

IN THE MATTER OF IAN DESMOND, 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 Inderjit Singh Johal, a barrister employed by the Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE that Ian Desmond, solicitor of Fulwood, Preston, Lancashire, 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 in each of the following respects:-

- (i) That he utilised clients' funds for his own benefit and or misappropriated the same;
- (ii) That he utilised clients' funds for the benefit of other clients who were not entitled to them;
- (iii) That he withdrew money from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules;

- (iv) That he acted in a conflict of interest situation with a client where his personal interest conflicted with that of the client;
- (v) That he failed to make any or sufficient enquiries as to the funds received into and paid out of his client account, absent any underlying transaction, and in so doing disregarded the guidance issued by the Law Society.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when the Applicant Inderjit Singh Johal appeared and the Respondent did not appear and was not represented. The Respondent had written to the Applicant on 26th July 2006 stating that he had requested removal of his name from the Roll and that he had neither the funds nor the ability to pay for advice or representation.

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

The Tribunal Orders that the Respondent, Ian Desmond of Fulwood, Preston, Lancashire, 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 £3,623.

The facts are set out in paragraphs 1 to 21 hereunder:-

1. The Respondent, born in 1952, was admitted to the Roll of Solicitors in 1977. At all material times he practised as a member and later as "Chief Executive" in the firm of Marsden Solicitors LLP at 3 Ribblesdale Place, Preston, Lancashire, PR1 3NA.
2. The Respondent's Practising Certificate had been suspended on 21st June 2005, the date on which he was adjudged bankrupt. He was not currently in practice.
3. The Forensic Investigation Unit (FIU) of the Law Society carried out an inspection of the books of Marsden Solicitors LLP on 21st March 2005. The inspection was limited to examination of the relevant matters relating to the Respondent.
4. The FIU Report dated 1st November 2005 was before the Tribunal.
5. The FIU Report recorded that there was a minimum cash shortage in client bank account of £239,649.42 caused entirely by improper payments from client bank account and inter-client ledger transfers made by the Respondent.
6. The misuse of funds was restricted to four client matters. The Respondent purchased residential properties and discharged personal liabilities with those funds.
7. The minimum cash shortage on client account can be broken down into the following client matters:-

(i)	S Deceased	£188,314.24
(ii)	OMB (a charity)	£ 42,504.74
(iii)	T Deceased	£ <u>8,830.44</u>

Total £239,649.42

Numerous payments in favour of the Respondent had been charged to the client ledger of a Mr and Mrs M - BCCI and various. Subsequently, inter-client ledger transfers had been made by the Respondent from the client ledgers of S Deceased and the OMB to Mr and Mrs M's client ledger to replace those funds.

8. In the matter of S Deceased, the value of the investments in the estate stood at £164,585.63 at April 1999. The investments were surrendered on instruction of the Respondent in his capacity as co-trustee of the estate. The proceeds were mainly used by the Respondent in a personal property purchase.
9. The Respondent further improperly transferred £68, 647.28 (representing surrender of a Norwich Union policy) to the client ledger account of Mr and Mrs M. Further improper payments and inter-client ledger transfers totalling £19,969.88 were made by the Respondent over a 9 year period starting in August 1995 and finishing in August 2004.
10. The firm acted for the OMB, a charitable organisation founded to provide welfare support for veterans of the First World War. The Respondent was a co-trustee of the Trust set up to deal with the charity's financial affairs. Following the sale of the charity's main asset, a property, £53,000 was credited to the client ledger of the OMB on 3rd October 2003. On 23rd March 2004 the Respondent caused the improper transfer of £42,504.74 from the OMB account to a NatWest Bank account in order to discharge a loan of £41,500 purportedly taken out on behalf of Mr and Mrs M. The NatWest loan account was closed on 23rd March 2004 following the payment. The £42,504.74 was sufficient to clear the outstanding capital on the loan, including the interest that had accrued. On 23rd March 2004 the balance on the client ledger account in respect of Mr and Mrs M was only £42.34.
11. In January 2005 the Respondent attempted improperly to transfer a further £21,000 from the OMB account to an unconnected client account without his co-trustee's authority.
12. The Respondent had been dealing with the estate of T Deceased in 1999. On 11th December 2003 the Respondent wrote to Fidelity Investments requesting the encashment of an investment made on behalf of the estate. Fidelity Investments subsequently made a payment to the firm in December 2003 of £8,830.44 but the funds had been improperly credited to the Respondent's own property purchase ledger.
13. The Respondent had conduct of various matters for Mr and Mrs M. Mr M resided in South Africa and the Respondent had a general power of attorney in respect of his financial affairs. The Respondent had acted for Mr M for a number of years and advised him in a claim for a substantial sum of compensation following the collapse of the Bank of Credit & Commerce International (BCCI). The Respondent also received instructions from Mr O on behalf of the clients.

