No. 9502-2006

IN THE MATTER OF NIGEL RICHARD MARK HEATH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr R Nicholas
Mr G Fisher

Date of Hearing: 11th 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 Iain George Miller, solicitor formerly of Wright Son & Pepper, but subsequently of Bevan Brittan Solicitors of Fleet Place House, 2 Fleet Place, Holborn Viaduct, London, EC4M 7RF on 8th June 2005 that Nigel Richard Mark Heath of Church Street, Olney, 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.

At the opening of the hearing the Respondent told the Tribunal that he and the Applicant had agreed an amendment to allegation 1. The Tribunal consented to such amendment. The allegations set out below are set out in the agreed amended form.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in that:-

1) he became involved in dubious and/or fraudulent transactions notwithstanding such transactions were of such a nature that a solicitor should not properly involve himself whether or not he actually knew they were fraudulent;

2) in a letter dated 6th March 2000, he represented to a client and/or investor that an organisation called Brite Business Corp had previously successfully dealt with a placement of funds which he knew or ought to have known was not true.

Allegation 2 was put on the basis that the representation was dishonest, although dishonesty was not an essential element of the allegation.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 11th January 2007 when Iain George Miller appeared as the Applicant and the Respondent was represented by Timothy Evans of Counsel instructed by Harbottle & Lewis LLP of Hanover House, 14 Hanover Square, London, W1S 1HP.

The Respondent's application that the Tribunal should reserve judgement

1. The Tribunal on 4th January 2007 had refused to grant an adjournment of this hearing pending the outcome of certain criminal proceedings against the Respondent. During the course of this hearing, but not at the outset, an application was made on behalf of the Respondent pursuant to Rule 23 of the Solicitors (Disciplinary Proceedings) Rules 1994 that the Tribunal should reserve judgement. The Tribunal heard that application in private.

2. In summary, it was the Respondent's application that a trial of the said criminal proceedings was imminent if the criminal case against the Respondent was not struck out. It had been ordered that that issue should be resolved by 27th May 2007. The trial concerned matters different from the allegations before the Tribunal. The trial was expected to attract local publicity as it related to an alleged multi-million dollar fraud. There was a real risk of prejudice to the Respondent were he to find himself with a decision made in respect of him by the Tribunal which generated adverse publicity, such as being suspended from practice or struck off, carrying with it serious opprobrium and/or a connotation of dishonesty.

3. The trial Judge would not be able to deal with this aspect and the adverse publicity might produce the result that the Respondent could not be fairly tried. There would be a serious and unnecessary muddying of the waters of justice.

4. There was no public interest point. The Respondent did not hold a Practising Certificate and could not be a risk to the public. In the circumstances it would be right for the Tribunal to reserve judgement.

<u>The Applicant's comments on the Respondent's application for the Tribunal's decision to be reserved</u>

5. It was the Applicant's submission that at the time when the Respondent's application for a reserved decision was made the substantive hearing had already proceeded to be heard in public. The facts in the case were already in the public domain and could be reported. The reality was that the Tribunal was being asked to make the same balancing exercise that it had made when it refused to grant an adjournment. If adverse publicity ensued from the Tribunal's judgement of the allegations then it would be a matter with which the criminal trial judge could deal. The Tribunal's

decision should be announced at the conclusion of the substantive hearing in the usual way.

The Tribunal's Decision (delivered in public)

6. The Tribunal concluded that it would not be right for it to maintain secrecy concerning its decision, or to reserve it until after any criminal trial faced by the Respondent had been concluded. In reaching its decision the Tribunal noted the following matters:-

   (i) The proceedings begun today, and before this Application was made, had not been held in private, nor had it been requested that they be so held;

   (ii) The hearing held on 4th January of the application to adjourn these proceedings had not been held in private;

   (iii) In general there is a public interest in the Findings of the Tribunal being made public, and being so made without delay;

   (iv) The period of delay requested beyond the hearing of the criminal matters referred to was unascertainable and uncertain;

   (v) The matters before the Tribunal and those before the Criminal Courts did not, as stated on 4th January when the adjournment application had been rejected, relate to the same subject matter;

   (vi) In so far as any findings of this Tribunal might be considered adverse to the Respondent concerned with a criminal trial, it was open to the Judge at that trial to take any appropriate steps to ensure a fair trial.

