

IN THE MATTER OF ANTHONY TUDOR REES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A G Ground (in the chair)  
Mrs H Baucher  
Lady Maxwell-Hyslop

Date of Hearing: 1st March 2007

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by George Marriott, solicitor and partner in the firm of Gorvins of 4 Davy Avenue, Knowhill, Milton Keynes, MK5 8NL on 24<sup>th</sup> July 2006 that Anthony Tudor Rees of 2 Doric Close, Chandler's Ford, Eastleigh, Hampshire, SO53 2PF, 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 were that the Respondent had been guilty of conduct unbecoming a solicitor in that he:

1. Failed to keep his books of account properly written up, contrary to Rule 32(1), (2) and (7) of the Solicitors Accounts Rules 1998 ('SAR 1998');
2. Dishonestly misappropriated clients' funds;
3. Drew monies from client account contrary to Rule 22 SAR 1998;
4. Dishonestly misled his client D; alternatively misled his client D;

5. Used clients' funds for his own purposes;
6. Failed to comply with SAR 1998, contrary to Rule 6 SAR 1998;
7. Failed to rectify the breaches of SAR 1998 contrary to Rule 7 SAR 1998;
8. Failed to reply promptly and substantively to correspondence from The Law Society;
9. Failed to deliver an Accountant's Report for his year end 2004 within time or at all, contrary to Rule 35 SAR 1998;
10. Failed to deal fairly with an unrepresented opponent and used his position as a solicitor to take advantage of him;
11. Failed to comply with Rule 15 of the Solicitors Practice Rules 1990;
12. Acted for seller and buyer when there was a conflict of interest between the seller and the buyer, the Respondent did not have both clients as existing clients and no written consent was forthcoming;
13. Continued to act for clients where there was a conflict of interest amongst them;
14. Failed to comply with a request from his former clients' new solicitors;
15. Preferred the interests on one of his three clients, N, over the other clients , B and H;
16. Failed to apply for a Remuneration Certificate in respect of his charges when requested so to do;
17. Failed to comply with a Law Society Direction pursuant to Section 44B of the Solicitors Act 1974.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 1<sup>st</sup> March 2007 when George Marriott appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included evidence by the Applicant as to due service of all of the papers in the matter upon the Respondent including Civil Evidence Act Notices to which no counter-notice had been provided.

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

The Tribunal Orders that the Respondent, Anthony Tudor Rees of 2 Doric Close, Chandler's Ford, Eastleigh, Hampshire, SO53 2PF, 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 £14,285.88.

**The facts are set out in paragraphs 1-41 hereunder:**

1. The Respondent, born in 1952, was admitted as a solicitor in 1985. His name remained on the Roll of Solicitors. At the material time the Respondent was a sole principal in the firm of A T Rees Solicitors and he practised from his home address of 2 Doric Close, Chandler's Ford, Eastleigh, Hampshire.
2. An Investigation Officer of The Law Society ("the IO") inspected the Respondent's books of account and wrote a Report dated 31<sup>st</sup> October 2005 which was before the Tribunal.
3. When the inspection began in June 2005 the Respondent's books of account were not up to date and there were no listings of liabilities to clients. The Respondent explained that he only reconciled the client cashbook balances with the bank statement and did not produce lists of client balances. The IO postponed the inspection until September 2005.
4. In September 2005 the IO was able to reconcile the Respondent's books of account with liabilities to clients only up to 30<sup>th</sup> April 2005. A comparison of the liabilities to clients in the books and the cash available revealed a cash shortage of £86,032.79, which arose as the result of overpayments made on behalf of clients, totalling £13,256.64, a misuse of clients' funds totalling £63,973.06, and over transfers to office bank account totalling £8,803.09.

