

IN THE MATTER OF DONNA ROBERTS,
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J R C Clitheroe (in the chair)
Mr J P Davies
Mrs V Murray-Chandra

Date of Hearing: 6th 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 Gerald Malcolm Lynch, solicitor and consultant to the firm of Drysdales of Cumberland House, 24-28 Baxter Avenue, Southend-on-Sea, Essex, SS2 6HZ on 9th March 2006 against Donna Roberts that an Order be made by the Tribunal directing that as from a date as specified in such Order no solicitor, Registered European Lawyer or Incorporated Solicitors Practice should except in accordance with permission in writing granted by The Law Society for such periods and subject to such conditions as the society might think fit to specify in the permission, employ or remunerate in connection with his/her practice as a solicitor, Registered European Lawyer or member, director or share-owner of an Incorporated Solicitors Practice, the person with respect to whom the Order is made or that such other Order might be made as the Tribunal should think right.

The application was made upon the following basis:

- (a) whilst in the employ of Messrs Hill Dickinson, solicitors, the Respondent dishonestly alternatively improperly withdrew upon application monies alleged to be required in the payment of Court fees and disbursements on clients' affairs where either no Court

proceedings were issued or where fees had already been discharged by way of cheque;

- (b) included monies improperly so drawn in accounts rendered for payment to clients.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 6th July 2006 when Gerald Malcolm Lynch appeared as the Applicant and the Respondent did not appear and was not represented.

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

The Tribunal Orders that as from 6th day of July 2006 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Donna Roberts of Moreton, Wirral a person who is or was a clerk to a solicitor and the Tribunal further Orders that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties.

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

1. At all material times the Respondent was in the employ of Messrs Hill Dickinson carrying on business at 2 Derby Square, Liverpool as an unqualified clerk in the Debt Recovery Department. The employment had lasted for a period of years. She was dismissed by the firm for gross misconduct on 8th May 2002.
2. On 15th April 2005 Messrs Hill Dickinson wrote to The Law Society to report the alleged wrongdoing of the Respondent and her dismissal. The delay in the report was caused by a police investigation although no police prosecution was pursued. The grounds for dismissal arose out of evidence indicating that the Respondent could not explain cash withdrawn and which totalled £28,170 in the period of five years prior to her dismissal.
3. The letter reporting the circumstances was accompanied by a summary of an investigation into Court fee discrepancies. The report identified the following matters of concern:
 - (a) the Respondent consistently claimed Court fees in cash by the completion of a purple slip giving details of the matter to which the Court fee applied, presented the said slip to the firm's cash office and received the cash. The petty cash administrator would then post the purple slip for the relevant matter. The slip carried the signature of a partner in all cases, the partner in the vast majority being Mr B. The intention was that the fee should then be paid over to the Court and a receipt obtained which would go on the file. The fee would then be billed to the client and payment received in due course.
 - (b) Appendix 1 to the report indicated a monthly profile of cases going back to February 1997 where Court fees had been paid out to the Respondent in cash. Not all the files were available but those that were were investigated. As a

result it was ascertained that clients had been charged a total of £10,295 improperly, a breakdown of which was exhibited in Appendix 3 to the report. There was also an analysis of how the gross figure indicated had been broken down.

4. On 28th April 2005 The Law Society wrote to Messrs Hill Dickinson for further information as a result of which the firm confirmed that the Respondent had commenced employment in March 1992 and had progressed to the position of trainee legal executive in the Debt Collection Department where she had the day-to-day running of that department with one other member of staff reporting to Mr B. There had been two disciplinary meetings held in April and May 2002. The cash withdrawals had operated only in respect of office account and none were in relation to client account.
5. The relevant partner, Mr B had made a statement to the police, a copy of which was before the Tribunal. It set out in detail the way in which the Debt Collection Department operated and the degree of responsibility invested in the Respondent. It confirmed that in February 2002 the Respondent had started maternity leave and in late March the person undertaking her work noticed that there were inexplicable aged disbursements showing on the system. A file was reviewed and an inexplicable cash withdrawal was found. An investigation therefore took place regarding matters upon which cash had been drawn by the Respondent. All necessary checks and counterchecks were made. Annexed to Mr B's statement was a spreadsheet identifying 255 occasions from August 1997 to January 2002 of withdrawals of petty cash totalling £28,170 where there was no legitimate explanation. In the main, the cash request slips were on the files where the Court fee had already been paid by cheque. In many files the Respondent had billed the clients for the cash that was wrongly obtained. Where this had happened the clients had been reimbursed.
6. At a disciplinary meeting held on 29th April 2002 the Respondent was asked to explain how these matters had come about. She was unable to explain satisfactorily specific matters put to her and identified in the notes of the meeting. The Respondent denied any wrongdoing.
7. A further disciplinary hearing took place on 8th May 2002 in which the notes of the earlier meeting and the statement of Mr B and exhibits were put to the Respondent. The Respondent said that she had no comment to make and she did not know where the missing money had gone. The procedures of the department were put to her and she did not seek to deny them. Individual examples were again put to her and she made no comment.
8. It was put to her that the evidence showed that during the relevant period the Respondent had control of the relevant files and Court fees had been drawn down in cash rather than by cheque when this was unnecessary. The Respondent had completed the account slips and drawn cash, in some cases when proceedings had already commenced by cheque, or when no proceedings were issued. There was no purpose or justification in drawing the cash and each withdrawal had been made by the Respondent. The cash had gone and the Respondent was asked for an explanation. The Respondent said that she had no explanation whatsoever. The Respondent was told that in the circumstances it appeared that there was evidence of

