

IN THE MATTER OF WINSTON JESIAH HELD, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mr S N Jones
Mr J Jackson

Date of Hearing: 28th September 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 Stuart Roger Turner, solicitor and partner in the firm of Lonsdales Solicitors, 5 Fishergate Court, Fishergate, Preston, PR1 8QF on 24th February 2005 that Winston Jesaiah Held of Sinclair Grove, London, NW11, 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 against the Respondent were that:-

1. He had been guilty of conduct amounting to a breach of Rule 1 of the Solicitors Practice Rules 1990 in the following ways:-
 - 1.1 That he failed to act diligently and/or with reasonable care and skill;
 - 1.2 That he failed to act in the best interests of his clients;
 - 1.3 That he compromised his proper standard of work;

- 1.4 That he failed to carry out properly or at all the instructions of a client;
- 1.5 (This allegation was removed during the course of the hearing.)
2. He had been guilty of conduct unbefitting a solicitor in each, any or all of the following circumstances, namely:-
 - 2.1 He improperly used client monies;
 - 2.2 He misappropriated client monies for his benefit and/or the benefit of others, which was an allegation of dishonesty;
 - 2.3 He misled a third party;
 - 2.4 He misled and/or took advantage of a client;
 - 2.5 He failed to reply substantively and/or at all to correspondence from the Law Society;
 - 2.6 He failed to comply with a First Instance Direction of the Law Society requiring him to pay £1,000 compensation in respect of a finding of inadequate professional service.

The Applicant sought an order that the Direction of the Professional Regulation Adjudication Panel of the Law Society dated 4th September 2001 requiring the Respondent to pay compensation to Mr SL be treated for the purposes of enforcement as if it were contained in an Order made by the High Court.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 28th September 2006 when Stuart Roger Turner appeared as the Applicant and the Respondent did not appear and was not represented.

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

The Tribunal Orders that the Respondent, Winston Jesaiah Held of Sinclair Grove, London, NW11, 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 £15,354.06.

The Tribunal Orders that the Direction of the Professional Regulation Adjudication Panel of the Law Society dated 4th September 2001 that the respondent pay compensation to Mr SL in the sum of £1,000 be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

The facts are set out in paragraphs 1 to 30 hereunder:-

1. The Respondent, born in 1941, was admitted as a solicitor in 1969 and his name remained on the Roll of Solicitors.

2. At the material times the Respondent was a consultant with Talbot Creggy Solicitors, ('the firm') Queen Anne Street, London, W1 9LB and also a consultant with another firm.
3. Mr and Mrs B instructed Talbot Creggy and Co in the sale of their property. The overall sale price was £132,000 made up of £30,000 paid by the purchaser directly to Mr and Mrs B and £102,000 sent by the purchaser's solicitors by telegraphic transfer on 8th February 1995 to the Respondent's firm.
4. The conveyancing transaction was carried out by Mr CB, a partner at the firm. Mr and Mrs B transmitted their instructions to the Respondent's firm by means of a communication from Mr SL to the Respondent. Mr SL was Mr and Mrs Bs' son and was already an established client of the firm. Some correspondence to Mr and Mrs B was addressed care of ATT Corporation (UK) plc, Mr SL's company. The Respondent was the person responsible for taking instructions from Mr SL. Mr SL had an authority to instruct the firm on behalf of Mr and Mrs B.
5. On 13th February 1995 the Respondent's firm acknowledged receipt of the sum of £102,000 from the purchaser's solicitors. A statement of account dated 8th February 1995 indicated the sum of £101,482.75 as being due to Mr and Mrs B after deduction of the Respondent's firm's fees and disbursements in the sum of £517.25.
6. On 20th February 1995 Mr CB wrote to Mr and Mrs B enclosing the firm's statement of account and indicated that he would await instructions about the payment of the balance due.
7. The ledger showed the Respondent as the solicitor. The narrative indicated a credit of £102,000 to client account on 10th January 1995 although the money was not telegraphically transferred until 8th February 1995. There followed a debit in the sum of £517.25, representing the Respondent's firm bill of costs on 16th February 1995. Following that it could be seen from the ledgers that between 3rd March 1995 and 31st May 1996, the entire amount of the sale proceeds was debited from the client account in a series of 45 withdrawals.
8. Transactions on the client account continued after 31st May 1996 with large credits entitled "correction" restoring money to the accounts before monies were again gradually withdrawn.
9. On 27th March 1996 the Respondent allowed client account to overdraw by £2,879.26.
10. On 26th April 1996 the Respondent allowed client account to overdraw by £16,692.
11. On 30th April 1996 the Respondent allowed the client account to overdraw by £13,598.04.
12. On 18th and 22nd July 1996 the client account was overdrawn by £2,334.09.
13. On 1st August 1996 the client account was overdrawn by £1,150.