7. It continued to be the first duty of the Tribunal to ensure the timely disposal of its business in order to ensure that the public is protected and to ensure that the good reputation of the solicitors' profession is maintained. This is achieved not only by holding its hearings in public but also by making its decisions as quickly as it is able to do so and making sure that such decisions are in the public domain.

8. This division of the Tribunal agreed with the earlier division in rejecting the request for adjournment that the said interests of the public and the solicitors' profession outweighed the interests of this individual Respondent.

9. The Tribunal refused the application that it should reserve its judgement. The Tribunal would announce its decision, after due deliberation, at the conclusion of the substantive hearing which would now proceed in public.

The Substantive Hearing

10. The evidence before the Tribunal included the admissions of the Respondent, who gave oral evidence. The Respondent admitted allegation 1. He admitted the facts

relating to allegation 2 but denied the allegation and denied that he had been dishonest.

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

The Tribunal Orders that the Respondent, Nigel Richard Mark Heath of Church Street, Olney, 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 to be subject to a detailed assessment unless agreed between the parties (to include the costs of the Investigation Accountant of the Law Society).

The facts are set out in paragraphs 12 to 28 hereunder:-

12. The Respondent, born in 1955, was admitted as a solicitor in 1982. Between 1st September 1999 and 30th March 2003 the Respondent practised as a consultant with the firm of Georgiou Nicholas. At the time of the hearing he was not practising and did not hold a Practising Certificate. The allegations arose from the Report prepared by a Forensic Investigation Officer of the Law Society who had carried out an inspection of the firm of Georgiou Nicholas which began on 31st December 2002. Early in the course of the inspection examination of certain client matter files of which the Respondent had conduct gave rise to concerns.

13. The Respondent's involvement in various transactions was described in some detail in the FIO's Report to which copies of documents referred to were annexed.

14. The transactions had the following features:-

(a) Examples of returns on investments included: 950% per week; 200% per week; 250% per annum; 22.5% per month, compounded monthly; 70% per month; 100-200% per week; 300% per 40 week period (hopefully more); 42% per day, four days per week for 40 weeks through HSBC/Citibank; 300%; 350% over 233 banking days. Each of those examples were taken from letters written by the Respondent to third parties either on Georgiou Nicholas letterhead or on the Respondent's own private letterhead.

(b) The documents used in the transactions contained phrases which included "rules of Non-Circumvention and Non-Disclosure established by the [ICC], Paris"; "Funds are clean, cleared of non-criminal origin"; "Irrevocable Pay Order"; and "attorney in fact".

(c) In one of his own letters the Respondent wrote:-

> "VP Bank has its own "cutting house" cutting Medium Term Notes. As you are aware, Banks are not supposed to trade, hence their use of Dr Weibel as a fiduciary. The funds reserved by the investor are, in fact, leveraged by VP albeit no benefit of the leverage is given to the investor. MTNs are purchased and sold to form the basis of the returns for the contract. Profits are generated within three days of buy/sell and

surplus profits over and above the amount agreed with you go to the Bank… The proposal is that you should receive 100% per week on the funds received."

(d) The Respondent had recognised that, at least, some of the schemes were bogus. For example he wrote: "I do not believe that it is a real programme in circumstances where you and I both appreciate that there are so many "time wasters" out there". He also received warnings from third parties. For example one wrote: "Nigel, a chartered accountant friend of mine was telling me about this reserved funds program that pays 150% per week on $100m. And you could do the whole thing thru a solicitor named Heath!! Please be careful."

(e) None of the schemes appeared to have been "successful".

(f) None of the schemes required the Respondent's involvement as a solicitor in relation to the particular transactions although he acted for clients who were introduced to, or informed about, the schemes.

15. The Respondent made the following representations to third parties:-

(a) "As you are aware, I am the solicitor proposing the introduction of yourself and/or your company into a scheme".

(b) "I have no reason to doubt that the first tranche will be credited next week. You should alert your bank accordingly".

(c) "I do believe it is a real programme …".

(d) "As requested I confirm that your client will be dealing with a Trader who is a Fed nominated commitment holder. His commitment level is in trillions of dollars".

(e) "I attach hereto a Schedule showing details of a bank programme running successfully for 4 years".

(f) "I regret I cannot produce the contract to you from TLDA but you have my absolute assurance that the programmes work, that I know a number of individuals who receive money through them and the distributions are in fact made by bank transfer or bank cheque as required. The programme "runs like clockwork"".

(g) "This TLDA programme is totally and utterly safe and performs perfectly as represented".

