

IN THE MATTER OF BARRY LUKE DAMIAN YOUNG, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R J C Potter (in the chair)
Mr A G Gibson
Mr D E Marlow

Date of Hearing: 19th October 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 Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack, Roscoe & Coleman, solicitors of 70 Marylebone Lane, London, W1U 2PQ on 13th February 2006 that Barry Luke Damian Young, solicitor, formerly of Eastcliff House, 5 Eastcliff, Preston, Lancashire PR1 3JE but then of Los Altos, Orihuela Costa, Alicante, 03189, Spain 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.

At the hearing the Tribunal was notified that the current address of the Respondent was in Algoz, Portugal.

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

- a) between May 2005 and July 2005 that he failed to act in the best interest of his clients by going to Spain and leaving his practice without an appropriately qualified supervisor in charge of his practice in breach of Practice Rule 1 of the Solicitors Practice Rules 1990;

- b) that he attempted to mislead The Law Society's investigator by stating that he had attended his practice and supervised staff despite being in Spain between May 2005 and July 2005 in breach of Practice Rule 1 of the Solicitors Practice Rules 1990;
- c) that he failed to supervise properly, or at all, non-qualified staff engaged on the Respondent's business in relation to conveyancing work in breach of Practice Rule 13 of the Solicitors Practice Rules 1990;
- d) On or about 25th July that he abandoned his practice and his clients following his exclusion from his office premises in breach of Practice Rule 1 Solicitors Practice Rule 1 of the Solicitors Practice Rules 1990;
- e) that he overcharged clients by claiming as a disbursement for local searches an amount in excess of that charged to the firm by the company carrying out searches and in breach of Practice Rules 1 and 15 of the Solicitors Practice Rules 1990;
- f) that he failed to avoid conflicts of interest in conveyancing, property selling and mortgage related services in breach of Practice Rule 6 of the Solicitors Practice Rules 1990;
- g) that he failed to comply with the Solicitors' Introduction and Referral Code 1990 including a failure to maintain a record of agreements for the introduction of work and disclose to clients commission fees paid to referral companies in breach of Practice Rules 1 and 3 of the Solicitors Practice Rules 1990;
- h) that he failed to act with independence or integrity in his representation of Mrs B and by drafting an agreement between Mrs B and his brother without advising either Mrs B to seek or consider seeking independent legal representation and/or advice in breach of Practice Rule 1 of the Solicitors Practice Rules 1990;

AND THAT the Respondent failed to comply with the Solicitors' Accounts Rules 1998 in each of the following particulars, namely:

- a) that he failed to keep proper accounting records in breach of Rule 32 of the Solicitors Accounts Rules 1998;
- b) that he failed to ensure compliance with the Rules in breach of Rule 6 of the Solicitors Accounts Rules 1998;
- c) that he failed upon discovery to remedy a shortage of money in client accounts in breach of Rule 7(1) of the Solicitors Accounts Rules 1998;
- d) that he improperly withdrew client money from his designated client account in breach of Rule 22 of the Solicitors Accounts Rules 1998;
- e) that he failed to comply with Rule 23 of the Solicitors Accounts Rules 1998 with regard to arrangements for the withdrawal of client account monies;

- f) that he failed to deliver or alternatively delayed in delivering to The Law Society, Accountant's Reports for the periods ending 31st March 2004, 30th September 2004 and 31st March 2005 contrary to s. 34 of the Solicitors Act 1974 and the Solicitors Accounts Rules 1998 made thereunder.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 19th October 2006 when Robert Simon Roscoe appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent.

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

The Tribunal Orders that the Respondent, Barry Luke Damian Young of 412 Dream Hills, Los Altos, Orihuela Costa, Alicante 03189, 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 £15,000 inclusive.

