

IN THE MATTER OF PETER JOHN WHEELER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mr A G Gibson
Mr G Fisher

Date of Hearing: 10th August 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 of 5 Fishergate Court, Fishergate, Preston, PR1 8QF on 23rd November 2005 that Peter John Wheeler of Beckley, Oxford, 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 were that the Respondent had been guilty of conduct unbecoming a solicitor in that he:-

- (i) Contrary to Rule 19(1) Solicitors Accounts Rules 1998 consciously and deliberately misused Stamp Duty monies for his own benefit;
- (ii) Deliberately and consciously delayed in the registration of Title in property transactions;

- (iii) Wrote a letter to his Lender client knowing that he was deliberately giving them misleading information;
- (iv) Knowingly gave a misleading statement to his accountants;
- (v) Contrary to Rule 15(1) Solicitors Accounts Rules 1998 improperly retained client monies in Office Account;
- (vi) Contrary to Rule 22 of the Solicitors Accounts Rules 1998 made an overpayment to a client resulting in a client account shortage lasting for fifteen months before being rectified;
- (vii) Contrary to Rule 32 of the Solicitors Accounts Rules 1998 failed to at all times keep accounting records properly written up;
- (viii) Contrary to Rule 6 of the Solicitors Accounts Rules 1998 failed to ensure compliance with the Solicitors Accounts Rules;
- (ix) Contrary to Rule 7 of the Solicitors Accounts Rules 1998 failed to remedy promptly upon discovery breaches of the Solicitors Accounts Rules.

The application was heard at the Court Room, 3rd Floor, 1 Farringdon Street, London, EC4M 7NS when Roger Stuart Turner appeared as the Applicant and the Respondent did not appear and was not represented. The evidence before the Tribunal included a letter addressed by the Respondent to the Tribunal dated 8th August 2006 in which he admitted in full all of the allegations made against him. His letter is further referred to under the heading below "The Submissions of the Respondent".

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

The Tribunal Orders that the Respondent, Peter John Wheeler of Oxford, 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 £7,600.00.

The facts are set out in paragraphs 1 to 12 hereunder:-

1. The Respondent, born in 1950, was admitted as a solicitor in 1975. At the material times he practised as a sole practitioner under the style of Peter J Wheeler Solicitors of 47 Walton Street, Oxford, OX2 6AD.
2. A Senior Investigations Officer of The Law Society (the SIO) commenced an inspection of the Respondent's accounts on 15th April 2005. His Report dated 3rd May 2005 was before the Tribunal.
3. The Respondent established that between 18th September 2000 and 1st December 2004 there had been a continuous but variable client account shortage reaching a maximum value of £109,585.00 on 19th August 2003. There were three causes of the shortage:-

| | |
|--|-------------------|
| A rolling shortage from misuse of Stamp Duty money | £46,105.00 |
| An improper retention of client monies | £40,000.00 |
| An overpayment of client monies | <u>£23,480.00</u> |
| | £109,585.00 |

Misuse of Stamp Duty Money

4. Between 18th September 2000 and 19th November 2004 the Respondent had placed monies received from clients in respect of their liability for Stamp Duty (Stamp Duty monies) in his firm's office account. The Respondent's Reporting Accountants had for the periods ending 31st December 2002 and 31st December 2003 reported to The Law Society that transfers of Stamp Duty monies had been made from client account to office account and had then not been paid to the Inland Revenue. The Respondent produced a list of fourteen matters where this had occurred the amount involved totalling £79,195.00. The Respondent when interviewed admitted that his purpose in transferring the Stamp Duty monies from client account to office account had been to support the office bank balance. The Respondent also admitted that when he made the transfers he had written out office account cheques for the Stamp Duty but had not sent them to the Inland Revenue. When he had later paid the Duty he had destroyed the original cheque and written out a new one.

The Late Registration of Title

5. Because of the late payment of stamp duty there was an associated late registration of title. The Respondent stated that no clients had actually been prejudiced. The clients' interests were not protected.

Misleading Statement to Lender Client

6. In one case a purchase was completed on 4th January 2002 and registration was not completed until 12th November 2003. As well as acting for the purchasers the Respondent also acted for the mortgage lender, the Bank of Ireland. Nearly four months after the completion of the purchase the lender clients wrote to the Respondent because they had not received the title deeds. Two further chasing letters were written before the Respondent replied on 8th April 2003, stating that he anticipated being able to send the deeds within 28 days. He did not. The lender client made a priority search at HM Land Registry, which revealed that the change had not been registered.
7. The Respondent replied on 13th August 2003. He blamed the delay upon a member of his staff, the loss of the file and said that the previous letters to him had not been brought to his attention by a staff member. When interviewed about this the Respondent agreed with the SIO that his letter was misleading and had been written to present an excuse to the lender.