(h) "Her programme is absolutely secure and will perform."

(i) "… I can state that presently the amount returned in the programme is considerably in excess of the minimum of 50% per month I quoted to you."

16. Three of the High Yield Investment (HYI) schemes involved TL Dowdell & Associates (TLDA). This was an organisation run by a US citizen called Terry Dowdell. On 21st July 2004 Mr Dowdell was sentenced in the United States of America to 15 years imprisonment for his conduct in an illegal investment scheme. The United States Securities and Exchange Commission (SEC) described his activities as "a massive international Ponzi scheme orchestrated by Terry L Dowdell, utilising various marketers, which raised more than $70million from investors in the US and abroad for a fictitious trading program ("the Vavasseur Program") purportedly involving the purchase and sale of foreign bank instruments and purportedly being operated by Vavasseur Corporation, a Bahamian Corporation".

17. The Respondent informed one potential investor in a letter dated 12th April 2000 written on Georgiou Nicholas letterhead that the TL Dowdell & Associates programme was "totally and utterly safe".

18. One of Mr Dowdell's associates was Gitte Mechlenberg with whom the Respondent also dealt. She was the subject of related proceedings by the SEC and had subsequently fled the United States.

19. In one letter to a potential investor dated 18th April 2000, also on Georgiou Nicholas letterhead, the Respondent stated:-

> "Having submitted the initial documentation to Gitte, she, as you are aware, merely awaits the amended Letter of Intent to activate matters. Her programme is absolutely secure and will perform. Vladimir will at least secure a 300% return on his investment which is clearly massively in excess of anything even his own bankers can offer him. Funds will remain reserved at all times."

20. From his letters to a Mr BB Britt of 3rd and 4th December 1999 it was clear that the Respondent sought to introduce a United States investor, the said Mr Britt, (through his company Beehive International LLC) to an "investment" offered by Brite Business Corp through a broker called Raymond James. In this context the Respondent appeared to be acting as solicitor to Mr Britt.

21. In his letter to a Mr Herzog dated 6th December 1999 the Respondent stated: "Further to our earlier telephone conversation I confirm instructions received from my client Billy Britt relating to the agreements entered into with his company, Beehive International LLC".

22. Mr Britt's company invested US$10million in the scheme. The "Key Agreement" between Beehive International LLC and Brite Corp dated 4th December 1999 provided for Beehive to receive substantial returns from Brite after the US$10million had been "accepted and transferred to the institutional account of Brite Business Corp at Raymond James". The returns were to include payments of not less than US$20million every calendar month after such "acceptance", and in respect of the first calendar month payment 40% of it was to be paid within "twelve international Banking days after acceptance".

23. By early 2000 it became clear that Mr Britt was concerned about the fact that he had not received the initial promised return on his investment. On 25th January 2000 the Respondent wrote to one of the other intermediaries, Mr Clarke, stating: "I had Bill Britt on the phone wondering when he should expect his first payment. … I played dumb on the exact date for his credit but told him that I believed that it was imminent and the USA weather had delayed things". After further correspondence, Mr Britt wrote to Mr Clarke stating that if he did not receive his payments by 17th February 2000 then he wanted his money returned to him.

24. On 3rd February 2000 the Respondent wrote to Mr Britt and stated: "In the circumstances, given the imminence of the first return, the fact that this is a leveraged program and that your investment remains absolutely secure (and indeed earning interest) it would be sensible to wait the further short period for receipt of first return where after further returns are automatic". The money was not received and on 17th February 2000 Mr Britt asked for his money back.

25. There were no further documents on the file which indicated what happened to the $10million. Proceedings had been brought by the SEC and a summary of the order made in those proceedings was as follows:-

"**The Brite Business Fraudulent Scheme**

11. In 1999 and 2000, Herula and individuals associates with Brite Business (and a related company, Brite Business SA) engaged in a scheme pursuant to which they successfully solicited five investors to invest a total of approximately $51.75million with Brite Business. Among these investors were Rashed Mohamed Mahran Al Bloushi ("Bloushi"), who invested $7.5million; Rhaeume Holdings Ltd ("Rheaume"), which invested $12.5millino; and Four Star Financial Services ("Four Star"), which invested $11.75million, some of which was invested through an intermediary, Lewis Blackburn ("Blackburn").

