

IN THE MATTER OF ALI BRIAN FERGUSON,
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J N Barnecutt (in the chair)
Ms A Banks
Mr G Fisher

Date of Hearing: 27th March 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 Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke, solicitors, 8 Bedford Row, London, WC1R 4BX on 20th April 2006 that an Order be made by the Tribunal directing that as from a date specified in the Order no solicitor, Registered European Lawyer or incorporated solicitor's practice should (except in accordance with permission in writing granted by the Society for such period and subject to such conditions as the Society might think fit to specify in the permission) employ or remunerate Ali Brian Ferguson of Hove, Sussex, in connection with his/her practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice.

The allegation against the Respondent was that he had been guilty of conduct of such a nature that in the opinion of The Law Society it would be undesirable for him to be employed by a solicitor in connection with a solicitor's practice.

At the commencement of the hearing the Applicant gave the Tribunal details of service of the proceedings effected in accordance with the Order for Substituted Service made by the Tribunal on 3rd August 2006. The letter sent by the Tribunal notifying the Respondent of the date of hearing had been returned and the Applicant had attempted to contact the Respondent

at his last known address. As a result he had heard from the Respondent's trustee in bankruptcy who had indicated that there was a surplus of funds in the bankruptcy but that he could not locate the Respondent. The Tribunal noted that service had been effected in accordance with the Order for Substituted Service. The Notice of Hearing date had been sent to the Respondent's last known address. While the Tribunal could not be absolutely certain that the Respondent was in fact aware of the hearing date, public protection required that the Tribunal deal with this matter and the substantive hearing would proceed.

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

The Tribunal Orders that as from the 27th day of March 2007 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 Ali Brian Ferguson of Hove, East Sussex, a person who is or was a clerk to a solicitor, and the Tribunal further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,720.00.

The facts are set out in paragraphs 1-8 hereunder:

1. The Respondent, who is not a solicitor, held himself out as being part of Harringtons Solicitors, 83 Ditchling Road, Brighton, East Sussex.
2. Joseph Harrington, solicitor, lodged a complaint with The Law Solicitor by letters of 18th December 2003 and 3rd May 2004. Mr Harrington alleged:

"Mr Ferguson, who was a person who I instructed as agent had made a number of misrepresentations to third parties in order to obtain money by deception.

In particular he had made the following representations to a man called Mr U who was involved in a partnership dispute:

1. He was a partner in my firm
2. He was a qualified solicitor
3. He had put my firm on the record in the case
4. He had my authority to do so
5. He had done work on the case

These were misrepresentations as none of the above is true.

It would seem that by making the following representations Mr Ferguson obtained £2,000 in cash, £750 which was paid directly into his bank account and a cheque made payable to him for £5,000.

I am a criminal defence practitioner and was completely unaware that the above representations had been made until the 3rd of December 2003."

3. Further matters were raised in correspondence from Messrs Hamlins by their letter of 5th March 2004. The issues were raised in a complaint lodged on behalf of S Limited and concerned instructions given on behalf of S Limited to the Respondent.
4. The particular events were considered by Robert Hildyard QC sitting as a Deputy Judge of the High Court in proceedings at the Chancery Division on 16th and 17th March 2004 with the Judgment dated 14th June 2004. A copy of the Judgment was before the Tribunal.
5. The Judgment made specific reference to the involvement of the Respondent. In paragraph 83 the Judge described the events as "this extraordinary and unsettling story."
6. Paragraph 82 of the Judgment stated as follows:

"Subject to that, the following further details emerge from the available evidence:

- (1) Mr L's [a director of S Limited] recommendation of Mr Ferguson to Mr and Mrs U appears to have been based on his having been acquainted with Mr Ferguson when the latter was working at another firm of solicitors in Brighton, and on a chance meeting with him in (I assume) about July.
- (2) Harringtons are a firm of criminal defence solicitors. Its principal is Mr Joseph Harrington ("Mr Harrington") a criminal practitioner with no experience of civil matters. According to Mr Harrington, Mr Ferguson did qualify as a solicitor in Scotland; but never in England and Wales.
- (3) Mr Harrington confirms to Ms P [of Messrs Hamlins] that Mr Ferguson was never a partner or an employee of the firm but that he, Mr Ferguson, had undertaken some work for the firm as "agent" and had referred some criminal matters to the firm. Ms P has exhibited a business card apparently in use by Mr Ferguson which is headed "Harringtons Solicitors" and underneath that "Criminal Defence Specialists" and gives the impression that "A. B. Ferguson" (who I take to be Mr Ferguson) is a partner or employee of that firm.
- (4) Mr L states in his witness statements that he and Mr U met Mr Ferguson and a barrister...
- (5) Ms P was provided by Mr L with, and has exhibited, a purported receipt signed by Mr Ferguson dated 29th July 2003 acknowledging receipt "for Harringtons" of the sum of £2000 "on account of work conducted in the above matter".
- (6) Ms P also stated that she was informed by Mr U that on 20th November 2003 Mr Ferguson urgently requested further payment to enable him to instruct Counsel for the hearing on 8th December 2003. A receipt from

Abbey National plc shows that Mr U paid £750 by direct payment into Mr Ferguson's account on that day (20th November 2003). Mr U told Ms P that he paid a further £5000 to Mr Ferguson the next day. Mr U did apparently query why he was being asked to pay Mr Ferguson directly, the latter told him it was because he had personally disbursed such amounts to Counsel. There is no evidence as to what became of that money.