Misleading Statement to Reporting Accountants

8. When the Respondent's Reporting Accountants examined his books of account for the preparation of the annual Accountant's Report to The Law Society they discovered an introduction of capital of £55,000.00. The Respondent had told them that this was an introduction of funds into the practice by the Respondent to avoid problems relating to the misuse of Stamp Duty happening again. This explanation had been set out in the Respondent's Accountant's Report.
9. Of the £55,000.00 introduced into the Respondent's office account, £15,000.00 had been credited on 13th June 2003 and was a loan provided by the Respondent's parents. The remaining £40,000.00 had been generated by an improper crediting of clients' monies in the office account. The Respondent confirmed at interview that he had intentionally misled his Accountants.

Improper Retention of Client Monies in Office Account

10. The Respondent had acted for Mr and Mrs F in a property transaction. The Respondent paid £40,000.00 from them directly into office account. This was not written up in the ledger. The Respondent told the SIO that the cheque had initially been paid into office account in error but because he had not been keeping up to date the error had not immediately been identified. However, after identifying it, he did not remedy the shortage immediately.

Overpayment of Client Monies

11. The Respondent acted for Mr and Mrs S in a property transaction. At the time of completion the Respondent asked his clients for £8,200.00 to complete. He should have asked for £31,700.00. The Respondent's clients were £23,500.00 short at the time of completion. The Respondent had previously returned that amount of money to his clients some months earlier. Because the Respondent did not keep his books of account up to date he did not notice the shortfall and he completed the transaction. The Respondent admitted that he had not realised his error; that after completion a debit balance had arisen on 26th September 2003 on the client account ledger and that it remained there until it was rectified on 18th November 2004, fifteen months later. The Respondent admitted that his books had not been up-to-date when the transaction took place. It was identified when the books were brought up-to-date.

Failure properly to write up Books of Account

12. The Respondent's Reporting Accountants reported to The Law Society for the Respondent's practice year ending 31st December 2003 that the accounting records had not been kept up-to-date during the year so that the current balance on each client ledger account was not shown nor was it readily ascertainable. As a result, where debit balances existed on client ledger accounts it was not possible for the Respondent to investigate them promptly and to correct errors.

The Submissions of the Applicant

13. The Respondent had been guilty of serious breaches of the Solicitors Accounts Rules and had misused monies held for Stamp Duty to fund his office. He had held £40,000.00 of client money in office account between 6th June 2003 and August or September 2004. His books of account had not been kept up-to-date. It was noted that they had been up-to-date at the time of the inspection but the Respondent himself accepted that they had been brought up-to-date because of the inspection.
14. The Respondent had made misleading statements to a lender client and to his Reporting Accountant. Both of those misleading statements demonstrated dishonesty on the part of the Respondent as did the wrongful use of client money to fund the practice.
15. In the submission of the Applicant, such behaviour satisfied the two part test in the case of *Twinsectra v Yardley*. Namely, that other members of the solicitors' profession would consider that the Respondent's actions were dishonest and he himself could not have failed to know that that would be the view of other solicitors.
16. The Applicant reminded the Tribunal that the Respondent had been open and frank with The Law Society's Investigation Officer and in correspondence. Further, he had made submissions to the Applicant at the earliest opportunity.

The Submissions of the Respondent

17. The Respondent by letter admitted in full all of the allegations made against him and whilst he had no wish to offer excuses for his actions he invited the Tribunal to take into account the comments that he made in a letter dated 2nd June 2004 sent to The Law Society.
18. The initial breaches of the Solicitors Accounts Rules occurred at a time when the Respondent was suffering from depression and stress in the period of time following the death of his father. The action that he took was out of character. The Respondent had come to realise that he should have sought help and assistance. He would forever regret having ever taking the actions that he did. The financial benefits gained by those actions were used solely to support his practice through particularly difficult financial times and had not been used to fund any extravagant lifestyle. No client had suffered any financial loss. The Respondent's books of account had been kept in compliance with the Solicitors Accounts Rules since November 2004.
19. Hitherto the Respondent had enjoyed an unblemished professional record since his admission as a solicitor in 1975.
20. The Respondent accepted that it would no longer be acceptable for him to continue in practice and he had closed his practice and had asked The Law Society to remove his name from the Roll.

The Findings of the Tribunal

21. The Tribunal found the allegations to have been substantiated, indeed they were not contested. The Tribunal did find that the Respondent's actions in misleading his lender client and his Reporting Accountant and in using client money in order support his practice amounted to dishonesty. The Tribunal had given the Respondent credit for his admissions and his openness and frankness with The Law Society's Investigator. However, mindful of its duty to protect the public and its duty to protect the good name of the solicitors' profession the Tribunal considered that it was both appropriate and proportionate that the Respondent be Struck Off the Roll of Solicitors. The Applicant sought the costs of and incidental to the application and enquiry and indicated the amount to the Tribunal. The hearing had taken rather less than he had anticipated and he reduced his proposed costs by £200.00. The costs of The Law Society's Investigation Officer amounted to £3,095.00. The Tribunal considered that the costs were reasonable and in order to save time and further expense ordered the Respondent to pay the costs in the fixed sum indicated of £7,600.00.

Dated this 2nd day of October 2006

On behalf of the Tribunal

A H B Holmes
Chairman