12. To induce these investors to provide their funds to Brite Business, Brite Business representatives fraudulently promised Bloushi, Rheaume, Four Star and other investors that Brite Business would generate astronomical returns on their investments. For example, Brite Business representatives represented to Rheaume that its $12.5million investment would generate, at a minimum, a return of 120% (or $15million) in a three month period.

13. In or about October 1999 Fife, the president of Brite Business, opened a securities brokerage account at the Cranston branch of Raymond James to facilitate the Brite Business scheme. The account was opened in Brite Business's name, and at all relevant times Herula was the designated registered representative on the account.

14. Of the $51.75million that Brite Business procured from investors, approximately $44.5million was deposited into the Brite Business account at Raymond James between November 1999 and March 2000. Of that $44.5million, approximately $29million was returned to three of the investors (including Four Star) who had demanded their money back. The remaining

> approximately $15.5million - including all of Rheaume's $12.5million investment that was deposited with Raymond James - was misappropriated or otherwise dissipated from the Brite Business account at Raymond James."

26. It was apparent from a Judgment of the United States Court of Appeals of 6th November 2002 in the case of Securities and Exchange Commission -v- Martin D Fife and Farouk Khan that Mr Britt's money was also caught up in this fraud although it appears that he did recover his money.

27. By January 2000 it had become apparent that Brite had not performed in relation to the investment by Mr Britt. Mr Britt asked for his money back on 17th February 2000.

28. On 6th March 2000 the Respondent wrote to another potential investor, Mr Kishenin, in the following terms:-

> "Further to my letter to you of 2nd March and at Carsten's request I write specifically to confirm the nature of my previous dealings with Brite Business Corp to attempt to explain what I believe to have been the problems encountered in your case. Let me again reiterate that I did not introduce you to Brite and Mike Clarke in any other than in good faith and the expectation they could achieve for you the desired entry into a trading programme.
>
> As you are aware, it is not an easy task to identify a "real" trade in a world of intermediaries/brokers/general "imposters". My introduction to Mike Clarke was effected last year from an impeccable source at a time when I was actively seeking to place a substantial investment for an American national. Prior to any dealings with Mike Clarke I attempted to establish in so far as I was able, his "bona fides" and received information from more than one source that he and his partner, Johan Herzog, had been successfully trading for a number of years, latterly through their nominated entity, Brite Business Corp. To the best of the knowledge and belief of myself and others Johan Herzog is effectively the "technician" if I may describe him as such, whilst Mike Clarke deals with the more mundane aspect of matters as regards completing the introduction of clients into programmes. Herzog's "commitment" is believed to be in trillions of dollars and was at one time held in Societe Generale (hence the production of the SG Shyne Note to you).
>
> Brite successfully dealt with the placement of funds for my American investor. Indeed, I produced to you the "blanked out" Arthur Andersen letter and that of Raymond James confirming purchase of the T-bill to form the basis of the trade to you. You appreciate therefore that based on certain knowledge of the successful placement of a substantial sum I was happy to recommend Brite to you."

The Submissions of the Applicant

29. The allegations concerned the involvement of the Respondent in High Yield Investment (HYI) schemes or bank instrument frauds. Such schemes were described by Neuberger J (as he then was) in Dooley -v- The Law Society (15th September 2000, unreported) in the following terms:-

> "Bank instrument frauds are based on documents which are full of impressive phrases, which on analysis make little sense, and which promise returns which are fantastic in both senses in which that word is used, namely fictional and enormous. They are used by unscrupulous crooks to encourage the badly advised, the ignorant, the gullible and the greedy to part with their money, tempted by promises of fantastically high returns. Once these investors part with their money, they are lucky if they see any of it again. Generally speaking, a man may as well burn his money for all the good it would do him. At least it would remove the false hopes and subsequent agony that such so-called investments involve. The involvement of solicitors and other responsible professionals in such scams is obviously attractive and desirable to those orchestrating them, particularly if the solicitor can be persuaded to act for a would-be investor, but even if he is more peripherally involved. The solicitor's involvement will give to the dishonest scheme an appearance of respectability and reliability. Hence, during the 1990s, as these fraudulent schemes have become more widely available, the Law Society has been increasingly anxious to ensure that solicitors are not involved in them in any way. The normal form of such schemes is so-called "prime bank instruments", which may either be a prime bank guarantee or a standby letter of credit. Neither of these actually exist. This fictional instrument is supposedly purchased by the hapless investor for considerably less than its face value, in the expectation of receiving the face value on redemption."

