

IN THE MATTER OF [*RESPONDENT 1 – NAME REDACTED*], solicitor
& ANDREW P APPELS, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. W. M. Hartley (in the chair)
Ms A. Banks
Mrs S. Gordon

Date of Hearing: 12th December 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 Stuart Roger Turner, solicitor advocate of Lonsdales Solicitors, 342 Lytham road, Blackpool, FY4 1DW on 10th May 2006 that Kevin Barnett of, North Kelsey, Lincolnshire, LN7 (now of Caistor, Lincs, LN7) solicitor and Andrew P Appels of Grimsby, North East Lincolnshire, DN32 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 application in respect of Mr Appels (the Second Respondent) was for an Order under Section 43(1)(b) of the Solicitors Act 1974 on the grounds that being an unadmitted person he had in the opinion of The Law Society occasioned or been a party to, with or without the connivance of the solicitors by whom he was or had been employed or remunerated, an act or default in relation to that solicitor's practice which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be employed or remunerated by a person in connection with his/her practice.

The allegations against the Respondents were that they had been guilty of conduct unbefitting in each or any of the following circumstances:-

- (i) That the First and Second Respondents received payments from a medical Consultant Orthopaedic Surgeon for referrals of the firm's clients to the consultant for the preparation of medical reports;
- (ii) That the First and Second Respondents failed to disclose to their clients the amount of commission received in respect of those referrals and failed to account to their clients for commissions received of more than £20.00.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 12th December 2006 when Stuart Roger Turner appeared as the Applicant, the First Respondent appeared in person and the Second Respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the First Respondent. During the hearing the First Respondent handed in two letters of reference and a schedule of income and expenditure.

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

The Tribunal Order that RESPONDENT 1, of Caistor, Lincs, LN7 (formerly of North Kelsey, Lincolnshire, LN7), solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,737.00.

The Tribunal Order that as from 12th day of December 2006 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with 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 Andrew P. Appels of Grimsby, North East Lincolnshire, DN32, a person who is or was a clerk to a solicitor and the Tribunal further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,737.00.

The facts are set out in paragraphs 1 to 13 hereunder:-

1. The First Respondent born in 1972 was admitted as a solicitor in 1997 and his name remained on the Roll of Solicitors.
2. At all material times the First Respondent was a solicitor at Martin and Haigh Solicitors of 12 – 18 Frances Street, Scunthorpe, South Humberside, DN15 6NS. The Second Respondent was employed by the same firm.
3. Martin and Haigh Solicitors wrote to The Law Society on 29th April 2005 reporting their former Partner, the First Respondent, and an unadmitted employee, the Second Respondent.

4. The firm had been provided by the Police four days previously with documentation showing that the Second Respondent had been receiving payments from Mr A, a Consultant Orthopaedic Surgeon, in relation to the referral of the firm's clients for the purpose of preparing a medical report. The documentation revealed that between 25th March 1998 and 15th October 2004 the Second Respondent had received a total of £9,120.50 in respect of referrals made to the Surgeon. The amount the Second Respondent received in respect of each referral began at £20.00 during 1998 but by 2004 had risen to £55.00. The documentation showed that Mr A had sent the payments to the Second Respondent's home address.
5. The firm wrote that the Second Respondent was interviewed whereupon he admitted that an arrangement with the Surgeon had existed since 1993.
6. The Second Respondent implicated the First Respondent. The First Respondent joined the firm in 1995 as a trainee and qualified on 1st October 1997. He was admitted to the Partnership on 1st November 2002. The Partners of the firm interviewed the First Respondent who admitted he had also accepted payments from the Surgeon, in his case on approximately five separate occasions between 1998 and late 2001/early 2002. The First Respondent resigned from the Partnership with effect from 29th April 2005.
7. The Law Society wrote to the First and Second Respondents separately on 7th July 2005 in order to seek their explanation. The First Respondent replied on 18th July 2005. He said that the Second Respondent was, as an experienced personal injury claims executive, assigned to assist him with his own case load. The Second Respondent told him that it was common practice amongst local solicitors to receive "remuneration" from the Surgeon in respect of referral of clients to him in order for medical reports to be prepared. The First Respondent said that he did not know any better and agreed to the inclusion of the Second Respondent's reference when referrals to the surgeon were made. He says he did not receive any payment direct and he did not inform the Partners of the arrangement as he did not believe that there was any need to. The First Respondent now accepted that the payment received should have been treated as commission.
8. A Caseworker at The Law Society wrote to the First Respondent on 1st September 2005 raising an additional query to which the First Respondent replied on 1st October 2005. In that letter he reiterated his sincere apologies and his acceptance that he should have known better.
9. On 28th September 2005, the Second Respondent emailed The Law Society apologising for the delay in responding but he wanted to await the outcome of a claim for unfair dismissal he had brought against the firm. The Law Society agreed to await the outcome of the hearing which was due to be heard on 1st December 2005. The Second Respondent then wrote on 12th October making a complaint against his former employers.
10. On 2nd December 2005 Martin & Haigh wrote to The Law Society confirming the Employment Tribunal proceedings had concluded. They confirmed the Tribunal had found the Second Respondent had been dismissed unfairly although had the firm followed the correct procedure the Tribunal found they would have been fully justified in dismissing the Second Respondent. The First and Second Respondent were

