

IN THE MATTER OF RICHARD MARK BAKER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A Gaynor-Smith (in the chair)
Mr R B Bamford
Mr G Fisher

Date of Hearing: 13th July 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 16th November 2005 that Richard Mark Baker of Hagley, Stourbridge, West Midlands, 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.

On 31st May 2006 the Applicant made a supplementary statement containing further allegations.

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 any or all of the following circumstances namely:

1. That contrary to Rule 6 of the Solicitors' Accounts Rules 1998 the Respondent failed as a principal in a solicitors firm to ensure compliance with the Solicitors Accounts Rules.

2. That contrary to Rules 22(1) and Rule 22(5) of the Solicitors' Accounts Rules 1998 the Respondent gave instructions for payment to be released from client account on at least four property transactions in the knowledge that he held insufficient funds on behalf of that client to cover payment.
3. That the Respondent failed to and/or unreasonably delayed in registering client's property titles with HM Land Registry.
4. That the Respondent failed to and/or unreasonably delayed in paying client's stamp duty;
5. That the Respondent failed to comply with instructions and/or breached undertakings to redeem existing charges, loans and mortgages before completion of property transactions.
6. Contrary to Rule 6(3) of the Solicitors Practice Rules 1990 he acted where a conflict of interest had arisen between the Respondent's lender and borrower client.
7. That the Respondent, contrary to Rule 7 of the Solicitors' Accounts Rules 1998 failed to remedy promptly upon discovery breaches of the Solicitors' Accounts Rules by failing to replace money improperly withheld or withdrawn from a client account.
8. That the Respondent improperly and with conscious impropriety withdrew money from client account contrary to Rule 22(1) of the Solicitors' Accounts Rules 1998.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 13th July 2006 when Stuart Roger Turner appeared as the Applicant and the Respondent was represented by Jack Friend of Jack Friend & Co, 11 Sudbury Hill Close, Wembley, Middlesex, HA0 2QR.

The evidence before the Tribunal included the admissions of the Respondent and a written reference handed up in his support from his current employer.

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

The Tribunal Orders that the Respondent, Richard Mark Baker of Hagley, Stourbridge, West Midlands, DY9 0PG, 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 to be subject to a detailed assessment unless agreed by the parties to include the costs of Investigation Accountant of the Law Society.

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

1. The Respondent, born in 1953, was admitted as a solicitor in 1976. At the material times he practised in partnership under the style of William Attwood & Son at First Floor, National Westminster Bank Building, 143/146 High Street, Cradley Heath, West Midlands, B64 5HJ.

2. The Respondent's former partner had notified The Law Society by letter of his concerns about the Respondent's conduct. As a result a Forensic Investigation Officer ("FIO") of The Law Society inspected the Respondent's firm's books of account and produced a written Report dated 18th July 2005 that was before the Tribunal.
3. The FIO's Report revealed the Respondent had acted for Mr and Mrs R in a number of conveyancing transactions over a period of four to five years.
4. In respect of four property purchases between 3rd January 2004 and 1st October 2004 the Respondent remitted the required completion moneys to the vendors' solicitors prior to the receipt of the necessary mortgage advance moneys. At the time of completion insufficient funds were held on behalf of the purchasing client resulting in shortages on client bank account. The shortages ranged from £165,000 to £742,644.64.
5. There were a number of matters where there were significant delays between the date of completion and the payment of stamp duty and the date of registration at HM Land Registry.
6. In fourteen transactions the delay in registration of title was between three months and three and a half years. Stamp duty penalties and interest were payable by the Respondent's firm. The clients' position had not been protected by a Land Registry Priority Search.
7. In each of the transactions the Respondent did not act in accordance with the Council of Mortgage Lenders Handbook as required.
8. The Respondent acted during the 1990's for Mr H in his divorce. As part of the divorce settlement Mr H received £11,563.40 for his part share of the sale proceeds of a property. The ledger showed that £8,000 was retained by the firm and placed on deposit. The Respondent's former partner had been unable to locate the money in any deposit account.
9. The Respondent admitted that he had used Mr H's money for the benefit of another client Mrs T. That file was missing. Mrs T's purchaser's solicitors confirmed that there had been a sale by Mrs T and in February 2001 £15,000 had been received into their client account on her behalf. They also confirmed that she had earlier bought the reversionary interest in her property for £8,000.
10. Mrs T was contacted and her daughter confirmed that her mother had received £5,163.75 and that was the full amount due to her. As at June 2001 there was a balance on the ledger of Mrs T's client account of £8,949.12. The Respondent's former partner believed that £8,000 of that balance was the money the Respondent took from Mr H's account.
11. In July 2003 £5,000 was debited from Mrs T's account. The cheque book stub was completed by the Respondent to record a further payment to Mrs T. A copy of the cheque demonstrated that it was paid to another client, Mr MS.