30. As Mr Justice Neuberger observed, the involvement of solicitors in dubious financial transactions is a matter which has been of concern to the Law Society for a number of years.

31. In October 1997 each solicitor was issued with his or her Practising Certificate a printed warning card in connection with bank instrument fraud. The warning was headed "Fraud Intelligence Office. WARNING: Banking instrument fraud" ("the Warning Card"). The Warning Card was reprinted in the Guide to the Professional Conduct of Solicitors, 8th edition, which was published in 1999.

32. In the light of the Warning Card it was submitted that by 1999 a solicitor should, at the very least, have been extremely cautious about becoming involved in the type of schemes that were the subject of the Warning Card. However, the Respondent had been a willing participant in such schemes.

33. The unrealistic returns promised in the HYI transactions were unrealistic to the point of being ridiculous.

34. A number of the phrases contained in the HYI scheme documents had been pointed out in the Law Society's warnings to be indicators of fraud. The documents used expressions, for instance "attorney in fact", which had no legal meaning. The Respondent himself had written letters using phrases against which the Law Society had warned and had indicated that absurd returns would follow investment.

35. Notwithstanding the written warnings of the Law Society and warnings that the Respondent received personally, the Respondent was a willing and enthusiastic participant in the HYI schemes. He lent his credibility as a solicitor and consequently used the good reputation of the solicitors' profession to bolster the schemes.

36. The Tribunal would be concerned to establish the level of the Respondent's involvement in the transactions. His involvement was not peripheral. He was willing to write letters on a number of occasions supporting the HYI schemes.

37. Subsequent events, namely action taken by the United States Securities and Exchange Commission, confirmed the dubious and/or fraudulent nature of the schemes.

38. Allegation 1 was put on the basis that no solicitor could properly have involved himself in those transactions. That was particularly so bearing in mind the Law Society's Warning Card and the dubious nature of the schemes on their very face. It was further said that the Respondent was nevertheless an enthusiastic participant.

39. With regard to allegation 2, the Respondent had written his letter of 6th March 2000 to Mr Kishenin (referred to in paragraph 28 above) when it was not possible for him on that date to state that "placement of funds for my American investor was successful" without knowing that this was not true. That assurance was dishonest. The Applicant accepted that it was open to the Tribunal to find allegation 2 to have been substantiated without also making a finding that the Respondent had acted dishonestly.

The Submissions of the Respondent

40. The Respondent admitted allegation 1. He accepted that the documentary evidence showed that he took a close interest in a number of so-called HYI schemes over the period October 1999 to April 2001.

41. The Respondent had himself invested in one such scheme and had lost a considerable amount of money. He was not aware of any other with whom he had dealt making a loss.

42. The Respondent had come to accept that all these investment schemes were fraudulent.

43. The Respondent had not seen the Law Society's Warning Card on such schemes prior to the disciplinary proceedings but he accepted that he should have exercised extreme caution before recommending any such scheme to any potential investor or having anything to do with any such scheme himself. He did not exercise the caution that he should have exercised.

44. With regard to allegation 2 the Respondent denied it because the representation which he made was in fact true. He denied dishonesty in making the representation.

45. The letter of 6th March 2000 had been written by the Respondent to Mr Kishenin of Lanciano Limited, who had approached him through Mr Ablad (a lawyer practising in Sweden) as a potential investor interested in investing in the so-called HYI schemes.

46. In the letter the Respondent was explaining to him why it was that he had felt able to recommend making an investment through Brite Corporation.

47. The Respondent's concern at the time - which he had come to accept was entirely wrong-headed of him - was the difficulty in finding traders who were genuinely able to secure the purchase of the investments which were supposed to be capable of producing the high yield.

48. The Respondent's purpose, in making the representation to Mr Kishenin, was to point out, truthfully, that Brite Corporation had successfully placed Mr Britt's investment with Raymond James (a reputable firm) in the purchase of United States Treasury bills. The Respondent had grounds for his belief that Brite Corporation was a genuine trader capable of delivering the investment that it had agreed to deliver. The fact that Mr Britt had then withdrawn from the scheme in order, as the Respondent believed, to deal directly with Raymond James did not affect the fact that Brite Corporation had succeeded in placing the investment.

49. The Respondent had been criticised for making the recommendation that he made, and was seeking to justify his action in doing so.