Misuse of clients' funds

The matter of D

5. With regard to the misuse of clients' funds in 1999 the Respondent accepted instructions to act for D in connection with a negligence claim against a firm of licensed conveyancers who, when acting for D with regard to his purchase of a new home, had mistakenly informed the selling developers that D no longer wished to buy the property. The property was sold to another. D wished to make a claim for breach of contract.
6. By November 1999 the licensed conveyancers had offered D £20,000 inclusive of costs to settle the matter. D rejected that offer.
7. The Respondent told The Law Society that he did not issue proceedings on behalf of D and did not report the matter to his insurers because "he was thinking of emigrating to Canada; so decided to deal with the matter himself."
8. When the IO inspected D's file, there was no documentation on it relating to the Respondent's failure to issue proceedings or the amount of compensation that he was proposing to pay. The Respondent conceded that "more likely than not they did not know" that he had made an error.
9. Between February 2004 and January 2005 the Respondent paid £63,977.96 to D.
10. The Respondent had used other clients' funds to make the payments to D and indicated to The Law Society that he hoped to raise capital to replace the misused

clients' funds within approximately a month of his interview with the IO. No funds had been replaced.

#### The matter of O

11. With further reference to the misuse of clients' funds, O died in June 2003 appointing the Respondent and her father to be executors and trustees of her Will. A grant of probate was not on the Respondent's matter file. A number of payments had been made to beneficiaries or transferred to office bank account for costs, leaving the client ledger account overdrawn by £4,374.36.
12. The matter file showed that O had funds in bank accounts of about £5,000. Estate accounts prepared by the Respondent included these funds as part of the assets received. There was no evidence that any of those monies had been paid into one of the firm's accounts. The Respondent told the IO that it was possible that he had misplaced the cheques and he would contact the banks and request replacement cheques. No replacement cheques had been forthcoming.
13. A further misuse of clients' funds arose in the matters of B and T. The Respondent acted for these unrelated clients in connection with matrimonial matters. In March 2005 the Respondent transferred £2,700 for costs in respect of both matters when neither client had funds standing to the credit of his account.

#### The matters of B and T

14. On the same day a standing order representing the Respondent's monthly drawings, transferred £2,700 from his office account to a private account.
15. The Respondent told the IO he understood there were sufficient funds in the respective clients' accounts properly to effect the transfer.

#### Will costs

16. The Respondent's further misuse of clients' funds occurred when he raised a bill for drawing a Will for his mother. In September 2004 the Respondent transferred these costs (£323.35 including VAT) from client to office bank account when the client ledger had no funds standing to its credit.
17. The Respondent indicated to the IO that initially he did not propose to charge but his mother requested that he raise a bill and because he had a power of attorney he had intended to pay the bill from funds in her personal bank account. This shortage was restored by the Respondent in May 2005.
18. The Accountant's Report for the Respondent's firm for the year ending 30<sup>th</sup> September 2004 was due to be delivered by 30<sup>th</sup> March 2005.
19. In March 2005, April 2005 and June 2005, the Respondent requested an extension of time to deal with his Accountant's Report on the basis that he had "computer problems". A final extension was granted by The Law Society requiring the

Respondent to produce the Accountant's Report on or before 31<sup>st</sup> July 2005. The Respondent did not do so. The Law Society wrote to the Respondent in October 2005 followed by a reminder later that month requesting an explanation.

20. The Respondent replied by letter dated 26<sup>th</sup> October 2005 in which he explained he had suffered difficulties in the transfer of accounting software and the corruption of data. He also stated that a new firm of accountants had been appointed but it had failed to produce a Report.

#### The matter of BV. CPR

21. The Law Society's Monitoring Unit had ascertained that CPR was the Defendant in a County Court action bought by B whom the Respondent represented. Following court action in which the Respondent's client was successful, the Respondent placed a charging order on the property owned by CPR and then obtained an order for sale. CPR raised the money to pay the Respondent's client by remortgaging his property in order to avoid an order for sale and these monies were to be received by the Respondent who was to discharge from them the monies due to his client and refund the balance to CPR.
22. The Respondent sent a document to CPR dated 6<sup>th</sup> June 2000 claiming the total sum due of £28,648.
23. On 16<sup>th</sup> June 2000 the monies raised by CPR's remortgage were paid into the Respondent's client account. As a result the Respondent held £38,023.77.
24. CPR was dissatisfied with the position and instructed solicitors who corresponded with the Respondent and with The Law Society. By letter dated 25<sup>th</sup> February 2003, they wrote to the Respondent demanding clarification and account of sums held over £28,648. After reminders, the Respondent replied in August 2003 refusing to deal with the matter on the grounds that it had already been dealt with. It had not. The Law Society then became involved in the matter for the second time and wrote to the Respondent on 12<sup>th</sup> September 2005 seeking his explanation. No reply was received. A reminder was sent on 13<sup>th</sup> October 2005. The Respondent did not reply.

