

IN THE MATTER OF NIGEL BARRY GLADSTEIN,  
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Miss T Cullen (in the chair)  
Mr A G Gibson  
Mr M C Baughan

Date of Hearing: 19th June 2008

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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 Stuart Roger Turner a solicitor and partner in the firm of Lonsdales solicitors of 342 Lytham Road, Blackpool, Lancashire FY4 1DW on 17<sup>th</sup> August 2006 against Nigel Barry Gladstein for an Order to be made by the Tribunal directing that as from a date to be specified in such Order, no solicitor 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 Nigel Barry Gladstein of Clayhall, Ilford, Essex, a person who is or was a clerk to a solicitor, or that such other Order may be made as the Tribunal shall think right

The allegations against the Respondent were:-

- 4.1 That he had failed to comply with guidelines set out in The Law Society's "Green Card" and so was involved in matters bearing the hallmarks of mortgage fraud in relation to the following transactions:-
  - 4.1.1 In respect of the purchase of a flat by failing to advise or notify the lender that:-

- 4.1.1.1 Instructions were being received from Mr B despite the mortgage offer being made to Mr T.
- 4.1.1.2 Mr T was not the registered leaseholder and that he was re-mortgaging a property that neither he nor Mr B owned.
- 4.1.1.3 The transaction was not a re-mortgage as stated on the Certificate of Title signed by the Respondent on 16<sup>th</sup> May 2004.
- 4.1.1.4 The mortgage advance was based on a valuation of the property which stated a purchase price different from the actual purchase price.

4.1.2 In respect of the purchase of a property by failing to advise or notify the lender that:-

- 4.1.2.1 Mr B was not the registered leaseholder at the time of the mortgage advance being received and utilised.
- 4.1.2.2 The transaction was not a re-mortgage as stated by the Respondent on the Certificate of Title.
- 4.1.2.3 The actual purchase price paid by Mr B was far less than the amount advanced.
- 4.1.2.4 The valuation given in support of the mortgage offer, was more than 33% higher than the actual purchase price.
- 4.1.2.5 That the Respondent acted contrary to paragraphs 3.1 and 6.3 of the Council of Mortgage Lenders Handbook for England and Wales (Second Edition).

4.1.3 In respect of another flat by failing to advise or notify the lender that:-

- 4.1.3.1 Mr M was not the registered leaseholder.
- 4.1.3.2 The transaction was not a re-mortgage as stated by the Respondent on the Certificate of Title submitted to them.
- 4.1.3.3 That the lease relating to this property had apparently yet to be created as at 1<sup>st</sup> August 2004 (the mortgage advance being received on 2<sup>nd</sup> August 2004) contrary to Special Condition 10 of the Lender's Mortgage Offer (failure to confirm that it was not a true legitimate transaction).
- 4.1.3.4 More than £200,000.00 had been disbursed to other (unconnected) parties including £80,000.00 to Mr and Mrs B on 9<sup>th</sup> August 2004.

4.1.4 In respect of the purchase of another flat by failing to advise or notify the lender that:-

- 4.1.4.1 Mr B was not the registered leaseholder.

- 4.1.4.2 The transaction was not a re-mortgage as stated by the Respondent on the Certificate of Title.
- 4.1.4.3 That the mortgage offer referred to a Charge which did not appear to be in existence.
- 4.1.4.4 The Respondent allowed part of the mortgage advance to be used for the repayment of a loan to an unconnected third party without the knowledge of the lender.

4.2 That contrary to Section 1 of the Solicitors Act 1974 the Respondent held himself out as a solicitor at a time when he had not been admitted as a solicitor, his name was not on the Roll and he did not have in force a certificate issued by the Society authorising him to practise as a solicitor.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 19<sup>th</sup> June 2008 when Stuart Roger Turner appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included a certificate of conviction from Harrow Crown Court dated 8<sup>th</sup> November 2007 and the sentencing remarks of Her Honour Judge Tapping.

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

The Tribunal ORDERS that as from 19th day of June 2008 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 Nigel Barry Gladstein of Arundel, West Sussex, 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 £22,478.67.

**The facts are set out in paragraphs 1 - 14 hereunder:-**

1. On 12<sup>th</sup> October 2005 Mr M J Calvert, Head of Forensic Investigations at The Law Society submitted an Interim Report (the FI Report) to Mr D J Middleton, Head of Investigation and Enforcement at The Law Society of an inspection into the books of account and other documents of the firm AB and Co where the Respondent had been employed between February 2003 and August 2004.
2. The inspection began on 24<sup>th</sup> November 2004 and the Interim Report deals solely with the Respondent's conduct in connection with a number of conveyancing transactions where he was the fee earner in the firm's employment. The Respondent was dismissed in August 2004 following an internal investigation by the firm and the Respondent was reported to the police.
3. Fourteen original client matter files were obtained from the police for which the Respondent was the sole fee earner on each of them. The FI Report deals with four of

the fourteen matters and a separate "Bible" of documents was prepared containing complete copies of the client files for those four matters.