The facts are set out in paragraphs 1 to 23 hereunder:

1. The Respondent, born in 1963, was admitted as a solicitor in 1994.
2. The Respondent was a sole practitioner in practice as Young & Co, solicitors, of Eastcliff House, 5 Eastcliff, Preston, Lancashire, PR1 3JE.
3. On 29th March 2005 an Investigation Officer of The Law Society ("the IO") attended the Respondent's practice for the purpose of inspecting his books of account and other documents.
4. The IO produced a written Report dated 8th July 2005 which was before the Tribunal. That Report revealed the following matters.
5. Following the commencement of the IO's inspection on 29th March 2005, he had further meetings with the Respondent at the firm's offices on 27th April 2005 and 4th July 2005. He also attended the firm's offices on 30th June 2005 when he ascertained the Respondent was away from the premises and was told that he was abroad.
6. The Respondent's practice did not appear to have been supervised since the Respondent's departure in mid May 2005.
7. At the second meeting on 4th July, the Respondent confirmed that he had been away from the office in Spain from 19th May 2005 until 2nd July 2005. He told the IO that during his period away he had contacted an unadmitted fee-earner, Ms B, and he had maintained contact with Ms B by telephone. He had returned to England three or four times and had visited the firm's office, not only during office hours but also at weekends. A local solicitor had agreed to supervise the Respondent's practice in his absence. That solicitor denied this.

8. On 18th May 2005 whilst employed by the Respondent, an unadmitted conveyancing executive, Ms Mc, exchanged contracts using The Law Society's Formula B on behalf of a client of the Respondent in respect of the sale of property. In breach of the undertaking inherent in Formula B, the Respondent's firm failed to send the signed contract to the purchaser's solicitor, despite requests for the same being made.
9. The Respondent obtained conveyancing local searches through a private firm, the Property Search Group (PSG). The Respondent charged clients at the full rate for Local Authority searches but paid PSG at a discounted rate. Clients were not informed of this arrangement and the Respondent retained the difference. Between June 2004 and February 2005 the Respondent made a profit of £3,252.10 in this manner.
10. The Respondent had been instructed to act on behalf of Residential Funding to obtain security for monies advanced to clients in respect of property transactions. The IO noted that the Respondent had in four transactions obtained searches through PSG contrary to GMAC general instructions.
11. The Respondent had arrangements with three firms to pay fees for client referrals in conveyancing matters. He accepted that he had breached the Solicitors Introduction and Referral Code 1990.
12. On 22nd July 2005 and thereafter The Law Society was contacted by various clients of the firm and by other solicitors. All made various complaints including one that the Respondent's office was locked, that post was accumulating and that telephone calls were not answered. The Law Society established that the Respondent had abandoned his practice. On 29th July 2005 the Adjudication Panel of The Law Society resolved to intervene in the Respondent's practice. The Respondent acknowledged the position by email on 1st August 2005.
13. In 2003-2004 the Respondent acted for Mrs B in the sale of her fish and chip shop business. All contact between Mrs B and the Respondent took place by telephone or letter. Mrs B had found a prospective buyer who was keen to proceed with his purchase. The Respondent advised Mrs B that he had doubts about the ability of the prospective purchaser to honour the terms agreed between the prospective purchaser and Mrs B. As a result of that advice Mrs B declined to proceed with that sale.
14. After the purchase did not proceed, the Respondent told Mrs B that he had a friend who was interested in purchasing the business. Mrs B instructed the Respondent to agree terms for the sale. Two weeks before the matter was to be concluded the Respondent admitted to Mrs B that 'the friend' was in fact his brother Mr LY.
15. At about the same time, the Respondent told Mrs B that Mrs LY did not, after all, have the ability to complete on the terms that had been provisionally agreed but that he could arrange for Mr LY to run the business and make payments over a period. Mrs B was anxious to resolve the matter as she had made arrangements on the basis that the matter would be completed so she acceded to the Respondent's proposal and instructed him to draw up an agreement between herself and Mr LY.