14. On 13th August 1996 the client account was overdrawn by £2,246.86.
15. On 25th September 1996 the final sum of £1,085.07 was withdrawn from client account bringing the balance to zero when the ledger ended.
16. The purpose of, or the authority for, any of the movements on the client account was unclear after 20th February 1995. There were payments to the Respondent's wife, numerous withdrawals were entitled "cash" or "inst WH", as well as transfers to office account for no immediate and apparently legitimate reason. No monies appeared at any stage to have been paid to Mr and Mrs B. The Respondent kept no documentation on the file which could explain the transactions on the ledgers or his authority for the transactions on the ledgers.
17. On 27th November 1998 Mrs B, now a widow, issued a writ against the firm and in the amended statement of claim sought to recover £101,482.75 which was the exact sum left, after deduction of the firm's legal fees from the £102,000 held by the firm following the sale of Mrs B's property. It was claimed that through SL Mr and Mrs B had prior to the sale authorised that the net sale proceeds be used to facilitate the transfer of another property by SL to Mr and Mrs B.
18. The matter was reported to the Solicitors Indemnity Fund and a defence served on 29th January 1999. In that defence it was admitted that the proceeds of sale would be distributed in accordance with the instructions given by Mr SL and Mr and Mrs B's agent to the Respondent. The defendants pleaded that "Mr SL held actual alternatively ostensible authority as the agent acting for the plaintiff and her husband to give instructions concerning the distribution of the net proceeds of sale". Further, the defendants admitted that the proceeds of sale were not used to effect the transfer of the other property. They went on to plead that the proceeds of sale had been distributed by the Respondent on the instructions of Mr SL which they said were to be treated as instructions of the plaintiff. However, the defendants pleaded that "the defendants cannot at present particularise the occasions on which the said instructions were given by Mr SL to Mr Held".
19. The Solicitors Indemnity Fund was concerned about the disposal of the proceeds of sale and began to investigate the claim. The summary of Solicitors Indemnity Fund concerns was set out in the letter of declinature sent to the Respondent on 14th February 2001. In the course of its investigations the Solicitors Indemnity Fund invited the Respondent to attend an interview with Leading Counsel. During the interview the Respondent was unable to provide any instances when instructions were given by Mr SL to use Mrs B's money.
20. At the beginning of the interview between Leading Counsel and the Respondent on 29th October 1999 the Respondent confirmed that there was no restriction upon him when he went to work for the Respondent's firm. In fact, the Respondent's Practising Certificate was subject to a condition of approved employment and he was prohibited from taking an articled clerk, in the practising years 1986/87 through to 1990/1991. His Practising Certificate for the year 1991/92 was issued subject to the condition of approved partnership or employment and the prohibition of taking an articled clerk remained. On 11th February 1987 an application was granted consenting to the

Respondent's employment with the firm. It followed there was a restriction on the Respondent when he went to work for the firm contrary to his response to Leading Counsel.

21. Following the Solicitors Indemnity Fund's decision to decline, indemnity, the case was settled with Mrs B for approximately £75,000 plus costs. The firm's partners then issued legal proceedings against the Respondent seeking to recover their losses.
22. On 14th February 2001 the Solicitors Indemnity Fund referred the Respondent to the Law Society and they requested the Respondent's explanation in relation to the allegations by letter dated 11th April 2001. A warning letter for failing to reply was sent to the Respondent on 26th April.