12. The Respondent admitted that he had paid the money to Mr MS as compensation because he had made an error on Mr MS's matter.

The Submissions of the Applicant

13. It was the Applicant's own partner who had reported his transgressions to The Law Society.
14. He had been guilty of serious delays in the conduct of client's conveyancing business. He had utilised moneys held in client account to complete property purchases when insufficient moneys were held on behalf of the clients concerned. This meant that there were breaches of the Solicitors Accounts Rules. Further the Respondent had not complied with instructions and had been in breach of undertakings to redeem existing charges, loans and mortgages before completing new advances.
15. The Respondent had been guilty of dishonesty when he had utilised one client's money for the purposes of another unconnected client.
16. The Respondent had misappropriated client money for the benefit of third parties. He deliberately tried to conceal his actions by, for example, incorrectly completing ledgers as in the transfer of £8,000 to a deposit account on the Mr H file and by incorrectly completing cheque book stubs as in the payment of £5,000 to Mr MS from Mrs T's account.
17. The actions of the Respondent had been calculated, deliberate and premeditated so as to avoid detection. The money owed to Mr H would not have been discovered unless he had come forward. The Respondent had used Mr H's money for the benefit of Mr MS. There was a loss to Mr H which the Respondent's former partner had had to make up.
18. The Respondent's conduct in these respects was dishonest.

The Submissions of the Respondent

19. The Respondent admitted the allegations. This was a truly sad case. The Respondent recognised that he would be excluded from the profession of which he had been a member since 1976.
20. The Respondent's failure to provide explanation to The Law Society had not been deliberate or wilful. He simply found himself unable sufficiently to understand why he acted as he did.
21. The Respondent was a quiet and unassuming man. He had become a partner in the firm but had very modest drawings as an equal partner in what was supposedly a successful practice.
22. The Respondent was a conveyancer and undertook all of the conveyancing work in the practice. The Respondent had been subjected to pressures from clients and although all solicitors were supposed to be robust some could not stand up to pressure.

23. The Respondent's marriage had broken down in 2003 and it was believed that that was a turning point. The Respondent had lost his house and was living in rented accommodation. He had been able to maintain contact with his two children aged 15 and 16.
24. In January of 2005 the Respondent had been adjudicated bankrupt because he had not filed his tax returns. It had not been his intention to evade the payment of tax but his failures represented part of his general slide downwards.
25. The Respondent had worked since then for another solicitor with the consent of The Law Society. That solicitor had written a glowing reference and the Tribunal was invited to give it due weight.
26. The Respondent had sought psychological assistance and had undertaken a course of six counselling sessions. His depression had played a large role in the events.
27. The Respondent had not masterminded any elaborate fraud and there had been no real attempt on his part to hide what he had done. He had admitted his wrongful behaviour.
28. The Respondent's conduct in this respect had been wholly out of character and was likely to have had its roots in depression attributable to the breakdown of his marriage.
29. The Respondent had come bitterly to regret that he had not found the strength of character to stand up to the client who had put him under considerable pressure. It might, of course, have been the Respondent's weak personality that had attracted Mr R to instruct him as someone that he could manipulate and bully.
30. The Respondent did not know what he was going to do in the future.

The Findings of the Tribunal

31. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
32. The Tribunal found the Respondent to have been dishonest where he used one client's money for the purposes of another and deliberately attempted to conceal what he had done. In making that finding the Tribunal applied a high standard of proof and the combined test in *Twinsectra v Yardley* namely that any ordinary solicitor would have considered that the Respondent's actions were dishonest and he himself could not have failed to recognise that that was the case.

The Tribunal's decision and its reasons

33. The Tribunal has a duty to protect the public and the good reputation of the solicitors' profession. Members of the solicitors' profession must be persons who demonstrate the highest standards of probity, integrity and trustworthiness. In acting dishonestly the Respondent had fallen very far short of those high standards and it was right that the Tribunal should fulfil its important duties by ordering that the Respondent be struck off the Roll of Solicitors. It was also right that the Respondent should be

responsible for the costs of and incidental to the application and enquiry and the Tribunal further ordered him to pay those costs such costs to be subject to a detailed assessment unless agreed by the parties and such costs to include the costs of the investigation accountant of The Law Society.

DATED this 18th day of September 2006
on behalf of the Tribunal

A Gaynor-Smith
Chairman