

IN THE MATTER OF ANDREW IAN WEST, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J N Barnecutt (in the chair)
Mr J P Davies
Ms A Arya

Date of Hearing: 21st February 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 Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Hertfordshire, SG14 1BY on 23rd June 2005 that Andrew Ian West, solicitor, of Louth, Lincolnshire, should appear before the Tribunal to answer the allegations contained in the statement which accompanied the application and that the Tribunal should make such Order as it thought fit.

The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in each of the following particulars:

- (i) He caused monies to be withdrawn from a client account in relation to costs without a bill or other written notification having been sent to the client or the paying party;
- (ii) He caused monies to be withdrawn from a client account otherwise than were properly required for a payment to or on behalf of the client (or other person on whose behalf the money was being held);
- (iii) He caused paper transfers of money held in general client account to be made from the ledger of one client to the ledger of another when it was not permissible to do so;

(iv) he acted towards his partners in a deceitful manner.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 21st February 2006 when Stephen John Battersby appeared as the Applicant and the Respondent was represented by David Elwyn Barton, Solicitor Advocate, of 72-74 Fore Street, Hertford, Hertfordshire, SG14 1BY.

The evidence before the Tribunal included the admissions of the Respondent.

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

The Tribunal Orders that the Respondent Andrew Ian West of Louth, Lincolnshire, 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 £9,000.

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

1. The Respondent, born in 1967, was admitted as a solicitor in 1991.
2. From the date of his admission until October 1997 he was employed as an assistant solicitor by the firm of Tilly Bailey and Irvine (TBI) of York Chambers, York Road, Hartlepool, TS26 9DP. In October 1997 he became a partner in that firm and remained in this position until his resignation on 1st June 2004 after the matters giving rise to the allegations came to light. At this time he was head of the Probate and Trust Department at the Hartlepool office of the firm.
3. On 4th June 2004 TBI reported to The Law Society that they had discovered breaches of the Accounts Rules which were attributable to the Respondent. As a result of this a Law Society Investigation Officer, Ms Seager, visited TBI to carry out an inspection on 6th July 2004. A copy of her Report dated 25th January 2005 was before the Tribunal.
4. Ms Seager's attention was drawn to the ledgers of Mrs DC deceased and Mr SC deceased which had cash shortages of £17,713.13 and £15,393.21 respectively - a total of £33,106.34. These shortages were accounted for by the fact that the Respondent had raised bills which were neither justified by work done nor approved by the residuary beneficiary Mr R (as described at paragraphs 9-21 of the Report).
5. The Respondent admitted that the bills were not justified by work done nor had they been notified to the client. They had been raised by him for the sole purpose of achieving his billing targets within the firm.
6. Paragraphs 22 and 23 of the Report set out further examples of misconduct on the part of the Respondent.
7. On 27 occasions between 14th December 1993 and 26th February 2004 paper transfers had been made from ledgers of clients to those of other clients. The purpose of this, as admitted by the Respondent, was to allow him to make interim payments to

beneficiaries when there were not sufficient funds on that client matter ledger to enable him to do so. The total monies dealt with in this way were £294,584.60.

8. The Respondent's explanation for his conduct was that he had felt under considerable pressure from the other partners to achieve billing targets and that he had otherwise obtained no personal gain from his activities. Such had been the effects upon him of this pressure that he had had to seek counselling. The remaining partners in the firm disputed the Respondent's explanation.

The Submissions of the Applicant

9. Clearly the Respondent's conduct in raising the unjustified bills was deceitful towards his partners who had no reason to believe that the bills were other than genuine. The Respondent's conduct had necessarily to be viewed as dishonest. Although the shortage was replaced by the remaining partners, had it not been discovered there would have been a loss to the clients. When the Respondent was interviewed by Ms Seager he had to his credit admitted what he had done.
10. In relation to the paper transfers, the beneficiaries had no doubt been calling out for their money. Most of the transfers were rectified by money coming in but there had been a potential for loss. £8,894 had been paid by the Respondent's partners, although it was anticipated that this money would mostly come back into the firm in due course.
11. The Respondent had given an explanation of pressure from the other partners which they disputed but in the submission of the Applicant whatever the reason for the Respondent's conduct, it was clearly dishonest.
12. The Respondent had agreed the Applicant's costs in the sum of £9,000.

The Submissions on behalf of the Respondent

13. The Respondent admitted the allegations and admitted that he had acted dishonestly as a solicitor. This had been a painful and upsetting process for him. He expressed his personal thanks to Ms Seager for her sensitive and caring approach and he had done his best to cooperate. The Respondent had been admitted for over 14 years and knew what the consequences of his misconduct in terms of penalty before the Tribunal would be.
14. The Respondent had resigned at the firm's request and after a short period with another firm had ceased to work in the law. His intention in the future was to become a teacher. His earning capacity had diminished and his marriage had disintegrated.
15. The Respondent was an upright person who had come to the Tribunal openly to face the end of this matter.
26. The Respondent stood absolutely by the letter sent on his behalf by his representative on 24th March 2005. The Respondent had felt isolated within the firm. He was a gentle person and something of a 'pushover' within the partnership. His motive had never been personal gain. He accepted that there had been a potential loss to others

but there had been no actual loss. The Respondent accepted that client money was sacrosanct.

27. Once matters had come to light it had been a source of huge relief to the Respondent as would be the finalising of these matters before the Tribunal.
28. The Respondent knew that the fault was his and that he had let down himself and the profession. He expressed sincere remorse.
29. The Tribunal was referred to the two testimonials in the Respondent's support and to the statement from a former member of staff in support of the Respondent's explanation as to the pressure he had been under.
30. The Respondent knew his fate but desired to leave the profession in as dignified a manner as possible.

The Findings of the Tribunal

31. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
32. This was a very sad case. It was clear that the Respondent had perceived himself to be under professional pressure and that perception, together with personal stress, played a part in his conduct. The Tribunal accepted that the Respondent had not been seeking to make personal financial gain and the Tribunal appreciated the Respondent's integrity and strength in attending the Tribunal. He had cooperated with the investigation and had made early admissions. This was however a case of admitted dishonesty involving clients' funds. As the Respondent's representative had said, clients' funds were sacrosanct. The right penalty as the Respondent had acknowledged through his representative was to strike the Respondent's name from the Roll of Solicitors.
33. The Tribunal Ordered that the Respondent, Andrew Ian West of Louth, Lincolnshire, solicitor, be Struck Off the Roll of Solicitors and they further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,000.

Dated this 24th day of April 2006
On behalf of the Tribunal

J N Barnecutt
Chairman