

IN THE MATTER OF JOHN STUART BAKER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Gibson (in the chair)
Mr P Haworth
Lady Bonham Carter

Date of Hearing: 4th 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 Michael Robin Havard, solicitor and partner in the firm of Morgan Cole Solicitors of Bradley Court, Park Place, Cardiff CF10 3DP on 22nd April 2005 that John Stuart Baker, solicitor of Kettering, Northamptonshire, 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 unbefitting a solicitor in that:-

- 1) He utilised clients' funds for the benefit of himself;
- 2) He utilised clients' funds for the benefit of other persons not entitled to those funds;
- 3) He drew monies out of client account otherwise than is permitted by Rule 22 of the Solicitors Accounts Rules 1998;
- 4) He breached the terms of a professional undertaking;

- 5) He acted in a fraudulent and deceitful manner and contrary to his position as a solicitor contrary to Rule 1 of the Solicitors Practice Rules 1990;
- 6) He paid referral fees to a firm of estate agents in return for conveyancing instructions in breach of Section 2(3), Section 2A and 3A of the Solicitors Instruction and Referral Code 1990.

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

The evidence before the Tribunal included the documents attached to the Applicant's statement made to Rule 4 of the Solicitors Disciplinary Proceedings Rules 1994; a Certificate of Conviction of the Respondent at Hinckley Magistrates Court on 15th July 2005 was before the Tribunal.

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

The Tribunal orders that the Respondent, John Stuart Baker of Kettering, Northamptonshire, solicitor, be struck off the Roll of Solicitors and it further orders that he do pay a contribution of £4,000 towards the costs of and incidental to this application and enquiry.

The facts are set out in paragraphs 1 to 13 hereunder:-

1. The Respondent, born in 1965, was admitted as a solicitor in 1990. At the material times he practised as an employed solicitor with a firm at Northampton (the firm). The Respondent resigned from his position on 20th July 2004. Whilst employed at the firm the Respondent undertook work in the fields of probate and residential conveyancing.
2. The practice manager of the firm first became concerned about the activities of the Respondent on 25th May 2004 when she was informed by the Respondent's secretary that she had been requested to engross a will on that particular morning, and later in the afternoon had been given letters with an application for a grant of probate using the same will.
3. An Investigation Officer of the Law Society (the IO) visited the firm to conduct an inspection. Her report dated 29th October 2004 was before the Tribunal.
4. In the course of administering various estates, the Respondent embarked on a course of dishonest activity. He misappropriated £224,121.51.
5. With regard to the will engrossed on 25th May 2004 the testatrix, Mrs W, died on 10th May 2004. She had made a will dated 26th July 1993. The Respondent forged a will changing the terms of the earlier will so that the residuary estate was left to Mrs W's children in equal shares although Mrs W had only one son who died in December 1965. The Respondent had admitted that he had re-drafted the will and forged the signature of the testatrix and the witnesses on the will and of Mr A and Mr W (the executors) on the oath for executors.

6. A number of cheques had been requisitioned by the Respondent in respect of payments out of client account all for his own benefit, save where payment benefited the sister of the Respondent's ex-wife. A list of and details of these cheques were contained in the IO's Report. The Respondent's actions included forging amendments to oaths for executors in order to make an under declaration of the estate's value with the aim of avoiding payment of inheritance tax. On the one hand, the beneficiaries of the estate would assume that the appropriate amount of inheritance tax was being paid; on the other hand, the figures having been fraudulently amended by the Respondent, the information supplied to the Inland Revenue indicated that the estate did not attract a payment of inheritance tax.
7. On 13th February 2004 the Respondent gave an undertaking to Wilson Browne Solicitors to hold back £75,000 out of net sale proceeds in a transaction to cover a liability arising out of a dispute involving his client Mr L. In breach of this undertaking the Respondent accounted to Mr L on 16th February 2004 for his half share of the net sale proceeds. The Respondent sought to comply with his undertaking by utilising £65,205.15 from the unconnected probate matter of DW deceased. He used that money to open a joint account in the name of the firm and Wilson Browne Solicitors to satisfy the undertaking he had given.
8. The subject matter of the IO's report was also the subject matter of criminal charges made against the Respondent. On 15th July 2005 he was convicted by the Hinckley Magistrates Court on 22 counts.
9. Count 1, attempted theft, related to an attempt to steal by raising a firm's client account cheque for £15,000 in the estate of Mrs W.
10. Counts 2 to 19 related to theft by employee. In each case money was stolen by the Respondent by raising a firm's client account cheque in probate matters.
11. Count 20, making a false instrument, related to the forgery of the will of Mrs W with the intention that the Respondent or another should use the same to induce the beneficiaries to accept it as genuine and by reason of so accepting it to do or not to do some act to their own or another person's prejudice.
12. Counts 21 and 22, false accounting, that on a date between 15th June 2004 and 17th June 2004 at Northampton the Respondent dishonestly with a view to gaining for himself or another or with the intent to cause loss to another falsified the probate account record of DW deceased by showing that £65,205.15 had been paid from his estate to his beneficiaries instead of which the money had been placed in a separate account relating to the client Mr L. On a date between 13th January 2003 and 15th January 2003 at Northampton the Respondent dishonestly with a view to gaining for himself or another with intent to cause loss to another falsified an account, namely the accounting record in the probate matter of CW showing that £482 had been used to pay for a nursing home used by the deceased when the payment was not related to that probate matter but related to the probate matter of Mr GF.
13. The Respondent was committed to the Crown Court for sentence and on 26th August 2005 at the Crown Court at Leicester the Respondent was sentenced on Count 1 to

two years imprisonment, on Counts 2 to 19 to three years imprisonment, on Count 20 to two years imprisonment and on Counts 21 to 22 to 15 months imprisonment. All terms of imprisonment were concurrent, so that the Respondent had a three year custodial sentence imposed upon him.

The Submissions of the Applicant

14. Amongst other things the Respondent manipulated the value of estates so that it appeared no inheritance tax was payable to the Inland Revenue but led executors and/or beneficiaries to believe that inheritance tax had been paid. The Respondent then utilised such monies for his own purposes. His activities had been thoroughly dishonest.

The Tribunal's Findings

15. The Tribunal found the allegations to have been substantiated.

The Tribunal's Decision and its Reasons

16. The Tribunal was dismayed by the deliberate dishonest activity of the Respondent. He had badly let down his clients, his employers and his profession. His offences of forgery of a will and the oath of executors were at the very height of shameful behaviour on the part of a solicitor who has to be trusted implicitly in such matters. This is one of the worst cases of dishonesty seen by this Tribunal. Such dishonest behaviour on the part of a solicitor will not be tolerated. In order to protect the public and the good reputation of the solicitors' profession the Tribunal had no hesitation in ordering that the Respondent be struck off the Roll of Solicitors. The Tribunal considered it right that the Respondent should pay a substantial sum towards the costs of and incidental to the application and enquiry and ordered that he pay £4,000 towards the Law Society's costs.

Dated this 17th day of November 2005
On behalf of the Tribunal

A G Gibson
Chairman