts Rules 1998;
- (vi) that he failed to perform bank reconciliations contrary to Rule 32(7) of the Solicitors Accounts Rules 1998;
- (vii) that he allowed his client account to be operated by a person not authorised to operate a client bank account in accordance with Rule 23 of the Solicitors Accounts Rules 1998;
- (viii) that he failed to deliver or alternatively delivered late an Accountant's Report to The Law Society for the period ending 31st October 2003 contrary to Section 34 of the Solicitors Act 1974;
- (ix) that by reason of the matters set out in the Forensic Investigation Report dated 12th August 2004; the Respondent acted contrary to Rule 1 of the Solicitors Practice Rules 1990.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Robert Roscoe of Victor Lissack & Roscoe, 70 Marylebone Lane, London, W1V 2PQ appeared for the Applicant and the Respondent did not appear and was not represented.

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

The Tribunal Orders that the Respondent, Joseph Herbert Henry Waite of Ryhill, Wakefield, 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 £5,239.00

The facts are set out in paragraphs 1 to 16 hereunder:

1. The Respondent, born in 1943, was admitted as a solicitor in 1968. At the material times the Respondent practised as a sole practitioner as the firm of Gillis Waite solicitors of 18 Bond Street, Wakefield, West Yorkshire. The Law Society resolved to intervene into the Respondent's practice on 13th August 2004 following receipt of The Law Society's Forensic Investigation Unit's Report (the "FIU") dated 12th August 2004 which was before the Tribunal.
2. The FIU carried out an inspection of the Respondent's books of account commencing 10th August 2004. The Respondent's books of account did not comply with the Solicitors Accounts Rules 1998. The FIU Officer reported upon the following matters:
 - (i) the Respondent had instigated numerous improper withdrawals from the client bank account some for the purposes of paying personal and business debts;
 - (ii) there were no proper reconciliations between client liabilities and client cash available, the last client account reconciliation had been prepared at the date of the Respondent's last Accountant's Report dated 31st October 2002;

- (iii) the client ledger accounts which had been maintained were found not to be up to date and some contained significant errors or omissions including unposted items;
 - (iv) Ms C, an unadmitted unqualified person, was signatory to the client account.
3. The FIU Officer identified a shortage on client funds of £24,835.75 as at the 10th August 2004, a figure with which the Respondent agreed. The shortage arose as a consequence of improper transfer of funds from client bank account to office bank account which the Respondent did not dispute.

Allegations (i), (ii) and (iii)

4. The Respondent told the Senior Investigation Officer that in order to pay his personal debts he made improper transfers from client to office bank account to make personal and business payments and had borrowed from the client account by a number of transfers, which were not attributable to any specific client matter.
5. The Respondent confirmed to the FIU Officer that the unjustified transfers totalled £28,835.75. The Respondent reduced the shortfall in general client's funds by £4,000 when calculating his costs in a conveyancing matter in June 2004 leaving a shortage of £24,835.75.
6. The Respondent was unable to identify all of the personal and business payments from office bank account. The following were identified to the FIU Officer as cheques drawn which were contributory factors:

| | | |
|-------|--------------------------------------|-------------------|
| (i) | 13/02/04 - PAYE and NIC | 1,894.00 |
| (ii) | 19/02/04 - PAYE and NIC | 2,018.00 |
| (iii) | 24/05/04 - to Central Administration | 2,999.26 |
| (iv) | 24/05/04 - to Central Administration | 3,000.00 |
| (v) | 17/06/04 - to Central Administration | <u>6,388.04</u> |
| | | <u>£16,299.30</u> |

7. The Respondent explained that a total of £3,912 was paid to the Inland Revenue in order to pay his employee's PAYE and National Insurance contributions and a total of £12,387.30 was paid to Central Administration as "referral fees" for new business passed to the firm. Central Administration confirmed receipt of the above three cheques. The Respondent requested that The Law Society intervene into his practice. He was in debt to Central Administration and had been unsuccessful in seeking to sell his practice.

Allegation (iv)

8. The Respondent told the FIU Officer that he and his wife had applied to Abbey plc for funds to be advanced in respect of their current mortgage in order to rectify the shortfall in client funds. The Respondent had requested the funding to be advanced from 19th August 2004; however there was no indication during the inspection that their application had been accepted.