16. Mr LY did not make a success of the venture and defaulted on the agreement.
17. There was no evidence that the Respondent acted for his brother, Mr LY, in the transaction. Further, there was no evidence that Mr LY was represented separately or at all. The Respondent did not inform or advise Mrs B of the conflict of interest in his continuing to act as her solicitor when encouraging her to enter into a transaction with his brother in negotiating the transaction on her behalf and in drawing up the agreement between her and Mr LY. The Respondent did not suggest that Mrs B might seek independent legal advice at any stage. He did not advise her to do so.
18. The Respondent had failed to deliver Accountant's Reports on a timely basis on the occasions set out in the FIO's Report.
19. The Respondent had held and continued to hold client monies. The Respondent's client ledger was not fully written up and his records and reconciliations were incomplete. The Respondent was unable to provide the FIO with a reconciliation statement or a list of client liabilities.
20. The Respondent had operated a miscellaneous client ledger account in the name of "Young and Co" between 13th December 2003 and 16th November 2004 in breach of Rule 32(16)SAR 1998.
21. The FIO adjourned his inspection until 27th April 2005 and to 30th June 2005 to allow the Respondent time to complete his client account reconciliations. The IO had been unable to place reliance on reconciliations produced by the Respondent because of the inadequacy of the bookkeeping which included duplications.
22. Staff responsible for maintaining the books of account during the Respondent's absence from the practice were unaware of their obligations and the Respondent was in breach of Rule 6 SAR 1998.
23. The IO ascertained a minimum cash shortage of £4,115.24 on client account. This shortage was partially rectified by the Respondent.

The Submissions of the Applicant

24. The Respondent admitted all of the allegations. The Respondent had been guilty of breaches in two areas, namely the Practice Rules and the Solicitors Accounts Rules.
25. The Respondent had misled The Law Society's Forensic Investigation Officer by indicating that a local solicitor was supervising his practice while he was abroad when that had not been the case.
26. The Applicant did not allege that the Respondent had been dishonest but rather that his practice had been run in an unsupervised and haphazard fashion.
27. The Applicant sought the costs of and incidental to the application and enquiry to include the costs of the Forensic Investigation Officer in the sum of £15,000. The Respondent agreed to be responsible for those costs.

The Submissions of the Respondent

28. The Respondent fully appreciated the magnitude and seriousness of the matters alleged against him. He found himself embarrassed. He had tried to cooperate with The Law Society and its representative in any way possible and had admitted the breaches alleged at the earliest opportunity.
29. The Respondent had had an unhappy experience in an earlier partnership. He had set up in practice on his own deciding to undertake conveyancing at a time when the property market took off and his small firm was in receipt of a great many instructions from conveyancing clients. He had also become involved in an internet business about which he had known little. His naivety in that respect had caused financial problems and the Respondent had entered an IVA. The reality was that he had lost control.
30. With regard to the specific matters alleged, the Respondent had not intended to mislead the IO. At a time when he had lost everything he had given what he described as a “knee jerk” answer to the question asked of him. He regretted that very much. He had on an earlier occasion made arrangements with a local solicitor to cover his practice during his absence.
31. The Respondent accepted that in the matter of Mrs B and his brother there was a potential conflict of interest. His brother was a chef and that was why he had been interested in the business. The Respondent had suggested that his brother take formal advice. It transpired that he had not been in a position to buy out Mrs B. Mrs B and the Respondent’s brother met and it had been agreed that the brother would run the business for one year and then possibly buy it. The Respondent had not been involved in those negotiations. The arrangement had not worked out and in due course Mrs B and her family had been convicted of deception of The Benefits Agency. It was only at that time that the Respondent and his brother realised the calibre of those individuals.
32. The Respondent had taken the opportunity of work in Spain when it had been offered to him and at the time of the hearing was working in Portugal. He had flown back from Portugal to attend the hearing to demonstrate how seriously he took the matter.
33. The Respondent had taken a degree by studying part-time at law school and being a solicitor was very important to him. He had put in a great deal of hard work in order to qualify.
34. When the Respondent opened his own practice it was successful and if he had stuck to that practice and not become involved in any other business, he did not believe the breaches would have occurred.

