

IN THE MATTER OF COLIN AREND JONGMAN, 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 Michael Robin Havard, solicitor and partner in the firm of Morgan Cole Solicitors of Bradley Court, Park Place, Cardiff, CF10 3DP on 23rd February 2006 that Colin Arend Jongman of Llangynwyd, Maesteg, 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 and/or as stipulated in breach of the Solicitors Practice Rules 1990 in each of the following respects, namely that:-

- 1) He conducted himself in a manner which compromised and impaired his integrity contrary to Rule 1(a) of the Solicitors Practice Rules 1990;
- 2) He conducted himself in a manner which was likely to compromise or impair his good repute and that of the solicitors' profession contrary to Rule 1(d) of the Solicitors Practice Rules 1990;

- 3) He acted in a deceitful way contrary to his position as a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Michael Robin Havard appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent and a Certificate of Conviction handed up at the hearing. The Respondent handed up a bundle of references written in support of him.

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

The Tribunal Orders that the Respondent Colin Arend Jongman of Ffordd-y-Gyfraith, Cefn Cribbwr, Bridgend, 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 £3,369.44 inclusive.

The facts are set out in paragraphs 1 to 5 hereunder:-

1. The Respondent, born in 1954, had been admitted as a solicitor in 1979. The Respondent was employed as a consultant with a firm of solicitors at Bridgend.
2. Having been adjudicated bankrupt, the Respondent completed a bankruptcy preliminary information questionnaire and when invited to provide details of “any other property or possessions of any description in any other parts of the world” the Respondent replied “none”.
3. At the time he completed the questionnaire the Respondent had an interest in an apartment property in Spain held in the joint names of himself and his wife.
4. The Respondent explained that he considered the property to be exclusively that of his wife. She had provided almost all of the purchase money. The property was held in the joint names of the Respondent and his wife to enable them to secure a mortgage advance on the property.
5. Since the date of the application the Respondent had been convicted of the offence of failing to make a material disclosure in bankruptcy proceedings at Llanelli Court in July 2006 and by way of sentence was fined £3,000.

The Submissions of the Applicant

6. The Respondent accepted that the behaviour on his part about which complaint had been made had been wrong. Since the making of application, the Respondent had been convicted in the Magistrates Court of offences under the Insolvency Act. The offence was not one of strict liability.

The Submissions of the Respondent

7. The Respondent had always practised in the field of criminal law both as a defence solicitor and working for the CPS. The Respondent had worked extremely hard to build up a small practice combining criminal work with family and personal injury cases. The long hours of work caused a strain on his family life. When the chance came to move to South Wales to become a salaried partner with a large Cardiff firm the Respondent sold up and moved. That position did not work out. The Respondent's then wife had been working as a "paralegal" in the area and they decided they would combine to start up a new firm in Bridgend concentrating initially on legal aid work at the lower end of the market. Again the Respondent had worked very hard and the firm had expanded into a successful practice.
8. The Respondent's former wife, under stress of work and domestic problems, had begun to drink to excess. That coincided with a large increase in the Respondent's workload with the implementation of legal aid franchising requirements.
9. By the end of 2000 things at home were getting worse and the Respondent remained stressed trying to keep up with client work and the firm's financial problems.
10. The Respondent's wife's behaviour caused difficulties.
11. The Respondent and his wife agreed with a firm of solicitors, KTP, that they would take over the work of his own firm and he would become a consultant.
12. The Respondent and his wife had in about 1998 discussed buying a property abroad as a way of trying to save their marriage or alternatively as a place for her to live on extended holidays while the Respondent was working. Mrs Jongman had saved about £40,000 which she wished to invest in the property abroad. Arrangements were made to buy a flat on the Costa Blanca at the cost of about £60,000. After buying the property, paying legal fees and furnishing it, it was decided that Mrs Jongman would need a mortgage of about £30,000. The Respondent had wanted no part in the actual purchase as none of the capital had been his, and it was always to be Mrs Jongman's apartment. A local Spanish bank would provide such mortgage assistance only if the Respondent's name was included on the title to the property.
13. When two or three years later Mrs Jongman and the Respondent reached agreement as to the disposal of their joint capital the apartment was not included as the Respondent had always seen it as her exclusive property. The Respondent had instructed a Spanish attorney to deal with the property in accordance with Mrs Jongman's instructions and on the basis that he would not receive any proceeds of sale.
14. The Respondent's financial situation deteriorated and he found himself owing Income Tax and VAT. He was adjudicated bankrupt in March of 2002.
15. Within a few days of the order for bankruptcy the Respondent was required to attend at the office of the Insolvency Service in Cardiff. He had been asked to help to complete a form setting out his assets and liabilities. He had been made aware of the need to be full and frank and indeed he realised in advance that he would be asked about property in which he had an interest. He had not been aware that Mrs Jongman had sold the apartment and appreciated that he needed to declare his interest as a legal

owner of the property even though he did not hold any beneficial interest that could be realised by his trustee in bankruptcy.