#### The transactions concerning B, H, N and R

25. The Monitoring Unit of The Law Society raised concerns about the Respondent's involvement in transactions concerning the conversion and sale of a property. B and H entered into discussions with N, a builder, about the conversion into five flats of a property which B and H owned. It was agreed N would undertake the works at his own cost and receive a proportion of the profits following the sale of the flats. N introduced B and H to the Respondent with a view to his drafting a joint venture agreement and acting on the sale of the five flats.
26. B and H were not provided with details of the Respondent's terms of business or costs. The Respondent told The Law Society that he had only given copies of his terms of business to N and stated that he did not receive signed acknowledgement of acceptance of the terms of business from either B, H or N.

27. H purchased one of the completed flats for £140,000. Completion took place in December 2002. A second flat was purchased by R, at the same price, in July 2003. The Respondent did not provide the title deeds to the property and complaint by R's solicitors was made to The Law Society.
28. B purchased the third flat for £125,000. Completion took place in May 2003. Solicitors subsequently appointed by B complained to The Law Society because the Respondent had not provided documents of title.
29. H also purchased the fourth flat.
30. The fifth flat was purchased by B's daughter for £140,000. The Respondent acted for both the buyer and the seller in this transaction. B's daughter was not an existing client of the Respondent.
31. B and H addressed their concerns to the Respondent. In the absence of any satisfactory response, B and H instructed fresh solicitors to deal with the Respondent. Their new solicitors wrote to the Respondent between November 2003 and January 2004 about the lack of documents of title. No satisfactory response was received and the new solicitors complained to The Law Society.
32. The Law Society attempted to broker a settlement. B and H's new solicitors complained to The Law Society again in November 2004 stating the matter could not be resolved informally. The new solicitors had prepared accounts based upon information available to them from B and H as the Respondent had failed to produce ledger entries. It was calculated sums in excess of £9,000 were due to B and H.
33. In February 2005 B wrote to The Law Society enclosing accounts prepared by the Respondent. She wrote again to The Law Society in March referring to a dispute between herself and N arising out of the joint venture. The dispute concerned a conflict of interests. The Respondent stated in a letter to The Law Society of 3<sup>rd</sup> June 2005 that in July 2003 he was aware the dispute between his clients represented either an actual or potential conflict of interest. In his letter the Respondent also admitted that he had become aware in around September or October 2003 of a further dispute being a second conflict of interest between B and N relating to the joint venture agreement.
34. The Respondent received conflicting instructions from B and N as a result of their dispute. B instructed the Respondent not to make payment to N from the funds held in respect of the properties. The Respondent told The Law Society he ignored the instructions from client B and made the payment to N.
35. In March 2005 B wrote to the Respondent and requested a remuneration certificate. The Respondent did not make an application for a remuneration certificate.
36. The Law Society raised the issue with the Respondent by letter but the Respondent did not respond. B told The Law Society that she had again requested a remuneration certificate in around October 2005.

37. In May 2005 The Law Society wrote to the Respondent and obtained a direction under Section 44(B) of the Solicitors Act 1974 in relation to the files of B and H. Some files were submitted by the Respondent to The Law Society in June 2005 together with a response in which he denied any wrong doing. No further response had been received from the Respondent and the balance of the documents had not been received by The Law Society.
38. In June 2005 the Respondent was reminded that his response was outstanding. He telephoned The Law Society to indicate his response had been expanded further. The letter from the Respondent in June indicated it would be coming shortly through the DX. Further requests for an extension of time were made by the Respondent which were acceded to and which meant his substantive response should have been with The Law Society by mid July 2005.
39. The responses received were submitted to B for her comments and she indicated she did not recall signing certain documents. The Respondent had been asked to deal with this issue when he was asked to obtain a remuneration certificate. An extension of time for reply was granted to the Respondent but no reply had been received.

