

IN THE MATTER OF HENRY WERELABOPHIA ENDELEY, registered foreign lawyer  
AND DAVID JOHN STEVENSON AND *[THIRD RESPONDENT]*, solicitors  
*[NAME REDACTED]*

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A Gaynor-Smith (in the chair)  
Miss T Cullen  
Mr P Wyatt

Date of Hearing: 5th February 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 Ian Ryan, solicitor and partner in the firm of Bankside Law, Solicitors of Thames House, 58 Southwark Bridge Road, London, SE1 0AS on 28<sup>th</sup> November 2005 that Henry Werelabophia Endeley (First Respondent) registered foreign lawyer of, London, SE18, David John Stevenson (Second Respondent) of, London, NW4 and (Third Respondent), solicitors of, Plaistow, London, E15 may 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.

On 23<sup>rd</sup> June 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 against the Respondents were that they had been guilty of conduct unbefitting a registered foreign lawyer and a solicitor, respectively, in each of the following particulars:

In respect of the First and Second Respondents

- (i) that they failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules);
- (ii) that they allowed clients' money to be paid into office account in breach of Rule 15(1) of the 1998 Rules;
- (iii) that they failed to provide clients with written notification of costs as required by Rule 19(2) of the 1998 Rules;
- (iv) that they utilised clients' money for their own benefit;
- (v) that they failed to ensure compliance with the 1998 Rules in breach of Rule 6 of those Rules.

In respect of the First Respondent alone

- (vi) that he wrote a misleading letter to a client;
- (vii) that he acted in a situation where his interests conflicted with those of a client;
- (viii) that he misled the court on three occasions.

In respect of the Second Respondent alone

- (ix) that he delayed unduly in the conduct of professional business.

In respect of the First and Third Respondent

- (x) that they failed to keep accounts properly written up for the purposes of Rule 32 of the 1998 Rules;
- (xi) that they failed to carry out reconciliations as required by Rule 32(7) of the 1998 Rules.
- (xii) that they failed to comply promptly or at all with a Direction made by an Adjudicator of The Law Society acting pursuant to delegated powers.

A further application was made on 28<sup>th</sup> November 2005 that a direction be made that a direction of an Adjudicator of The Law Society made on 5<sup>th</sup> September 2005 for the payment of compensation pursuant to paragraph 21(c) of Schedule 1A of The Solicitors Act 1974 be enforced as if it were contained in an Order made by the High Court pursuant to paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.

The applications were heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 5<sup>th</sup> February 2007 when Mr Ian Ryan appeared as the Applicant. The First and Second Respondents did not appear and were not represented. The Third Respondent appeared and was represented by Mr David Morgan.

The evidence before the Tribunal included the Reports of The Law Society's Forensic Investigation Unit ("FIU") dated 19<sup>th</sup> March 2004 and 23<sup>rd</sup> December 2004 and the admissions of the Third Respondent in respect of allegations (x) and (xi). The Third Respondent also gave oral evidence to the Tribunal and produced testimonials.

At the outset of the hearing the Applicant sought the Tribunal's leave to withdraw allegation (viii) against the First Respondent and allegation (xii) against the Third Respondent. The Tribunal gave leave.

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

The Tribunal Orders that the First Respondent, Henry Werelabophia Endeley of Suite 101, 2 Lansdowne Road, Mayfair, London, W1J 6H0, solicitor, be Struck Off the Register of Foreign Lawyers and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,685.64. (The First and Second Respondents to be jointly and severally liable for such costs.)

The Tribunal Orders that the Second Respondent, David John Stevenson of 219 Watford Way, Hendon, London, NW4 4SL, 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 £20,685.64. (The First and Second Respondents to be jointly and severally liable for such costs.)

The Tribunal made no Order in respect of the Third Respondent.

The Tribunal Orders that the Direction made by an Adjudicator of the Law Society dated 5<sup>th</sup> September 2005 in respect of the First Respondent Henry Werelabophia Endeley for the payment of compensation to Mrs O be teated for the purposes of enforcement as if it were contained in an Order of the High Court.

**The facts are set out in paragraphs 1 to 14 hereunder:**

1. The First Respondent, born in 1959, was registered as a foreign lawyer on 2<sup>nd</sup> February 2001. The Second Respondent, born in January 1956, was admitted as a solicitor on 15<sup>th</sup> April 1980 and does not presently hold a practising certificate. The Third Respondent, born in 1965, was admitted as a solicitor on 15<sup>th</sup> September 2000 and is currently employed by Whitecross Solicitors.
2. At all material times the three Respondents carried on practice in a multi-national partnership ("MNP") under the style of Pinnacle Solicitors at 8A Hammersmith Broadway, Hammersmith, London, W6 7AL and subsequently, from 12<sup>th</sup> November 2004, at 1000 Great West Road, Brentford, Middlesex. The Third Respondent had joined Pinnacle as an assistant solicitor in August 2001. She married the First Respondent in February 2003 and in June that year she had been made a salaried partner. The Tribunal accepted that the Third Respondent in reality had continued as no more than an assistant solicitor and had not been given access to the firm's accounts or allowed properly to participate in the running of the firm.
3. The partnership had come to an end in 2004. The Second Respondent left in May 2004 and the Third Respondent in August 2004. When the Third Respondent left the

partnership, the MNP ceased and the practice became that of a foreign lawyer, the First Respondent.