The Findings of the Tribunal

35. The Tribunal found the allegations to have been substantiated, indeed they were not contested.

Previous Findings of the Tribunal

36. Following a hearing on 5th July 2005 the Tribunal found the following allegations to have been substantiated against the Respondent:

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

- i) He failed to deliver the Accountant's Report for the firm of Young & Co for the year ending 31st March 2003 to The Law Society, as required by the provisions of Section 34 (1) and (2) of the Solicitors Act 1974 (as amended).
- ii) He had failed to comply with a decision of an Adjudicator dated the 14th May 2004.

37. In its Findings dated 5th August 2005 the Tribunal said:

- “11. The Tribunal noted that the Respondent's accountants had not been able to provide an Accountant's Report for the year ending March 2003 because of lost accounting documentation. It seemed entirely possible that this situation was not capable of rectification. The Accountant's Reports relating to subsequent periods were not placed before the Tribunal but were said to be qualified. As The Law Society had inspected the Respondent's books of account and discovered no serious breaches, the Tribunal made the assumption that the qualification of the filed Reports was caused by the fact that the reporting accountants were not in a position to vouch for opening balances.
12. The Tribunal accepted that the Respondent's bookkeeper had lost important accounting documents, the absence of which prevented his reporting accountants from making the appropriate Report. The Tribunal also noted that the Respondent had supplied details of his circumstances to The Law Society when required to do so. The Respondent had accepted his accountant's advice and the accounts had been reconciled up to the end of September 2004. The positive difference between the cash at bank and the total of client ledgers had been recorded in a suspense account and the accounting process had started afresh from the beginning of October 2004. The Respondent considered the positive balance probably related to the non-transfer of costs to which the firm was entitled.
13. The Respondent appeared to have taken his responsibility for the keeping of accounts seriously and had done what he could to deal with the outstanding issues.
14. In the particular circumstances of this case the Tribunal concluded that the Respondent should be reprimanded. The Applicant had sought the costs of and incidental to the application and enquiry and the Tribunal ordered the Respondent to pay the Applicant's costs in the fixed sum of £928.00. The Tribunal further ordered that the Respondent should file six monthly

Accountant's Reports until such time as The Law Society considered that that was no longer necessary.

15. The Tribunal wished to make it plain that should the Respondent have allegations substantiated against him on a future occasion he might not expect to be treated so leniently."

The Tribunal's decision and its reasons

38. The Tribunal noted that dishonesty had not been alleged against the Respondent but the Respondent had admitted a raft of allegations relating to a catalogue of failure on his part to conduct himself properly as a solicitor. The misleading of The Law Society's Forensic Investigation Officer was serious as was the making of what amounted to a secret profit in charging more for conveyancing searches than the Respondent had paid. The Respondent had not treated Mrs B as she had been entitled to expect. The Solicitors Accounts Rules breaches and cash shortage were also serious matters and the Respondent had abandoned his practice causing anxiety, distress and potential cost to clients and other persons. The Tribunal had also taken into account the fact that the Respondent had on an earlier occasion had allegations of a broadly similar nature substantiated against him. An indication was given on that occasion that he might not expect to be treated as leniently should he be brought before the Tribunal again.
38. In order to protect the public and maintain the good reputation of the solicitors' profession in all of the particular circumstances the Tribunal concluded that it was both appropriate and proportionate that the Respondent be struck off the Roll of Solicitors. He had agreed the quantum of the costs sought by the Applicant, although the Respondent was subject to an IVA, but in those circumstances the Tribunal concluded that it would be appropriate that the Respondent should pay the Applicant's costs and the Tribunal fixed those costs in the agreed sum.

Dated this 22nd day of November 2006
on behalf of the Tribunal

R J C Potter
Chairman