

IN THE MATTER OF MYLES MACGREGOR AUSTIN-OLSEN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr I R Woolfe (in the chair)  
Mr S N Jones  
Mrs C Pickering

Date of Hearing: 25th April 2006

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Law Society by Victoria Jane Hunt, solicitor employed by the Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 11th October 2005 that Miles MacGregor Austin-Olsen, solicitor of Eastbourne, East Sussex, 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 fit.

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

- (i) That he withdrew money from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998 ("SAR");
- (ii) That he utilised client funds for his own purpose, which for the avoidance of doubt was an allegation of dishonesty;
- (iii) That he acted and/or continued to act in circumstances where his own interest conflicted with the interest of client(s);

- (iv) That he failed to remedy withdrawals from client account in breach of the SAR promptly on discovery contrary to Rule 7 of the SAR;
- (v) That he obtained a bridging loan by deception from a bank;
- (vi) That he failed to honour a professional undertaking given to a bank.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 25th April 2006 when Hilary Susan Morris, a solicitor employed by the Law Society, appeared on behalf of the Applicant and the Respondent did not appear and was not represented.

A supplementary statement of Victoria Jane Hunt dated 11th October 2005 was before the Tribunal. This had been served on the Respondent but not within the required time limits. The Applicant had on 24th April 2006 received a letter from Messrs Rodney Warren & Co, the Respondent's solicitors, indicating that the Respondent did not wish to defend the allegations before the Tribunal and confirming that the Respondent had been convicted of certain offences and sentenced to a period of imprisonment. At the request of the Tribunal Ms Morris contacted Messrs Rodney Warren & Co who confirmed that their letter related to the Rule 4 statement only and that they had not yet seen the supplementary statement. In the circumstances with the consent of the Tribunal Ms Morris proceeded with the allegations contained in the Rule 4 statement only.

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

The Tribunal Orders that the Respondent, Myles MacGregor Austin-Olsen, solicitor, be struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,232.03.

**The facts are set out in paragraphs 1 to 21 hereunder:-**

1. The Respondent, born in 1951, was admitted as a solicitor in 1977 and his name remained upon the Roll of Solicitors.
2. At all material times the Respondent carried on practice as a consultant to Messrs Gaby Hardwick Solicitors ("the Firm") of 2 Eversley Road, Bexhill on Sea, East Sussex, TN40 1EY.
3. Following an internal investigation by the partners of the Firm they uncovered areas of concern. On 17th May 2004 the Firm informed the Law Society that the Respondent had been dismissed on 14th May 2004 following discovery of matters of concern.
4. The Forensic Investigation Unit ("FIU") carried out an inspection of the firm's books of account commencing on 6th July 2004. The resulting Report noted the following:-
  - (i) Two improper payments from client account;
  - (ii) Borrowing money from a client without ensuring that the client obtained independent legal advice;

- (iii) Obtaining a bridging loan from HSBC by deception;
- (iv) Breach of an undertaking to HSBC in relation to the bridging loan.

5. On 7th July 2004 the FIU Officer interviewed the Respondent and all the comments attributed to the Respondent were made during that interview.

(i) - Two improper payments from client bank account

6. On 20th April 2004 the Respondent arranged for a payment of £8,000 to be made from client bank account to Mrs N. The payment was debited to a ledger account in the name of O E Limited. The Respondent confirmed that there was no connection between O E Limited and Mrs N, and that O E Limited had not given him permission to make the payment. Further the Respondent explained that the payment was made because he personally owed Mrs N £8,000.
7. On 23rd April 2004 the Respondent arranged for a payment of £5,000 to be made from the client bank account to a Mr T-M. The payment was debited to the ledger account in the name of O E Limited. The Respondent confirmed that there was no connection between Mr T-M and O E Limited, and that O E Limited had not given him permission to make payment. The Respondent explained that the payment of £5,000 to Mr T-M was a part repayment of a loan that he had taken out with that client.
8. In respect of both of the improper repayments referred to above, the Respondent said to the FIU Officer that he knew that the money was in the client bank account on behalf of his client O E Limited and he also knew that the client did not need the money for some time. The Respondent said it was his intention to repay the money to O E Limited.
9. On 14th May 2004 the Firm arranged for a transfer of £13,000 from office to client account in order to correct the shortage created by the two improper payments made by the Respondent.

(ii) - Utilising clients' funds for his own purpose

10. The Respondent admitted that payment of £8,000 from client account to Mrs N which was debited to the ledger account in the name of O E Limited was made because he personally owed Mrs N £8,000 (see paragraph 6 above). The Respondent said "I should not have taken it. It got me out of an immediate short term problem".
11. The Respondent's payment out of client account of £5,000 to Mr T-M was again debited to the ledger account in the name of O E Limited. The Respondent confirmed that the re-payment made to Mr T-M was a part re-payment of a personal loan from that client (see paragraph 7 above).