16. The Respondent said that had he declared the property he knew that would result in Mrs Jongman receiving a claim for the flat to be sold and part of the net proceeds to be paid over to the Respondent's trustee and because of the volatility she had shown in the previous years he believed that she would seek to set aside the financial agreements they had reached and return to South Wales. She would have attempted to stir up trouble with his employers (she had already threatened to do this) and return to live in the matrimonial home. That would have destroyed the fragile degree of normality which the Respondent had achieved at home and disrupt his efforts to sell the house.
17. He foolishly made the decision to keep quiet about the Spanish apartment. That failure to declare was repeated when he went to see his trustee in bankruptcy and the Respondent accepted that at no time until February 2005 did he advise them that he was a legal part-owner of the Spanish apartment.
18. The Respondent did not make that decision for personal financial gain. He believed there was no likelihood that his estate in bankruptcy would be successful in a claim for a share of the sale proceeds of the flat. He also made the decision not to declare at a time when he was in a state of emotional turmoil following the breakdown of his marriage in very trying circumstances and his personal bankruptcy which would change his status for a very long time.
19. Nearly three years had passed before the Respondent was served with a Court Order staying the automatic discharge of his bankruptcy. He immediately confirmed that he had a legal interest in the Spanish property and immediately filed an affidavit in the local County Court confirming the facts.
20. As a result of his failure to disclose the details of the Spanish property the Respondent had been convicted upon his guilty plea in July 2006 by Llanelli Magistrates Court of an offence of failing to make a material disclosure in bankruptcy proceedings. The Court imposed a fine of £3,000. The Respondent appreciated that he had been dealt with leniently.
21. The Respondent had lost his good character which itself was a significant punishment at his age.
22. The Respondent remained bankrupt and would remain so until the outcome of the proceedings in the Spanish courts in respect of the flat.
23. The Respondent had been adversely affected by his continuing bankruptcy and, in particular, money left to the Respondent by an uncle with the intention of enabling the Respondent to rebuild his life was likely to be taken by his trustee in bankruptcy.
24. The Respondent had been fortunate to have employers prepared to stand by him.

25. If the Respondent was not able to work he faced an uncertain future. At 52 years of age with no training other than that of a solicitor it would not be easy to obtain work, particularly with a conviction and continuing bankruptcy. The Respondent had a new partner who had suffered emotionally as a result of what had happened and as a couple they were largely dependent on the Respondent's income. The Respondent was fortunate that his partner had stood by him.
26. In all the circumstances the Respondent asked the Tribunal to deal with him leniently.

The Tribunal's Findings

27. The Tribunal found the allegation to have been substantiated, indeed it was not contested.

The Tribunal's Decision and its Reasons

28. The Tribunal found this to be a very sad case. The Tribunal accepts that the Respondent behaved with the lack of probity and integrity required of a solicitor. The Tribunal accepts that he behaved in such a way when he was under substantial pressure. The Tribunal gave the Respondent credit for the fact that he had fully cooperated with his trustee in bankruptcy when his omission had been discovered, he had pleaded guilty at the Magistrates Court and had cooperated fully with the Law Society. The Tribunal noted that the Respondent had practised as a solicitor over a long period and had hitherto enjoyed an unblemished career. The Tribunal also took into account the testimonials written in support of the Respondent which spoke highly of his character and ability.
29. The Tribunal considered very carefully the mitigating factors put forward by the Respondent. The Tribunal was in no doubt that at the material time the Respondent had been subject to considerable pressure. Although what he did amounted, as he himself accepted, to an act of dishonesty the Tribunal was of the view that in difficult circumstances the Respondent had acted on a single occasion in a manner that was out of character.
30. Despite taking the mitigating factors into account, the Tribunal could not escape a finding that what the Respondent did was serious and he had committed an act of dishonesty. A solicitor who behaves in that way inevitably seriously impairs the good reputation of the solicitors' profession and the confidence of the public in that profession as being one which adheres to the highest standards of probity, integrity and trustworthiness. The Tribunal concluded that the Respondent was not a danger to the public but in order to preserve the good reputation of the solicitors' profession it was both right and proportionate that the Respondent be struck off the Roll of Solicitors. The Respondent accepted liability for the Applicant's costs and agreed the inclusive figure sought by the Applicant. The Tribunal therefore made an order that the Respondent pay the Applicant's costs in the agreed fixed sum.
31. The Tribunal recognised that the Respondent is a solicitor with considerable experience, in particular in legally aided criminal work. The Tribunal acknowledged the Respondent's explanation that there is a shortage of such solicitors in the area in

which he practised and, indeed, it had been difficult to recruit young solicitors to the Duty Solicitor Scheme. The Tribunal recognised that the Respondent's misconduct occurred on a single occasion, was out of character and had occurred in the face of considerable emotional and other pressures. The Tribunal took into account that the Magistrates dealt with the Respondent leniently having considered the appropriate penalty to be a fine. Although the Tribunal did not intend these remarks to be binding on the Law Society, it considered that in such circumstances this is a case where the Law Society could give favourable consideration to the employment of the Respondent in an appropriate solicitor's firm given such safeguards as the Law Society might require.

Dated this 4th day of December 2006
On behalf of the Tribunal

R J C Potter
Chairman