The Findings of the Tribunal

50. The Tribunal found allegation 1 to have been substantiated, indeed the Respondent himself admitted the same.

51. With regard to allegation 2 the Tribunal found the allegation to have been substantiated on the basis that the representation in question was not the whole truth but the Tribunal was not satisfied to the required high standard of proof that the representation was dishonest. The Tribunal considered however that for a solicitor to write such a letter was wholly reckless and economical with the truth. At the time the letter was written (6th March 2000) the Respondent was well aware that the placement of funds by Brite Business Corp on behalf of Mr Britt's company had not been successful in that the contracted and wholly improbable returns had not materialised. In the absence of such returns a representation that the placement of funds had been successful was not true. The Tribunal noted the Respondent's explanation that he was merely seeking to justify why he made the recommendation that he did and was not seeking to confirm that at the time he wrote the letter to Mr Kishenin on 6th March 2000 that he considered that Brite Business Corp had successfully completed an HYI transaction. Whilst not being satisfied with this explanation the Tribunal were not satisfied that the allegation of dishonesty was made out beyond reasonable doubt.

Previous Findings of the Tribunal

52. Following a hearing on 17th January 1991 the Respondent (together with Nicholas Potter) had the following allegations substantiated against him. The allegations were that the Respondents had:-

(a) contrary to Section 34 of the Solicitors Act 1974 failed to deliver Accountant's Reports as required by that Section, alternatively delayed in the submission of such Reports for the practice periods from 1st November 1985 to 31st October 1989;

(b) contrary to the provisions of Rule 11 of the Solicitors Accounts Rules 1986 failed to keep properly written up books of accounts in that although cash books were written up and reconciled with bank statements, no clients ledger was written up and maintained later than 31st October 1988;

(c) by virtue of the breaches aforesaid the Respondents had been guilty of conduct unbefitting a solicitor.

53. On that occasion the Tribunal said:-

> "The Tribunal has from time to time to stress the great importance that solicitors must give to the proper and accurate keeping of books of account and to the submission of Accountant's Reports to the Law Society on time. It is only in meticulous compliance with such requirements that the public interest is served and the Law Society is able to police solicitors' practices in order to ensure that the protection of the public remains to the fore. The Tribunal accept that the major part responsibility is that of the first respondent and further accept that the second respondent agreed to enter into partnership when these matters were outstanding. The Tribunal consider that these respondents might have made even greater efforts to put matters right. In the past solicitors who have found themselves in similar difficulties have appeared before the Tribunal having devoted an enormous amount of time and effort to retrieve an unsatisfactory accounting situation and indeed often have spent huge sums of money to obtain professional advice and assistance in that regard. The Tribunal have been disquieted by the respondents' attitude which appears to have been, "we will get it right but we will do it in our own time".
>
> In particular the first respondent had been aware that matters were not satisfactory over a very long period of time. The Tribunal Order that the first respondent, Nigel Mark Heath, solicitor, of 14 Ivor Place, London NW1, do pay a fine of £2,500 and the second respondent, Nicholas Potter, solicitor, of the same address do pay a fine of £750, both penalties to be forfeit to Her Majesty the Queen and the Tribunal further Order that the respondents do pay the costs of and incidental to the application and enquiry, to include the costs of the Investigation Accountant of the Solicitors Complaints Bureau, such costs to be divided in the following proportions: three quarters to be met by the first respondent and one quarter to be met by the second respondent. The costs to be taxed by one of the Taxing Masters of the Supreme Court."

The Respondent's Mitigation

54. The Tribunal was invited to have regard to the following points:-

(a) While the Respondent entirely accepted that he had been naïve and gullible about all this, he firmly believed at the time that every scheme which he recommended, or invested in himself, was a bone fide and successful investment scheme. On the other hand, he was not so naïve and gullible as to believe that all the schemes that were being marketed were either bona fide or successful. He had been highly sceptical of any scheme which did not include provision for a money-back guarantee from a reputable financial institution and he did not recommend any such scheme to any potential investor.

(b) Unfortunately, the Respondent was not so careful in respect of his own investment because he relied on Terry Dowdell's undertaking (which he assumed was a bona fide undertaking upon which he could rely) that his money would remain protected in a client account managed by him.

(c) None of those to whom the Respondent recommended any of the schemes actually invested in them, save for Beehive International LLC (Mr Britt), who invested $10million through Brite Business Corporation (Mr Clarke and Mr Hertzog) in December 1999.