separately written to again on 13th December 2005 asking if they wished to provide any further comments within fourteen days. Neither replied before the Adjudication Report was prepared. In the absence of a reply the Report was prepared and before it was sent out to the First and Second Respondents for their comments the Employment Tribunal's written reasons were submitted by the firm. The Tribunal said:-

“Thus we are satisfied that the Respondents [the firm] did have a genuine belief, and that was reasonably held on the basis of a reasonable investigation. That leads only to the issue of whether dismissal would have been within the band of reasonable responses. Solicitors, and people who work within solicitors' office know, or should know, that there is the need to behave with the highest level of propriety, in particular in relation to the way you deal with clients, and in particular in relation to the way money is dealt with. The Claimant [Mr Appels] had received large sums of money which, when he gave evidence today, he accepted could not legitimately have been his money. He accepted that money at least belonged to the Respondents, whereas in reality the money belonged to his clients. Albeit he claims ignorance of the Solicitors Rules of Practice, it appears that he had the Code of Practice within his office available to him, and if he had the slightest doubt, as manifestly he should have had, as to the propriety of his actions, the Code was there to be studied and read. He had legal skills, and it was a document that he could have readily accessed and the contents of it would have been abundantly clear to him. The fact he received money in that way must call into doubt the motivation of instructing Mr A to prepare medico-legal reports. The whole purpose behind the outlawing of commissions such as this is that it brings the lawyer into conflict with the interests of his client, unless that client knows that to instruct such doctor is going to lead to financial reward to the lawyer or a rebate to the client. Manifestly, dismissal was within the bank of reasonable responses in this case. Thus, although we have found this case to be one of automatic unfair dismissal, we find that had fair procedures and the statutory procedures been followed, the Claimant's dismissal would inevitably come about. Thus, no remedy or compensatory award should flow from our finding”.

11. The Law Society having sent the Report to the First and Second Respondents received a reply on 7th February 2006 from the First Respondent. Again the First Respondent reiterated his sincere regrets and apologies in relation to his conduct which he understood was inappropriate and below the standard which should be applied. He also wrote commenting on the issues of the costs arising from the investigation. In that letter he referred to having suffered a lengthy period of severe depression requiring medical intervention and counselling.
12. The Second Respondent replied on 9th February 2006 by e-mail. He said that in his view there were a lot of mistakes in the Report and that the maximum commission he had ever received was £30 per Report. The Second Respondent's e-mail had attached to it a copy of a statement prepared for his Employment Tribunal claim against his former employers.
13. On 3rd March 2006 an Adjudicator of The Law Society resolved to refer the conduct of the First Respondent to the Tribunal and resolved that an Application should be made to the Tribunal under Section 43(1)(b) of the Solicitors Act 1974 (as amended) in respect of the Second Respondent.

The Submissions of the Applicant

14. The First Respondent had admitted the allegations. The Second Respondent by an email to the Applicant dated 2nd September 2006, a copy of which was before the Tribunal, said:-

“I acknowledge the proceedings and the return date of the 12th December 2006... I intend to take no part”.