(iii) - Conflict of interest and loans to the Respondent

12. The Respondent said that he borrowed £30,000 from a client Mr T-M. The loan was stated as being for a period of one year from 10th October 2002 at an interest rate of 10%. The Respondent said that he borrowed the money to invest in a public house in Devon and that he repaid part of the loan, but that £10,000 plus interest remained outstanding. The improper payment of £5,000 referred to above was part re-payment of that loan. The partners of the Firm had settled the outstanding amount of the loan including interest on behalf of the Respondent.
13. In relation to the loan the Respondent conceded that he had obtained the loan from the client without ensuring that the client obtained independent legal advice in relation to the loan as required by Principle 15 of the Guide to the Professional Conduct of Solicitors 1999.

(iv) - Failing to remedy the improper withdrawals from client account

14. The Respondent failed to repay the two improper payments which were replaced by the Firm (paragraph 9 above).

(v) - Obtaining a bridging loan by deception from a bank

15. The Respondent acted for his former wife in relation to a related property sale and purchase. Both the sale and purchase were due to complete on the same day, 12th March 2004. The sale was for £125,000 and the purchase was for £209,000.
16. In order to complete the purchase, the Respondent approached the Firm's bank, HSBC, and requested a bridging loan of £95,000. The Respondent misled the bank into believing that the bridging loan was required because of a difference in timing between the sale and purchase and that the loan would be repaid once the sale had taken place. However, at the time the Respondent requested the bridging loan, he knew the sale and the purchase would be completed simultaneously and the bridging loan was therefore required simply because the Respondent did not have the difference between the sale and purchase price.
17. The Respondent confirmed that he had misled the bank in order to obtain the bridging loan.

(vi) - Breach of undertaking to the bank in relation to a bridging loan

18. In order to obtain the bridging loan of £95,000 from HSBC, the Respondent gave an undertaking to the bank that he would repay the bank out of the proceeds of the related sale. The Respondent breached this undertaking because he did not repay the bridging loan out of the sale proceeds but utilised these in the related purchase.
19. The Respondent confirmed that he had breached the undertaking given to the bank in relation to these funds and the partners of the Firm accepted the undertaking as a liability of the Firm and indicated that they would arrange to discharge the debt to the bank.

20. On 7th October 2004 the Law Society wrote to the Respondent asking for his comments upon the contents of the Report. No response was received to the letter nor to a subsequent copy of the letter sent by recorded delivery.
21. A copy of the Report was also forwarded to the Firm on 7th October 2004. A response was received from the Firm on 13th October 2004 notifying the Law Society that in addition to the £95,000 bridging loan to complete the purchase the HSBC had also loaned an extra £30,000 by way of a bridging loan to redeem the existing mortgage on the sale. Therefore the totality of the money which had to be paid by the partners of the Firm to HSBC was £126,373.12 (to include interest).

### **The Submissions on behalf of the Applicant**

22. Dishonesty was alleged against the Respondent in that he utilised clients' funds by way of improper transfers and loans from clients who were not advised to take independent advice. Borrowing money from clients gave rise to a conflict or potential conflict of interest.
23. Clearly the Respondent had misappropriated clients' funds and had made misrepresentations to HSBC.
24. The Respondent had instructed his solicitors that he did not wish to defend the allegations.

### **The Findings of the Tribunal**

25. The Tribunal was satisfied from the unchallenged documentation that the allegations were substantiated, indeed the Respondent had indicated through his solicitors that he did not intend to defend them.

### **Previous appearance before the Tribunal**

26. On 8th March 1994 an allegation that the Respondent had been guilty of conduct unbecoming a solicitor in that he had failed to comply with a professional undertaking was substantiated before a division of the Tribunal.
27. The Tribunal on that occasion said that:-

“Notwithstanding the Respondent’s initial belief in the matter he now admitted that he was in breach of this undertaking and indeed was in continuing breach of the same. Given the circumstances and background to this particular matter the Tribunal did not feel that anything other than a financial penalty would be appropriate. Given his bankruptcy and the fact that in any event he would have substantial costs to pay in connection with these proceedings, they felt it appropriate to exercise a degree of leniency.”

The Tribunal ordered the Respondent to pay a fine of £500 together with the Applicant’s costs.

28. The Tribunal on 25th April 2006 considered that this was a sad case for the profession. The Respondent had behaved dishonestly in relation to client monies. For the sake of the public and of the profession it was right that the Respondent's name be struck off the Roll of Solicitors.

29. The Tribunal made the following order:-

The Tribunal Orders that the Respondent, Myles MacGregor Austin-Olsen, solicitor, be struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,232.03.

Dated this 19<sup>th</sup> day of June 2006

On behalf of the Tribunal

I R Woolfe  
Chairman