(d) The principal reason why those who were seriously interested did not invest was that the Respondent only recommended schemes on the basis that their money would remain deposited in proper bank account or, if moved, would be protected by a satisfactory guarantee from a reputable financial institution. He was most careful not to recommend to the potential investor a scheme which involved him in transferring his money to a third party without such a guarantee being in place. Although the Respondent found it frustrating at the time, he now realised that it was consistent with the nature of these schemes that - save in the case of the one investment that did occur - no such guarantees were ever forthcoming.

(e) The Beehive International investment proceeded only because Raymond James Financial Services Inc gave what seemed to the Respondent to be a satisfactory guarantee. Raymond James Financial Services Inc was a subsidiary of Raymond James Financial Inc, a thoroughly respectable financial institution which was quoted on the New York Stock Exchange. According to its "2006 Quarterly Report" for the fourth quarter published in November 2006, Raymond James Financial Inc employed 4,700 financial advisors worldwide, managing client assets worth approximately $31.8billion.

(f) What happened in the Beehive Investment was: Beehive made its investment of $10million on 9th December 1999, having secured the Raymond James guarantee. Raymond James then purchased US Treasury bonds, as instructed by Brite. However, that trade did not produce any profit, or at least none that Brite was willing to pay out. Not having received anything from the investment by 17th February 2000, Beehive demanded the return of its money.

The Respondent had no further contact with Beehive or Mr Britt after that, as he believed at the time that Mr Britt's intention was simply to bypass him and Brite Corporation and deal directly with Raymond James. The Respondent had no direct knowledge of this but it appeared that Raymond James duly honoured its guarantee to Beehive, and repaid the investment together with interest.

55. In the circumstances the Respondent had admitted allegation 1 and the facts behind allegation 2 but not the thrust of the allegation itself.

The Tribunal's Decision and its Reasons

56. The Tribunal found allegation 1 to have been substantiated. The Respondent himself had come to recognise that he should not have been involved in the dubious HYI transactions details of which had been placed before the Tribunal. The attention of members of the profession had been drawn to the proliferation of fraudulent investment schemes purporting to produce extraordinarily high returns on investments. It was recognised that a number of fraudsters sought to deprive potential investors of large sums of money by the production of bizarre schemes, spurious documentation and promises of very high returns indeed, often with the added incentive to invest provided by an assurance that monies would be used for charitable causes or humanitarian projects.

57. It ill behoves a solicitor to use phrases and expressions that have no meaning in English law. It beggars belief that a solicitor should employ such phrases in letters that he himself has written. The question has to be asked, "how can a solicitor offer advice to any client or third party upon a scheme which is so nonsensical that he himself cannot have any useful knowledge of it?"

58. It is well recognised that the fraudsters customarily seek to involve a member of the solicitors' profession in order that a cloak of respectability may be achieved and those defrauded are encouraged to part with large sums of money because of the comfort they derive from the fact that a solicitor is involved in the transaction. In becoming involved in the fraudulent schemes, as the Respondent did, he falsely allowed his own status and the good reputation of the solicitors' profession to be used improperly to persuade potential "investors" to make substantial investment of money.

59. The only proper way for a solicitor to behave when invited to participate in one of these schemes, in whatever capacity, is to refuse to do so and report the approach made to him to the appropriate authorities.

60. For a solicitor to become involved in dubious and/or fraudulent transactions of this type was not compatible with his continued membership of the profession. The Respondent's participation in this case did in the Tribunal's view amount to such serious conduct unbefitting a solicitor that it was both appropriate and proportionate that he be struck off the Roll of Solicitors. This sanction was required in order that the Tribunal fulfil its own duty to protect the public and to maintain the good reputation of the solicitors' profession.

61. The Tribunal had also found the second allegation to have been substantiated against the Respondent namely that he had made the stated representation, which he knew or ought to have known was untrue. The Respondent knew that the representation was not the whole truth, and that omission of reference to the known failure of the investment rendered the representation misleading and untrue.

62. It was right that the Respondent should bear the whole of the costs of and incidental to the application and enquiry.

63. In view of the not inconsiderable complexity of this matter and the fact that a proportion of the FIO's costs related to the firm of Georgiou Nicholas it was right that such costs be subject to a detailed assessment (and should include a proportion of the costs of the FIO) unless all such costs are agreed between the parties.

DATED this 22nd day of March 2007
On behalf of the Tribunal

A G Ground
Chairman