Allegations (v) and (vi)

9. The Respondent said that his wife had been the cashier of his practice and that she had "stopped keeping written accounts" part way through the financial year November 2002 to October 2003. The Respondent said he was ill during the middle of 2003 and did not become aware of the problems until September 2003. While he was absent from the office his wife had been controlling the finances of the firm.
10. On his return to the firm the Respondent employed a bookkeeper who, he had come to realise, had failed to carry out his duties. The Respondent's accountants did not assist him either and returned his books and records to him.
11. The Respondent's wife, after returning from a short period away from the practice, together with the reporting accountant was in the process of bringing the bookkeeping up-to-date.
12. The Respondent confirmed to the FIU Officer that five-weekly client reconciliations had not been carried out; the last reconciliation prepared would probably have been at the time of the last Accountant's Report, 31st October 2002. The Respondent said that a member of staff was keeping a 'daybook system' and ledgers for all current matters but he accepted that none of the ledgers she maintained had balances brought forward. He also confirmed that no bills or postings to the office side of the client ledger had been maintained.
13. The Respondent said that he had become ill during 2004 and had arranged for a neighbouring solicitor to provide supervision for his practice. However it was only on 9th August 2004 that he realised that the solicitor had retired from practice. The Respondent then decided to attend his office on a daily basis despite being ill and having a doctor's certificate covering a four week period from 29th July 2004.
14. The Respondent provided a client ledger reconciliation and a list of client ledger balances as at 31st January 2003. However these could not be relied upon for various reasons including the fact that there were unposted items and differences on the face of the reconciliation.

Allegation (vii)

15. The Respondent's firm operated five bank accounts at the Royal Bank of Scotland. The Respondent explained that his daughter, Ms C, was allowed to operate the account despite the fact that she was an unqualified member of staff and was not authorised under the Solicitors Accounts Rules to operate such an account.

Allegation (viii)

16. The Accountant's Report for Gillis Waite solicitor for the year ending the 31st October 2003 was due for delivery by the 30th April 2004. The Law Society's Redditch office granted the Respondent an extension of time for delivery to 31st July 2004. The Report had not been filed.

The Submissions of the Applicant

17. The disciplinary proceedings had been served following a Tribunal's ruling that service be by way of substituted service. Advertisements had been placed in newspapers as required by the Tribunal and copies of the advertisements were handed up.
18. The allegations made against the Respondent were serious and substantial and arose from an FIU inspection of his practice in August of 2004. The FIU's findings led to an intervention into the Respondent's practice by The Law Society. The most serious issue was that the Respondent had withdrawn money from client account to use for his own purposes. The Applicant did put the case against the Respondent as one involving dishonesty.
19. The Applicant understood that the Respondent had been subjected to bankruptcy proceedings but he was not aware of any criminal proceedings against him.
20. The sum of client money involved was significant, being in excess of £24,000.
21. The Tribunal was invited to find all of the allegations to have been substantiated. The Applicant had not been able to notify details of his costs to the Respondent but he did seek his costs and invited the Tribunal to fix such costs in the sum of £5,239. This figure included not only legal costs but also the FIU costs and the costs of the advertisements in connection with substituted service.

The Findings of the Tribunal

22. The Tribunal found all of the allegations to have been substantiated.
23. The Tribunal was satisfied by the FIU Officer's Report that the allegations were substantiated. The most serious aspect of this case is the fact that the Respondent has used clients' money as if it were his own. Applying the tests in the case of *Twinsectra -v- Yardley* the Tribunal found that any ordinary member of the solicitor's profession would consider that the Respondent's conduct was dishonest and the Respondent must himself have been aware that his fellow solicitors would hold such an opinion. Not only had the Respondent been dishonest, acted in breach of the Solicitors Accounts Rules but he had failed in the high duty that he has as a solicitor to exercise a proper stewardship over clients' monies. In order to demonstrate that such behaviour will not be tolerated, to protect the interests of the public and the good reputation of the solicitors' profession, the Tribunal concluded that it was both just and proportionate to order that the Respondent be struck off the Roll of Solicitors. Further in order to save further time and unnecessary cost the Tribunal ordered the Respondent to pay the Applicant's costs in the figure sought by the Applicant namely £5,239 as the Tribunal considered this sum to be entirely reasonable.

DATED this 18th day of November 2005

On behalf of the Tribunal

J P Davies
Chairman