

IN THE MATTER OF ROSEMARY JOAN FORTUNE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr S N Jones (in the chair)
Mr J N Barnecutt
Ms A Arya

Date of Hearing: 14th November 2006 and 23rd January 2007

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 24th April 2006 that Rosemary Joan Fortune (formerly Baker) of Wood Green, Wednesbury, 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.

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

- (a) that she misled The Law Society by indicating at the time of enrolment as a student that she had not been convicted of an offence in any court in the UK when she knew this to be untrue and in breach of Rule 1 of the Solicitors' Practice Rules 1990.
- (b) that she misled The Law Society by indicating at the time of admission as a solicitor that she had not been convicted of an offence in any court in the UK when she knew this to be untrue and in breach of Rule 1 of the Solicitors' Practice Rules 1990.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 14th November 2006 and 23rd January 2007 when Robert Simon Roscoe appeared as the Applicant and the Respondent did not appear and was not represented.

At the commencement of the first hearing the Applicant gave details of service on the Respondent of the documentation including the date of the hearing and the Tribunal was satisfied that service had been effected.

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

The Tribunal Orders that the Respondent, Rosemary Joan Fortune of Wood Green, Wednesbury, West Midlands, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 23rd day of January 2007 and they further Order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,700.

1. The Respondent born in 1965 was admitted as a solicitor in 2002 and her name remained on the Roll of Solicitors.
2. In 2005 The Law Society and the Respondent's then employers, Sandwell Metropolitan Borough Council, both received information from an anonymous source that the Respondent had been convicted of criminal offences in the criminal courts.
3. Both to her employers, and in correspondence with The Law Society, the Respondent admitted that in January 1988 at Walsall Magistrates Court she had pleaded guilty to two offences, firstly to the theft of foodstuffs from the Asda supermarket in Darlaston for which she was fined, and secondly, for having failed to pay a taxi fare for which she was also fined.
4. On 30th March 1998 the Respondent submitted to The Law Society an application for student enrolment. Part D of the application contained a declaration of truth signed by the Respondent. The Respondent indicated in Part B of the application, question 1 that she had not been convicted of an offence in any court in the UK or elsewhere.
5. On 18th February 2002 the Respondent submitted to The Law Society an application for admission to the Roll. Part 6 of the application contained a declaration of truth signed by the Respondent. The Respondent indicated in Section 2(3) of the application, question 1 that she had not been convicted of an offence in any court in the UK or elsewhere.
6. Walsall Magistrates Court were unable to locate details of the conviction and could not provide a certificate of conviction. The West Midlands Police had not retained details of the convictions.

Hearing on 14th November 2006

The Submissions of the Applicant

7. The Applicant indicated that the Respondent had at an earlier stage participated in the proceedings and had instructed solicitors. The Applicant had made contact with those solicitors the day before the hearing and they were no longer instructed. The Applicant had served a Civil Evidence Act Notice on 3rd May 2006 to which there had been no response.
8. Both of the Respondent's convictions would have been spent by the time she came to seek enrolment with The Law Society. Both of the application forms however made clear by a superscription above the relevant box that spent convictions should be disclosed. The Respondent had misled The Law Society in respect of both applications.
9. The Tribunal was referred to the Respondent's letter to The Law Society of 21st July 2005 enclosing her statement dated 4th July 2005 in which she accepted the convictions and set out the extremely difficult personal circumstances she had been facing at the time of the convictions. The Applicant said that it was tragic, although her own fault, that after all the Respondent's hard work she was before the Tribunal. Had she disclosed the convictions to The Law Society at the relevant time it was quite possible that The Law Society would have allowed her to enrol.
10. The Applicant relied on the Respondent's admissions in relation to the convictions as he would have been unable to prove the convictions without them.
11. The schedule of the Applicant's costs had been sent to the Respondent.

The Tribunal's Finding in relation to liability

12. The Respondent had admitted the convictions and the Tribunal was satisfied from the documentation before it that the allegations were substantiated.

Preliminary Comments of the Tribunal

13. The Tribunal retired to consider the appropriate penalty but was concerned at the absence of the Respondent particularly given her earlier participation in the proceedings. The allegations were so serious that it was possible that the Respondent's ability to practise might be at risk. It appeared however from the documentation that there might have been some exceptional circumstances. The Tribunal decided that it was right to take the unusual step of standing over its decision on penalty in order to give the Respondent a final opportunity to appear before the Tribunal and make submissions in mitigation.
14. The matter was adjourned to 23rd January 2007.

Hearing on 23rd January 2007

The Submissions of the Applicant

15. The Applicant had written to the Respondent on 15th November 2006 and the Respondent could have been in no doubt of the potential seriousness of her position.
16. The Respondent had replied by letters dated 20th November 2006 and 11th December 2006 to which the Tribunal was referred. The Applicant had replied to the Respondent on 12th December but had heard nothing further.
17. The Applicant was not alleging dishonesty against the Respondent.
18. Despite the increase in costs due to the adjournment, the Applicant sought his costs only in the figure previously notified to the Respondent, namely £1,700.00.

The Findings of the Tribunal

19. The Tribunal had at the hearing on 14th November 2006 found the allegations to have been substantiated.
20. Although no dishonesty had been alleged against the Respondent the facts in this matter had greatly concerned the Tribunal. The background to this case was very unusual and the Tribunal had taken careful note of the circumstances set out in the Respondent's statement of 4th July 2005. The Tribunal would have been helped by the attendance of the Respondent but unfortunately despite the adjournment she was not present. The Respondent had indicated in her letter of 11th December 2006 to the Applicant that she was unemployed and did not intend to return to the legal profession. Without a clear explanation from the Respondent the Tribunal could not allow her to continue in practice given the seriousness of the allegations. Given the unusual circumstances of the case shown by the documentation and noting, although there was no evidence to substantiate it, from the Respondent's statement that she had needed medical treatment for anxiety arising from these matters the Tribunal considered that it was possible that at some time in the future the Respondent might wish to return to the Tribunal and give an explanation. In these circumstances the Tribunal was satisfied that the correct penalty was an indefinite suspension from practice. The Respondent would also be ordered to pay the Applicant's costs.
21. The Tribunal Ordered that the Respondent, Rosemary Joan Fortune of Wood Green, Wednesbury, West Midlands, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 23rd day of January 2007 and they further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,700.00.

DATED this 23rd day of February 2007
on behalf of the Tribunal

S. N. Jones
Chairman

