

IN THE MATTER OF DAVID MALCOLM HEYWOOD,
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr P Haworth (in the chair)
Mr L N Gilford
Mr J Jackson

Date of Hearing: 7th April 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 Iain George Miller, solicitor of Wright Son & Pepper, 9 Gray's Inn Square, London, WC1R 5JF on 14th January 2005 that David Malcolm Heywood of Whitefield, Manchester M45, that an Order be made by the Tribunal that as from a date to be specified in such Order that 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 Law Society should think fit to specify in the permission employ or remunerate the Respondent in connection with his practice as a solicitor, or that such Order might be made as the Tribunal should think right.

The allegations were that during his employment with Holland & Knight Solicitors the Respondent:-

- (a) caused to be made unauthorised transfers from the office account in the amount of £38,650.24;

- (b) caused overdrawn office account balances on client ledgers in the amount of £7,752.52;
- (c) caused payments to be made to himself without the authority of his employer.

The application was heard at the Court Room, Gate House, 3rd Floor, 1 Farringdon Street, London EC4M 7NS when Iain George Miller appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the Respondent's letter of 14th February 2005 addressed to the Tribunal, a copy of a letter written by the Applicant to the Respondent dated 30th March 2005 and the Respondent's reply of 3rd April 2005. The Respondent did not deny the allegations but raised objections to costs being ordered against him.

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

The Tribunal orders that as from 7th day of April 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 David Malcolm Heywood of Unsworth, Bury, (formerly of Whitefield, Manchester, M45) 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 £800.00

(The Tribunal has in its Order adopted the wording relating to the modification of Section 43 of the Solicitors Act 1974 contained in the Administration of Justice Act 1999.)

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

1. The Respondent was employed by the solicitors firm Holland & Knight (or its predecessor firms) from 1969 to 2001 as partnership secretary.
2. During 2001, Holland & Knight's accountants discovered discrepancies in the firm's accounts caused by the actions of the Respondent.
3. The Tribunal had before it a copy of the report prepared by Holland & Knight's reporting accountants. The Respondent was reported by Holland & Knight who was said readily to have admitted the matters put before him, in respect of which he offered to make financial redress. He had been questioned about clients' account and had emphatically denied any improper use of clients' money. The Respondent had been invited by the partners to resign forthwith.
4. There were shortfalls on office account for which the Respondent admitted responsibility when questioned by the firm's accountant. He had made a number of unauthorised and unrecorded transfers from client account to office account.
5. Unauthorised and unrecorded transfers from client to office account between 13th July 2001 and 14th September 2001 totalling £38,650.24 were established.

6. There were overdrawn office account balances resulting in a further shortfall on client account of £7,752.52.
7. The total to be repaid to client account amounted to £46,402.73 and that was repaid to client account in two instalments, one of £23,675.23 on 31st October 2001 and the balance of £22,727.50 being paid on 7th November 2001.
8. Holland & Knight reported that no client had suffered loss.

The Submissions of the Applicant

9. The Respondent had been employed by the firm over a long period of time during which inevitably he developed a relationship of trust with the principals of the practice.
10. The matter had been reported to the Law Society in November 2001 but a number of factors caused a delay in bringing the matter before the Tribunal. Initially it had been thought that the Respondent would be the subject of criminal proceedings. When an investigation was commenced some difficulty was encountered in finding the address of the Respondent. Enquiries led the Law Society to believe that the Respondent resided at an address but he had not replied to any correspondence. It was ascertained that the Respondent resided at a different address.
11. The Respondent had not made any contact with the Law Society, nor had he made any contact with the Applicant until shortly before the substantive hearing. The Law Society had referred the matter to the Tribunal in the absence of any response from the Respondent and in the absence of his agreement to submit to a Section 43 Order.

The Submissions of the Respondent (contained in his letters referred to above)

12. The Respondent had been under the impression that the matter had been finalised over 18 months earlier. The last letter he received from the Law Society dated 11th September 2003 gave the Respondent 14 days to reply. He assumed that the order would have been made after that date in the absence of any response.
13. The Respondent objected to any costs order being made against him. He considered that the Law Society should have exercised its power to make an Order pursuant to Section 43 "in house" and costs had unnecessarily been run up by referring the matter to the Tribunal.

The Tribunal's Decision and its Reasons

14. The Tribunal found the allegations to have been substantiated against the Respondent, indeed he had not contested them.
15. It was a matter for regret that the matter had taken some time to reach the Tribunal. The Tribunal accepted the reasons given by the Applicant for the delay and, of course,

the Law Society had made its decision to refer the matter to the Tribunal in the absence of any response from the Respondent.

16. In view of the behaviour of the Respondent whilst employed by a firm of solicitors it was right that his future employment within the legal profession should be subject to control. For the reasons set out above the Tribunal considered that it was right that the Respondent should bear the costs of the application and enquiry. The figure inclusive of VAT of £800 put forward by the Applicant was entirely reasonable and in order to save time and further cost the Tribunal ordered the Respondent to pay the Applicant's costs in that fixed sum.

Dated this 3rd day of May 2005
On behalf of the Tribunal

P Haworth
Chairman