Complaint by Mr SL

23. In or about May 1996 Mr SL instructed the Respondent to advise on a matter in respect of a professional negligence action against a firm of solicitors who had previously represented Mr SL and his associated companies. The Respondent at the time was a consultant at the firm. The Respondent commenced action for Mr SL's company ATT Corporation UK plc against the solicitors for professional negligence in November 1996. After the close of pleadings no application to list the matter for a final hearing was made by the Respondent on Mr SL's behalf within 15 months and the action was automatically struck out by the court under Order 17 Rule 11 of the then County Court Rules. By the time Mr SL became aware that the case had been automatically struck out, more than six years had elapsed since the events which led to the original allegation of negligence and so it was time barred from being pursued further.
24. At about the same time in May 1996 Mr SL's previous solicitors commenced two separate actions in the Shoreditch County Court against Mr SL's company ATT Corporation plc and Mr SL personally for professional fees. The Respondent failed to enter defences on behalf of Mr SL and default judgements were entered in respect of both cases. Mr SL said that the Respondent failed to inform him not only of the judgements being entered against him and his companies but failed to inform him of orders for costs that had been made.
25. On 3rd December 1996 Mr SL's previous solicitors wrote to the Respondent reminding him of Mr SL's and his company's liabilities. The letter required payment within 14 days. Without informing his client the Respondent settled the sums for which judgement had been obtained. It appears that this was done by the Respondent telephoning Mr SL or his secretary requesting £3,110 for professional fees whereas in fact that sum was to enable the Respondent to settle the judgement about which Mr SL knew nothing.
26. On 9th March 2000 the Law Society wrote to the Respondent in respect of the complaints made on behalf of Mr SL. No response was received to this letter and a chasing letter was sent on 16th May 2000.

27. The Respondent replied by letter of 30th May 2000. He did not deal with the substantive issues but referred to a medical condition that he had been suffering from for some time.
28. The Respondent wrote again on 16th June enclosing further medical reports and a memorandum giving his explanation of the matters raised regarding the complaint by Mr SL and his associate company ATT. The memorandum did not specifically refer to the issues raised against the Respondent by the Law Society.
29. On 4th September 2001 the Professional Regulation Adjudication Panel, in respect of the Respondent's inadequate professional service, directed that the Respondent pay £1,000 compensation to Mr SL. After the time period during which an application for a review should have been made expired the Law Society wrote to the Respondent on 21st September 2001 informing him that he had until 28th September 2001 to pay Mr SL compensation. A further letter was sent on 12th October by the Law Society to the Respondent because he maintained he had not received the letter of 7th September 2001 notifying him of the Adjudication Panel's decision. He was therefore given until 19th October 2001 to make a compensation payment. A further letter was sent on 13th November by the Law Society to the Respondent seeking confirmation of his compliance with the award of compensation by 27th November 2001.
30. On 3rd December 2001 an Adjudicator decided that the Respondent should be referred to the Tribunal in relation to his conduct in failing to comply with the previous first instance decision to pay compensation for inadequate professional service.

The Submissions of the Applicant

31. The Applicant had been corresponding with the Respondent at his last known address until January 2006, since when he had had no reply.
32. The Applicant gave the Tribunal the chronology of this matter. There had been some medical evidence of the Respondent's ill health put forward at an earlier stage. The matter had been fixed for a substantive hearing on 19th January 2006 when the Tribunal reluctantly adjourned the matter on the grounds of the Respondent's ill health and directed that he submit a full medical report by 19th March 2006 or consent to the Law Society arranging for such a report. There had been no contact from the Respondent and the matter had again been listed for a substantive hearing. The Applicant had served the Respondent with a copy of the witness statement of Mr SL on 30th August 2006 and had received no reply.
33. The Applicant had been instructed in this matter in August 2002. There had been some delay in progressing the proceedings because of the Respondent's ill health but there was still no cogent medical evidence, these matters were now aged and the Applicant wished to proceed.
34. The Solicitors Indemnity Fund had been satisfied that Mr SL had not given the instructions as claimed by the Respondent. The witness statement of Mr SL had not been rebutted. In that statement Mr SL confirmed that he had not given the instructions claimed.

