

IN THE MATTER OF MUNASINGHE MABARANA, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mrs H Baucher (in the chair)  
Mrs E Stanley  
Mr M C Baughan

Date of Hearing: 22nd January 2007

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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 Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London, WC1R 4BX on 2<sup>nd</sup> November 2005 that Munasinghe Mabarana, solicitor of Bruce Grove, London, N17 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.

On 12<sup>th</sup> January 2006 the Applicant made a supplementary allegation containing a further allegation.

The allegations set out below are those contained in the original and supplementary statements.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:

- (a) contrary to Solicitors' Indemnity Insurance Rules 2002, the Respondent failed to pay The Law Society's costs and expenses;

- (b) that the Respondent failed to reply promptly or at all to correspondence from The Law Society;
- (c) that he failed to comply with a decision of an adjudicator of The Law Society.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 22<sup>nd</sup> January 2007 when Peter Harland Cadman appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included evidence as to service of the proceedings by a process server upon the Respondent.

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

The Tribunal Orders that the Respondent, Munasinghe Mabarana of Bruce Grove, London, N17, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 22<sup>nd</sup> day of January 2007 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,240.00

The Tribunal further Orders that the Directions of the Adjudicator of the Law Society dated 20<sup>th</sup> November 2005 be treated for the purposes of enforcement as if they were orders of the High Court.

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

1. The Respondent, born in 1944, was admitted as a solicitor in 1990. His name remained on the Roll of Solicitors. At the material times the Respondent carried on in practice on his own account under the style of Mabarana & Co at 11B King Street, Southall, Middlesex, UB2 4UF.
2. The Respondent's firm entered the Assigned Risks Pool. In accordance with Rule 10(ii) and Rule 18 of the Solicitors Indemnity Insurance Rules 2002, The Law Society carried out an investigation and prepared a Report dated 8<sup>th</sup> May 2003. The cost of that investigative Report was £1,544.33. The Respondent agreed to pay that sum by way of three instalments on 1<sup>st</sup> September 2003, 1<sup>st</sup> October 2003 and 1<sup>st</sup> November 2003. The Respondent did not pay any of those instalments.
3. A bankruptcy petition had been commenced against the Respondent but withdrawn on the basis of agreed terms of repayment and costs; £3,539.24 being the total of the investigation costs and court fees and costs relating to the bankruptcy petition remained owing to The Law Society by the Respondent.
4. The Law Society wrote to the Respondent on 16<sup>th</sup> March, 11<sup>th</sup> and 26<sup>th</sup> April, 20<sup>th</sup> and 31<sup>st</sup> May 2005. The Respondent did not reply to any of that correspondence.
5. Mr A-S lodged a complaint with The Law Society concerning the Respondent's representation of him at an Industrial Tribunal.

6. The Law Society wrote to the Respondent about this and the Respondent replied and was contacted by telephone. The Respondent told The Law Society that he had closed his firm, Mabarana & Co, with effect from 31<sup>st</sup> May 2004.
7. The matter was considered by an Adjudicator of The Law Society on 20<sup>th</sup> November 2005. The Adjudicator directed that:
  - (a) the Respondent's firm pay compensation to the complainant in the sum of £300; and
  - (b) that the Respondent waive all fees in the matter and return £400 to the complainant.
8. Both directions were to have been complied with within seven days. The Respondent had complied with neither of them despite further correspondence addressed to him by The Law Society.

#### **The submissions of the Applicant**

9. The facts spoke for themselves. The Tribunal was invited not only to impose a disciplinary sanction but also to make an Order that the direction of the Adjudicator of The Law Society be treated for the purposes of enforcement as if it were an Order of the High Court.

#### **The submissions of the Respondent**

10. The Respondent took no part in the proceedings.

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

11. The Tribunal found all of the allegations to have been substantiated.
12. On 23<sup>rd</sup> November 2004 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations were:
  - (a) that his books of account were not properly written up in breach of Rule 32 of the Solicitors Accounts Rules 1998;
  - (b) that he breached Practice Rule 15;
  - (c) that he breached Practice Rule 13;
  - (d) that he failed to keep any adequate records of client matters.
13. On that occasion the Tribunal said:
 

“The Tribunal finds all of the allegations to have been substantiated, indeed they were not contested. Although the Tribunal accepts the Respondent's assertion that whilst practising at Ealing Legal Centre he did not arrange for his post to be opened by a non-employee, he did not comply with Practice Rule 13.

The obligation upon a solicitor to comply punctiliously with the Solicitors Accounts Rules and the Solicitors Practice Rules is a high one. The Respondent has fallen far short of what is required of him.

The Respondent had admitted his shortcomings and accepted that his failings were serious. He had in some respects put right his failures and he had largely closed his practice without loss to clients. There was no evidence before the Tribunal that any client made any complaint about the Respondent's conduct of his business.

The Respondent has also been given credit for his admissions and his recognition of the seriousness of his failures. He is contrite and has apologised to the profession.

The Tribunal expected the Respondent to deal with all outstanding regulatory matters and his obligations to The Law Society and further expected him to settle his outstanding liability to the Assigned Risks Pool.

In the particular circumstances of this case, the Tribunal considered that it would be just and proportionate to order that the Respondent be reprimanded and it further imposed the condition upon the Respondent that he might not practise as a principal or partner or as an office holder or shareholder of an incorporated solicitors practice on the basis that such prohibition should not prevent the Respondent from acting as a solicitor in employment approved by The Law Society.

It was right that the Respondent should pay the costs of and incidental to the application and enquiry and the Tribunal ordered him to pay such costs in the fixed sum agreed by the Respondent.”

### **The Tribunal's decision and its reasons**

14. The Respondent has a disciplinary history. The Respondent has not fulfilled his obligations as a solicitor. In particular he has not paid moneys to The Law Society which were due and which he agreed to pay by instalments. His failures had caused The Law Society to incur further cost. Failure on the part of a solicitor to reply to correspondence addressed to him by his own professional body is a serious matter as it prevents that body from fulfilling its duties as a regulator and thereby serving to protect the public.
15. The Tribunal considered that the Respondent should not be permitted to continue to practise as a solicitor until all of the outstanding matters had been resolved and he was able to satisfy this Tribunal that in all the circumstances he might be permitted to return to practice.
16. The Tribunal Ordered that the Respondent be suspended from practice for an indefinite period. He was further Ordered to pay the costs of and incidental to the application and enquiry fixed in the sum sought by the Applicant of £6,240. The Tribunal considered it appropriate to fix the costs as they appeared to be entirely reasonable and to fix such costs would be a saving of time and money.

17. The Tribunal further Ordered that the Directions of the Adjudicator of The Law Society dated 20<sup>th</sup> November 2005 be treated for the purposes of enforcement as if they were Orders of the High Court.

DATED this 1st day of March 2007  
on behalf of the Tribunal

H Baucher  
Chairman