#### The IO Report

40. The Law Society sent to the Respondent a copy of the IO's Report with a letter of 4<sup>th</sup> November 2005 asking for an explanation. No response was received from the Respondent.

#### Intervention

41. The Law Society resolved on 5<sup>th</sup> December 2005 to intervene into the Respondent's practice and to refer his conduct to the Tribunal.

#### **The Submissions of the Applicant**

42. The Respondent's failure to respond to his professional body had led to The Law Society intervening into his practice in December 2005.
43. The Respondent had been granted many extensions of time for the filing of his outstanding Accountant's Report but still had failed to deal with this important regulatory requirement.
44. The Law Society had conducted a number of investigations into the Respondent's practice. The Respondent had not been cooperative.
45. With regard to the misuse of clients' money, in the case of clients B and T the Respondent had transferred ostensibly in relation to costs exactly the same amount, £2,700, that was needed to meet the standing order on office account representing the Respondent's drawings. The Law Society's case against the Respondent was that he knew or ought to have known that there were no funds available for transfer and the only way the Respondent could maintain his monthly drawings was by making the

transfer. It was The Law Society's case that the Respondent had been dishonest in so doing.

46. With regard to the matter of D, in which the Respondent did not issue proceedings against negligent licensed conveyancers, the Respondent's failure to report his admitted negligence and/or breach of contract to his insurers and to D and in taking payments from other clients to compensate D for the Respondent's several breaches, the Respondent had acted dishonestly.
47. In reaching its decision as to whether or not the Respondent had acted dishonestly the Tribunal was invited to bear in mind the two-part test set down in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12.
48. In the submission of the Applicant the Respondent's overall behaviour had fallen very far short of that required of a member of the solicitor's profession and in the particular instances cited, he had acted dishonestly.

#### **The Submissions of the Respondent**

49. The Respondent played no part in the proceedings and made no submissions.

#### **The Findings of the Tribunal**

50. The Tribunal found all of the allegations to have been substantiated and where dishonesty was alleged by The Law Society, the Tribunal did find that the Respondent had been dishonest. In reaching that conclusion the Tribunal applied the tests in Twinsectra -v- Yardley. The Tribunal was of the view that the actions of the Respondent in misappropriating clients' funds for his own use and benefit and for the benefit of another client to conceal his own shortcomings in fulfilling his obligation to that other client were dishonest actions; and that such actions would be regarded by ordinary members of society and in particular by ordinary members of the solicitor's profession as conscious impropriety and dishonesty and that the Respondent could not have failed to recognise that that view would be held.

#### **The Tribunal's decision and its reasons**

51. The Tribunal was deeply concerned that the Respondent had failed to meet important regulatory requirements and in particular had not complied with the Solicitor's Accounts Rules which are in place to ensure that members of the public are protected. The Respondent had seriously let down a number of clients who had placed reliance upon him. In particular the Respondent had sought to continue to act for more than one client where there was a clear conflict of interest and he had in fact preferred the interests of one of those clients over another two.
52. Whilst the Tribunal would have regarded all of the Respondent's failures as being very serious, the Tribunal has made a finding that in certain of his dealings the Respondent acted dishonestly.



53. Such a finding serves seriously to damage the good reputation of the solicitor's profession and more important the Tribunal has to make its decision bearing in mind its first and most important duty to protect the public. The public should be protected from a solicitor who has been prepared to act dishonestly and the Tribunal Ordered that the Respondent be struck off the Roll of Solicitors. The Applicant had invited the Tribunal to make a fixed costs Order and had supplied a schedule setting out how the costs he sought had been calculated. The Respondent had not taken any part in the proceedings and had therefore given no indication as to his views on the award of costs or the quantum of the same. The Tribunal accepted the Applicant's calculations and in order to save the expenditure of further time and money, the Tribunal Ordered the Respondent to pay the Applicant's costs fixed in the sum sought by the Applicant.

DATED this 20<sup>th</sup> day of April 2007  
on behalf of the Tribunal

A G Ground  
Chairman