35. The claim against the Respondent by Mrs B had gone to arbitration and had been compromised on economic grounds.
36. The Respondent had misled Leading Counsel about the status of his Practising Certificate.
37. In relation to the complaint by Mr SL, the Respondent's failure to enter a defence could be seen as negligence but matters became worse when the Respondent failed to inform Mr SL of his failure and then settled without informing his client.
38. The first matter, that of Mr and Mrs B, had been referred to the Law Society by the Solicitors Indemnity Fund and the second, that of Mr SL, by Mr SL's new solicitors who had been unable to obtain the files. Mr SL, who was involved in both matters, was like the Respondent a member of the Orthodox Jewish community and the Respondent and Mr SL had known each other for many years.
39. Despite the age of this case the Respondent had not given a proper explanation of what had occurred. The Respondent had been asked by Leading Counsel why in the matter of Mr and Mrs B he had not clarified the matter with them or made a file note. The absence of any written record was significant.
40. After the Tribunal's finding in relation to liability the Applicant sought his fixed costs in accordance with the schedule served on the Respondent.

The Findings of the Tribunal

41. The Tribunal amended the allegations to remove allegation 1.5 which duplicated allegation 1.2 although the Tribunal accepted that the Applicant had been referring to two different clients.
42. The Tribunal considered carefully the documentation, including Mr SL's witness statement, and the submissions of the Applicant. Despite the age of the proceedings no explanation had been forthcoming from the Respondent in relation to the allegations. The evidence of Mr SL had not been challenged. In the absence of any explanation the withdrawals from the client ledger of Mr and Mrs B appeared to be a clear and dishonest misappropriation of clients' funds. There was no evidence on the file to support the defence put forward in the civil proceedings that the Respondent in making the withdrawals had been acting on the instructions of Mr SL.
43. It was clear from the documentation that the Respondent had misled Leading Counsel with regard to his Practising Certificate. He had failed to reply to correspondence from the Law Society. The reply which had been received had not been substantive. He had also failed to comply with the Decision of the Law Society Adjudication Panel dating back to September 2001.
44. The Tribunal was satisfied that all the allegations (as amended) had been substantiated. The Tribunal was also satisfied applying the tests set out in the case of Twinsectra -v- Yardley and Others [2002] UKHL 12 and to the high standard required that the Respondent's misappropriation of client monies was dishonest.

Previous appearance before the Tribunal on 21st March 1985

45. At the hearing in 1985 the following allegations were substantiated against the Respondent, namely that he had been guilty of conduct unbefitting a solicitor in that he had:-
- (a) Failed to submit Accountant's Reports in accordance with the requirements of Section 34(2) of the Solicitors Act 1974;
 - (b) Made transfers from client account in breach of Rule 8(2) of the Solicitors Accounts Rules 1975;
 - (c) Made use of clients' funds for his own purposes.
46. The Tribunal on that occasion said:-
- “The Respondent has shown a complete disregard for his professional responsibilities. He evidently paid little or no attention to the bookkeeping in his practice. On 31st December 1982 there was a shortage of £137,874 on his client account and on 31st December 1983 notwithstanding a substantial injection of funds provided by his wife into the account, there was a shortage of £109,303. The Respondent has admittedly suffered ill health. He is still far from well and in the Tribunal's opinion he is unfit, certainly at present, to practise as a solicitor and they order that the Respondent, Winston Jesaiah Held of 15 Highfield Gardens, London NW11, be suspended from practice as a solicitor for a period of eighteen months from the 16th day of May 1985 and that he do pay to the Applicant the Applicant's costs.”
47. The Tribunal on 28th September 2006 had found a large number of serious allegations substantiated against the Respondent, including an allegation of dishonesty in the course of the Respondent's practice. A solicitor who dishonestly misappropriated clients' funds, misled or took advantage of a client, misled Leading Counsel and ignored correspondence from and a direction made by his professional body could not be permitted to remain a member of the profession.
48. The Respondent had failed to comply with the Direction that he pay compensation to Mr SL for a prolonged period and the Tribunal would make the enforcement order sought.
49. The Applicant had served a schedule of costs on the Respondent without response. It was right that the Respondent pay the Applicant's costs and the Tribunal would order costs to be paid in accordance with the schedule.
50. The Tribunal made the following Orders:-

The Tribunal Orders that the Respondent, Winston Jesaiah Held of Sinclair Grove, London, NW11, 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 £15,354.06.

The Tribunal Orders that the Direction of the Professional Regulation Adjudication Panel of the Law Society dated 4th September 2001 that the Respondent pay compensation to Mr SL in the sum of £1,000 be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

Dated this 8th day of November 2006
On behalf of the Tribunal

R B Bamford
Chairman