misappropriation of funds and that on the balance of probabilities she was guilty of misconduct and should be summarily dismissed. She had nothing to say. Rights of appeal were explained to her.

9. On 8th May 2002 the employment partner of Hill Dickenson wrote to confirm the said meeting and that the Respondent was dismissed for gross misconduct. On 14th May 2002 in response the Respondent said that she would not be appealing against the dismissal but that this was not an admission of guilt. She said she had not misappropriated cash nor intended to.
10. On 17th May 2005 The Law Society wrote to the Respondent outlining the allegations and seeking an explanation. There was no response and on 30th August 2005 a further letter was sent requiring a response within 14 days.
11. On 2nd September 2005 Hill Dickinson wrote to The Law Society confirming the employment arrangements and circumstances relating to the withdrawal of cash.
12. The Law Society wrote again to the Respondent on 4th October 2005 following a telephone conversation with her. There had still been no response. A response was received by The Law Society on 17th October 2005. The Respondent said that she could not pay any costs awarded against her as she was not in employment and had re-mortgaged her house to provide Hill Dickinson a lump sum of £20,000. She denied misappropriation and the police had advised her that there would be no prosecution.

The Submissions of the Applicant

13. The Respondent had received the documentation and the Applicant had served a Notice to Admit documents and a Civil Evidence Act Notice to which no response had been received except for a letter to the Tribunal received on 19th April 2006.
14. It was clear that over a period of years substantial sums of money not utilised for the purpose for which they were obtained were drawn from the firm by the Respondent in respect of which no satisfactory explanation had been rendered. Substantial sums had been reimbursed to clients improperly charged. On her admission, although accompanied by a denial of liability, a substantial repayment of money had been made by the Respondent to the firm.
15. Although the police had not charged the Respondent it was submitted that she had dishonestly or improperly taken the money.
16. The Respondent was no longer employed in the law but in the submission of the Applicant it was appropriate for the Tribunal to make the Order and indeed the Respondent had accepted the making of the Order in her letter to the Tribunal although not admitting the allegations.
17. The Respondent had also said in her letter that she could not afford to pay costs, nevertheless the Applicant sought his costs in the sum of £2,110 inclusive. It was a matter for The Law Society whether or not they decided to enforce those costs.

The Submissions of the Respondent

18. The submissions of the Respondent were contained in her letter to the Tribunal received on 19th April 2006.
19. She stated that she would not be attending but wished the Tribunal to proceed and make the Order as she could not afford to fight. She was in receipt of incapacity benefit and could not afford costs. She did not admit to any of the allegations stating that the police had made a full search of her house and accounts and found no evidence of wrongdoing.

The Findings of the Tribunal

20. A very high standard of proof had to be met by the Applicant in order to enable the Tribunal to make a finding of dishonesty. Given that high standard of proof and the Respondent's denials, the Tribunal could not make such a finding. Nevertheless it was clear from the documentation before the Tribunal that the Respondent had refused to provide a proper explanation for what had occurred. She had denied taking the money yet had voluntarily repaid £20,000 to the firm. Her course of conduct was sufficient to satisfy the Tribunal that it was appropriate to make the Order sought in order to enable The Law Society to regulate any future employment the Respondent might seek in the law.
21. The Tribunal Ordered that as from 6th day of July 2006 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Donna Roberts of Moreton, Wirral, a person who is or was a clerk to a solicitor and the Tribunal further Ordered that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties.

DATED this 12th day of September 2006
on behalf of the Tribunal

J R C Clitheroe
Chairman