4. The Law Society's Forensic Investigation Unit ("FIU"), in 2004 carried out two inspections into Pinnacle's books of accounts and produced Reports dated 19<sup>th</sup> March 2004 ("the First Report") and 23<sup>rd</sup> December 2004 ("the Second Report"). The Law Society as a consequence of the FIU's findings intervened in Pinnacle's practice on 12<sup>th</sup> April 2005.

#### Solicitors Accounts Rules ("SARs") breaches (First Report)

5. The First Report identified a cash shortage and a number of serious deficiencies with the accounts. In particular, the books of accounts had not been kept properly written up in accordance with the SARs.
6. The cash shortage arose on the matters of Mrs A (deceased) and Mr NE.
  - a) In Mrs A's case, the shortage totalled £5,722.96. There was on file no evidence that bills had been raised and delivered in support of the transfers to office account. The Second Respondent, who was also executor of the estate, when questioned about this file had said that he thought there had been further payments out and also that he did not recall billing this file. As regards a debit from the client account on 23 January 2003 with the narrative "Office" but no office side ledger entry, the First Respondent in interview said that these entries related to another client, Ms P. A bookkeeper for Pinnacles subsequently produced to the FIU a ledger relating to Ms P but admitted that the ledger had been created to answer the FIU's queries.
  - b) In Mr NE's case, the shortage was £835.20. The FIU found two copy bills on file for profit costs of £1,046.12. The ledger however showed a total of £1,985.00 had been transferred to office account between 7<sup>th</sup> February and 30<sup>th</sup> June 2003.
7. The First and Second Respondent had also in the matters of Mr D and of Mrs J allowed client monies to be paid into office account in breach of the Solicitors Accounts Rules. In Mr D's case, £4,500 was paid into office account on 4<sup>th</sup> July 2001 and the breach was not rectified until 22<sup>nd</sup> July 2002. In Mrs J's case, a deposit of £275,000 had been received in office account on 17<sup>th</sup> April 2002. On 1<sup>st</sup> May 2002, £250,00 had been transferred to client account but the remaining £25,000 had not been transferred at the time of the inspection (January 2004).

#### Writing misleading letter to a client

8. In August 2002, a mortgagee client, KMC, had complained to the firm in relation to the purchase of a property in Wealdstone. The First Respondent had replied to KMC by letter dated 3<sup>rd</sup> September 2002 in the following terms:

"We have investigated your concerns and found the necessary documents were sent to the Land Registry and all along they have told us that registration is progressing."

The FIU found no evidence of any prior application for registration or any documentation from the Land Registry in those terms and the First and Second Respondent, when asked, offered no explanation. The Tribunal was satisfied that the letter was incorrect in content and deliberately misleading.

#### Conflict of interest

9. The First Respondent in 2002 acted on behalf of Mr A in the sale of his property. On 20<sup>th</sup> December 2002 the sum of £20,396.88 was transferred from Mr A's client account to the account of a third party. The First Respondent was at that time a signatory to the latter account. The First Respondent had also given an undertaking to the third party for amounts to be paid to him from the proceeds of sale.

#### Undue delay in the conduct of professional business

10. In respect of two conveyancing matters handled by the Second Respondent, the FIU found that there had been delays in registering title after completion:
  - a) in the matter of Mr AA, completion took place on 13<sup>th</sup> February 2002 but an application to register title was not made until 28<sup>th</sup> November 2002.
  - b) in the matter of Mr RS completion took place on 21<sup>st</sup> November 2001 but an application for registration of title was not made until 11<sup>th</sup> October 2002.
11. The Second Respondent was unable to provide an explanation for the delays.