15. The Second Respondent had been employed by the firm from 1990 until his dismissal in 2005 and had dealt with personal injury cases. He had greater experience in personal injury matters than the First Respondent. The Second Respondent had introduced the First Respondent to the referral system but the First Respondent never received money directly from Mr A. All the money went to the Second Respondent who paid the First Respondent for cases with his reference on. The Tribunal was referred to the copies of letters from the orthopaedic Surgeon to the Second Respondent which covered the period from March 1998 to October 2004.
16. The Second Respondent had initially received £20.00 per referral but subsequent documents referred to payments of £25.00, £27.50, £55.00 and £70.00. The copy cheques exhibited to the Rule 4 Statement showed a total payment of over £9,000.00.
17. The First Respondent had accepted that receiving the payments had been wrong. He had received about five payments in a small amount. The First Respondent had however turned a blind eye to the payments to the Second Respondent.
18. The First Respondent had written to The Law Society on 18th July 2005 stating:-
- “I would conclude by saying that I was naïve and foolish from the beginning of this matter. My respect and friendship for Mr Appels clouded my judgment and I became indirectly involved, for a small amount of money, in something which has had an enormous impact upon my life. I have not spoke to or heard from Mr Appels since the end of April and now realise that my trust in him was seriously misplaced. I can only offer my most sincere apologies and regret over my conduct which I appreciate fell short of what should be expected from me”.
- He had further written on 1st October 2005:-
- “I would reiterate my sincere apologies here and my acceptance that, ultimately, I should have known better than to become involved in the matter at issue”.
19. The First Respondent had accepted that what he had done was wrong. The Second Respondent had not. When interviewed by the firm the Second Respondent had not denied receiving the payment but said that he would not have done so if he had known that this was a breach of the Rules. He said that the First Respondent had said that it was alright to accept the money. The Second Respondent had taken his employers to the Employment Tribunal in respect of his dismissal and the Tribunal was referred to the comments of the Employment Tribunal.

20. Solicitors and solicitors' employees had to be independent in order to act in the best interest of their client. Accepting fees raised concerns that the referral to a particular expert might not be in the best interest of the client. Solicitors could accept commission in some circumstances but if it was over £20.00 they had to account to the client. The Respondents had not accounted to the client nor to the firm.
21. The Applicant sought his costs in accordance with his schedule served on the Respondents.

The Submissions of the First Respondent

22. The First Respondent had been involved on the periphery of this matter and had received a small number of payments totalling less than £100.00. At the time the First Respondent had been young and naïve. He had admired and trusted the Second Respondent who was the best man at his wedding. The First Respondent should have known better and should have checked the position at the time.
23. The First Respondent had now lost his job, his home, his wife and most of his assets. He was living in rented accommodation.
24. The First Respondent was now employed in work in the social housing field for a registered social landlord. This was mentally although not financially rewarding. The First Respondent would be happy to meet any fine or costs ordered by the Tribunal although he would need to pay these by instalments. The First Respondent handed to the Tribunal references and a schedule of his income and his expenditure.
25. The First Respondent reiterated his apologies.

The Findings of the Tribunal

26. The First Respondent had admitted the allegations and the Tribunal found them to have been substantiated. The Tribunal considered carefully the documentation in relation to the Second Respondent including the representations he had made in correspondence and was satisfied that the allegations were substantiated.
27. In respect of the Second Respondent it was right that the Order sought be made. Although the Second Respondent had said in his email of 2nd September 2006 that he did not intend to seek employment with a solicitor again, it was right that should he in the future decide to seek such employment it would be regulated by The Law Society.
28. The Tribunal had had the opportunity to hear the submissions in mitigation which the First Respondent had made in person. The Tribunal recognised and had been impressed with the Respondent's courage in attending the Tribunal and his straight forward and early acceptance of his responsibility. He had wrongly accepted a very small sum of money a long time ago under the influence of someone much more experienced. Since his prompt resignation from the firm he had gone to work in a difficult field where the references showed that he was highly regarded. There was no allegation of dishonesty against him and the Tribunal was satisfied that in all the circumstances a financial penalty was appropriate.

29. The Applicant had asked that an Order for costs be made on a joint and several basis but the Tribunal considered that in this case a division of the costs was more appropriate and the Tribunal would Order each of the Respondents to pay half of the Applicant's costs.
30. The Tribunal made the following Orders:-

The Tribunal Order that RESPONDENT 1, of Caistor, Lincs, LN7 (formerly of North Kelsey, Lincolnshire, LN7), solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,737.00.

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DATED this 16th day of February 2007

on behalf of the Tribunal

W M Hartley
Chairman