14. There had been a number of improper payments from the client ledger account of Mr and Mrs M in favour of the Respondent and then a number of improper inter client transfers to replace those monies. Payments totalling £93,159.26 were made from the account. £32,936.07 was used by the Respondent to assist him (as a deposit and purportedly a stamp duty payment) in a personal property purchase. Payments were made on behalf of the Respondent to various credit card companies totalling £45,300 and a payment of £14,923.19 to BMW Financial Services.
15. Improper inter client transfers, one from the S Deceased matter and the other from the OMB matter to the M client ledger, totalling £111,152.02 had been made. Mr M did not repay the £68,647.28 which had been improperly transferred from the S Deceased account.
16. Payments had been made to third parties and funds received from third parties without any explanation on the client matter files. They appeared to have no connection with the matters that the Respondent was handling on behalf of Mr and Mrs M. There were no documents on file identifying the third parties or the source of the funds. It appeared that the Respondent was operating a banking facility for Mr M and Mr O.
17. The Respondent disclosed a liability to the Inland Revenue of £1,810,555 in his bankruptcy proceedings in respect of tax liabilities regarding funds received from BCCI on behalf of one of his clients.
18. The FIU's Report also recorded a case where the Respondent acted where a conflict of interest had arisen. He acted for Miss H in a conveyancing matter in the 1990s. The Respondent entered into agreement with Miss H whereby she made a loan of £30,000 to the Respondent on the basis that he paid monthly mortgage payments on her behalf until the end of her mortgage term, when he would repay the capital sum.
19. The Respondent provided Miss H with a promissory note in support of the arrangement. The note was dated 26th April 1995 and signed by the Respondent. The note stated that £30,000 would be repaid to Miss H on demand after 1st June 1997 and that the Respondent and his wife would make the monthly mortgage repayments due to the Yorkshire Building Society.
20. The Respondent did not offer Miss H any security for the loan, nor did he recommend that she obtain independent legal advice before entering into the loan agreement.
21. Miss H instructed solicitors to recover £30,000 from the Respondent's firm. The firm rejected Miss H's claim as the agreement the Respondent entered into with Miss H had been on the basis of a personal friendship and not by virtue of his role within the firm.

The Submissions of the Applicant

22. The Applicant put the matter as one involving professional misconduct at the highest end of the scale. The OMB was a charity for veterans of the First World War. The Applicant invited the Tribunal to reject any suggestion that the Respondent had made

a mistake in the conduct of Mr M's affairs - his actions could be explained only by a finding that the Respondent had been dishonest.

23. The Applicant did not know whether any claims had been made on the Law Society's Compensation Fund. He understood that missing money had been replaced by the partners in the Respondent's firm or by indemnity insurers.
24. The Respondent's firm had decided not to report his actions to the police.

The Submissions of the Respondent

25. The Respondent did not make formal submissions to the Tribunal but the Tribunal noted that he had sought to have his name removed from the Roll of Solicitors voluntarily. It also noted in correspondence with the Law Society about the improper transfer of the proceeds of a surrender of a Norwich Union policy, the Respondent said that when that matter had been put to him it had come as quite a shock and he had no recollection of the situation. He had also described his attempt to transfer £21,000 from OMB without his co-trustee's authority to have been a mistake and also that, in relation to a transfer from OMB to Mr M's account, he said it appeared to have been a bridging loan taken from the M account but then repaid from this client's account. This was obviously a serious mistake. He had been unable to give a satisfactory explanation as to why the mistake had occurred.
26. With regard to the loan made to the Respondent by Miss H he had explained that he could not categorically say that he told her to get separate advice, but she had always been very reluctant to deal with anyone else in the past.

The Tribunal's Findings of Fact

27. The Tribunal finds the facts in support of the allegations to have been proved, indeed none of the facts was denied by the Respondent. The Tribunal found all of the allegations to have been substantiated and also found that the Respondent had been dishonest. Although dishonesty was not alleged as a specific allegation the Tribunal was in no doubt that the misappropriation of client funds and the improper utilisation of client funds were allegations in which dishonesty was inherent.

The Tribunal's Decision and its Reasons

28. The Tribunal found that the Respondent had been guilty of the most appalling dishonesty. This was a matter in which the Respondent dishonestly took about a quarter of a million pounds through various accounts in his practice. It was of particular concern that his action caused substantial loss to a charitable organisation set up to support veterans of the First World War. For a solicitor to accept a loan of £30,000 from a client without insisting that she took formal independent advice was also a very serious matter where the solicitor had not put his client's interests first.
29. The Tribunal was concerned that the Respondent's activities might not have been reported to the police and expressed the hope that the Law Society would look further into that aspect of the matter.

30. The Respondent was a danger to the public and his action had seriously undermined the good reputation of the solicitors' profession.
31. It was appropriate that he be struck off the Roll of Solicitors. It was right that the Respondent should pay the costs of and incidental to the application and enquiry. The Tribunal considered the sum sought by the Applicant to be entirely reasonable and ordered the Respondent to pay such costs in that fixed sum.

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

R J C Potter
Chairman