#### Solicitors Accounts Rules breaches (Second Report)

12. A second inspection took place on 24<sup>th</sup> November 2004 following termination of the partnership. The First Respondent, who continued to practise as Pinnacle Solicitors notwithstanding termination of the MNP, did not produce the books of account and admitted that the books were not up to date and that reconciliations had not been carried out since 30<sup>th</sup> November 2003.
13. The matters which were the subject of the First and Second Reports were considered by Adjudication Panels of The Law Society on 4<sup>th</sup> August 2004 and 5<sup>th</sup> April 2005 respectively and it was decided to refer the Respondents' conduct to the Tribunal and to intervene in the firm of Pinnacle Solicitors. The Tribunal however accepted that the Third Respondent had not known of the Law Society's investigations and intervention until May 2005.
14. On 5<sup>th</sup> September 2005 an Adjudicator of The Law Society directed that the firm of Pinnacle Solicitors pay compensation to a Mrs O for inadequate professional services. The First Respondent was informed of this direction by letter dated 19<sup>th</sup> April 2005. On 21<sup>st</sup> July 2005 Mrs O was granted payment from the compensation fund in the sum of £162,467.29.

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

15. The Applicant submitted that the First and Second Respondents were guilty of very serious professional misconduct. Their failure to ensure compliance with the Solicitors Accounts Rules meant the books of accounts could not be relied upon to be accurate and the FIU had been unable to give an opinion in the First Report as to the

extent to which the funds held on client account were sufficient to meet the firm's liabilities to clients at the date of the inspection. There were moreover rolling unreplaced client account shortages. The First and Second Respondents had had the benefit of clients' funds in office account (which should have been in client account) and that they thereby utilised clients' money for their own benefit. Furthermore, the First Respondent's conduct in writing a misleading letter to a client (KMC) amounted to dishonesty.

16. The First and Second Respondents' misconduct had been aggravated by a lack of co-operation throughout the disciplinary proceedings. The Second Respondent had made no response at all notwithstanding personal service of the papers on him. The First Respondent had not responded substantively. There had been difficulties too in relation to service of papers on the First Respondent. It was this unco-operative behaviour from the First and Second Respondents which in large part had caused the Applicant's high level of costs (£20,685-64).
17. The Applicant said that while the Third Respondent as a partner of the firm bore responsibility for the firm's shortcomings, it was nevertheless accepted that her role in the wrongdoing was minor. The Applicant did not seek to contest what the Third Respondent had said in evidence to the Tribunal.

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

18. Mr Morgan on behalf of the Third Respondent confirmed that the Third Respondent admitted allegations (x) and (xi) on the ground that she had been a partner of the firm at the relevant time. Thus it had been her responsibility to ensure the firm's compliance with the Solicitors Accounts Rules 1998. The Third Respondent had however been in an invidious position given that the First Respondent and senior partner of the firm was also her husband. Mr Morgan said that marriage within the African context, as in this case, was set within cultural constraints. A wife in these circumstances was under the control and leadership of her husband and thus the Third Respondent had not had access to the firm's books of accounts. The Third Respondent had had no actual knowledge of the breaches of the Rules.
19. The Third Respondent had suffered greatly in this matter in that her marriage was now over and she found herself with limited capacity to work as a solicitor because of conditions upon her practising certificate. At the moment the Third Respondent was remunerated by the firm for which she works only by way of a commission from the fee income she earns. Her current employers spoke highly of her and she had been cooperative throughout the disciplinary proceedings.

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

20. The Tribunal was impressed by the Third Respondent as a witness and found her to be transparently honest. The Tribunal accepted her evidence to it which was unchallenged by the Applicant. The First and Second Respondents had chosen not to attend the hearing or to give sworn testimony and the Tribunal accepted the findings of the Forensic Investigation Unit as set out in its Reports and supported by documents before the Tribunal. The Tribunal accordingly found the facts as set out above.

21. The Tribunal found all the allegations proved against the First and Second Respondent. The Tribunal also found the allegations against the Third Respondent proved.

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

22. The Tribunal had no hesitation in finding that the First and Second Respondents had been grossly negligent in relation to the transfer of clients' monies into office account and which they then used for their own benefit. The First Respondent moreover had written a deliberately misleading letter to a client. The test in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 was undoubtedly satisfied in respect of this dishonesty. In all the circumstances the Tribunal's decision must be that the First Respondent is erased from the Register of Foreign Lawyers and the Second Respondent is struck off the Roll of Solicitors.
23. The Tribunal was satisfied from the evidence before it that the Third Respondent was the innocent victim of the First and Second Respondents' misconduct. The Third Respondent had suffered greatly as a consequence. In the Tribunal's view, the Third Respondent deserved to have the stain upon her reputation expunged and it recommended that The Law Society review the conditions imposed upon her practising certificate. The Tribunal decided to make no Order against the Third Respondent so as to reflect her particular circumstances.
24. The Tribunal Ordered that the First and Second Respondent be jointly and severally liable for the costs in this matter fixed in the sum of £20,685.64.
25. The Tribunal further Ordered that the Direction made by an Adjudicator of The Law Society dated 5<sup>th</sup> September 2005 in respect of the First Respondent for the payment of compensation to Mrs O be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

DATED this 22nd day of March 2007  
on behalf of the Tribunal

A Gaynor-Smith  
Chairman