- (7) ...
- (8) ...Mr L apparently telephoned Mr Harrington from Brazil on 1st December 2003 to discover that ("to my horror") he denied that Mr Ferguson worked for him at all, although he admitted that he had allowed Mr Ferguson to use a business card with the firm's name on it.
- (9) ...
- (10) Also according to Mr L, Mr Harrington informed him that his firm had never received any of the money paid to Mr Ferguson and had never gone on the Court record as S Limited Solicitors. Mr Harrington initially agreed that his firm would now go on the record only for the purpose of the hearing on 8th December, after which S Limited would have to obtain alternative representation; but Ms P states in her witness statement that Mr Thrower explained to her that Mr Harrington subsequently changed his mind.
- (11) Any such change of mind was not, according to Mr L, ever communicated to him... his evidence is that he believed that S Limited would be represented by Mr Thrower and duly instructed by Harringtons on 8th December 2003.
- (12) Similarly, Ms P states that she is informed by Mr U that Mr Harrington never informed them that his firm would not go on the record and, on the contrary, reassured them that Mr Thrower would be instructed to represent S Limited at the 8th December hearing.
- (13) Ms P, who says that she has spoken personally to both Mr Harrington and Mr Thrower, states that Mr Thrower told her that originally Mr Harrington had agreed that his firm would go on the record, and had instructed him to attend the hearing, but ultimately changed his mind on 4th December, having failed to establish any contact with Mr Ferguson.
- (14) Mr Thrower did attend at the hearing on 8th December, but without instructions. Having allowed him a brief explanation (the content of which is not before me), HH Judge Weeks declined to hear further from him in such circumstances.
- (15) S Limited was thus not represented at the hearing on 8th December. Mr L was in Brazil. Despite the story of deceit that had emerged,

neither Mr U nor Mrs U saw fit to attend. There is no evidence from either Mr U or Mrs U themselves as to this strange pattern of events.

7. The Law Society wrote to the Respondent requesting an explanation by letter of 26th April 2004 and the Respondent replied by letters of 7th May 2004 and 2nd June 2004. The Respondent denied holding himself out as a partner of Harringtons or as a qualified solicitor.
8. The Respondent admitted receiving the sums referred to at paragraph 2 above from Mr U. He alleged that the monies would have been split with Mr Harrington. He said that all the payments were receipted, an official receipt being issued by his bank for the £750, the cancelled cheque serving as a receipt for the £5,000 and the receipt for the £2,000 handed to Mr L.

The Submissions of the Applicant

9. The basis on which the Respondent made his assertions in correspondence was not accepted by Mr Harrington. Nevertheless in the submission of the Applicant the Respondent had through those assertions admitted the following:
 - (i) that there was a purported agreement between the Respondent, an unqualified person, and a firm of solicitors to share profit costs on a criminal matter and on civil matters;
 - (ii) that, with regard to monies received by him:
 - (a) although he accepted £2000 in cash on account of costs for legal work purportedly to be carried out by a firm of solicitors, he did not pay such funds into client account. On the contrary, he had admitted that he retained £1,000;
 - (b) with regard to further monies received in the sum of £750 and £5,000, he had admitted that he paid these directly into his own personal bank account.

Such monies, if received for and on behalf of a solicitor's firm must, in accordance with the Solicitors Accounts Rules, be paid into client account.

10. Further and beyond the matters admitted in the Respondent's own assertions, he had:
 - (i) improperly failed to conduct litigation in a competent manner;
 - (ii) misrepresented to clients his status (as a purported solicitor).
11. The Respondent's admitted conduct was sufficient for a Section 43 Order and the Tribunal was asked to make such an Order which was only a method of control and regulation not a penal sanction.
12. The Applicant sought his costs in the sum of £7,720 which included the costs of substituted service. The Applicant was aware of the Respondent's bankruptcy.

The Findings of the Tribunal

13. The Tribunal considered carefully the documentation including written representations made by the Respondent and noting the Judgment of Robert Hildyard QC sitting as a Deputy Judge of the High Court. The Tribunal was satisfied from all the information before it that it was right to make the Order sought to ensure that The Law Society would be able to regulate the Respondent should he seek to obtain employment in a solicitor's practice in the future.
14. The Tribunal was aware of the Respondent's bankruptcy but felt it right to make a fixed Costs Order in respect of the Applicant's costs.
15. The Tribunal Ordered that as from the 27th day of March 2007 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 Ali Brian Ferguson of Hove, East Sussex, a person who is or was a clerk to a solicitor, and the Tribunal further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,720.00.

DATED this 18th day of May 2007
on behalf of the Tribunal

J N Barnecutt
Chairman