4. In the first matter, mortgage monies had been released by the lender in relation to the purchase of Flat J by Mr T but the money was used in relation to Mr B's purchase of Flat G. The purchase of Flat J was subsequently completed by £200,000.00 being acquired through a loan from the Halifax Bank together with the transfer of £193,059.63 from a client ledger from an unrelated purchase in respect of which a mortgage advance had been received from another lender. The lenders had not been informed that mortgage advances were being used towards the purchase of different properties.
5. Furthermore, the mortgage advance received from the lender in relation to the purchase of Flat J was not returned to the lender despite completion being delayed for more than 5 working days from receipt of the funds contrary to Part 2 of the Council of Mortgage Lenders Handbook (Second Edition). Also the mortgage advance received in respect of the purchase of Flat G had been utilised before a properly executed mortgage deed had been received. As a result, the Respondent had acted contrary to paragraphs 3.1, 5.9 and 6.3 of the Council of Mortgage Lenders Handbook for England and Wales (Second Edition) and contrary to Section 2 (1)(b) of the Lenders General Conditions 2000.
6. The second matter was where the Respondent had acted for Mr B in the purchase of a property. Mr B had received an offer of a Buy to Let mortgage from a lender and that offer was based on a valuation of the property of £225,000.00. The Respondent had signed and sent a certificate of title to the lender stating the transaction was a remortgage even though Mr B did not acquire the property from the vendors until four days after the certificate of title had been signed. The transfer document (TR1) recorded a purchase price of £168,000.00, less than that stated in the valuation used to support the mortgage offer.
7. The Respondent had failed to advise the lender that the certificate of title was incorrect as it stated it was a re-mortgage, Mr B was not the registered leaseholder at the time of the mortgage advance being received and utilised, the lender was advancing £191,674.00 when the actual price paid by Mr B was only £168,000.00 and that the valuation given in support of the mortgage offer was more than 33% higher than the actual purchase price.
8. The third matter related to the Respondent acting for a purchaser who was purchasing with the assistance of a Buy to Let mortgage from a lender based on the maximum loan value of 85%. The lender's valuation was £335,000.00 and a mortgage advance of £274,634.00 was received from the lender into the firm's client account. The mortgage offer contained a special condition requiring the "solicitors to confirm that this is a true legitimate transaction, that all monies passed through the solicitors' client account and that all insolvency considerations have been satisfied prior to the release of funds".
9. On 1<sup>st</sup> August 2004 the registered freeholder was Mr RC and on 3<sup>rd</sup> August the Respondent signed and sent a certificate of title to the lender saying that the mortgagor was Mr JMN and the transaction was refinance. It was also noted that the relevant client ledger illustrated that more than £200,000.00 had been disbursed to

other apparently unconnected parties including £80,000.00 to Mr and Mrs B on 9<sup>th</sup> August 2004.

10. There was no evidence on the file that the Respondent had advised or notified the lender that Mr JMN was not the registered leaseholder, or that the certificate of title was incorrect in that it stated the transaction was a re-mortgage.
11. The fourth matter was where the Respondent acted for Mr B in a proposed re-mortgage of a property. On 20<sup>th</sup> May 2004 the leasehold title to the property belonged to Mr and Mrs C. On 6<sup>th</sup> July 2004 the firm received a copy of Mr B's mortgage offer of £284,750.00. The offer was conditional upon inter alia the redemption of the existing mortgage secured on the property. The offer was referred to by the lender as a re-mortgage although it is clear from the file that the Respondent was aware that his client Mr B was not re-mortgaging. The Respondent signed and returned a Certificate of Title to the lender stating it was a re-mortgage despite his knowledge that Mr B was not the registered owner of the property and there was no existing charge secured on the property.
12. On 30<sup>th</sup> July 2004 the firm received £284,421.00 into the firm's client bank account from the lender and on the same day a payment of £204,000.00 to a third party was made and described as "re-payment of loan". The ledger recorded two payments of £14,580.00 and £15,000.00 to Inland Revenue stamp duty but there was no evidence on the file of stamp duty being paid or any attempt to deal with the registration.
13. There was no evidence that the lender was advised or notified that Mr B was not the registered leaseholder, that the certificate of title was incorrect in stating the transaction was a re-mortgage when in actual fact it was a purchase and that the mortgage offer referred to a non existent charge.
14. As a result, the Respondent acted contrary to paragraph 3.1 and 6.3 of the Council of Mortgage Lenders Handbook for England and Wales (Second Edition).

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

15. The Respondent had appeared at the Harrow Crown Court on 22<sup>nd</sup> June 2007 and had made admissions of conspiracy to defraud, obtaining a money transfer by deception, five counts of theft and two counts of obtaining a pecuniary advantage for himself by deception. Her Honour Judge Tapping at the Harrow Crown Court sentenced the Respondent to a total of 24 months imprisonment.
16. The Tribunal made enquiries as to whether the Respondent was aware of the disciplinary hearing and were advised that letters giving details of the hearing had been sent to the Respondent on 4<sup>th</sup> March 2008, 27<sup>th</sup> May 2008 and on 3<sup>rd</sup> June 2008 to which there had not been any response. In December 2007 a letter had been received from the Respondent's solicitors in the criminal proceedings but other than that the Respondent had not been in contact with the Applicant or the Tribunal in response to any correspondence.
17. The Tribunal asked when was the last communication received from the Respondent and the Applicant confirmed that there have been no communications from the

Respondent concerning this matter since 3<sup>rd</sup> April 2007 when the matter was last before the Tribunal.

18. The Applicant sought his costs in the sum of £22,478.67.

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

19. The Tribunal considered carefully the documentation and the submissions of the Applicant. In the absence of any evidence or submissions put forward by the Respondent the Tribunal was satisfied from the documentation available to it that all the allegations were substantiated.
20. There was no mitigation before the Tribunal on behalf of the Respondent. It appeared to the Tribunal that the Respondent had fallen far below the accepted standards of the profession. For a solicitor's clerk to be convicted of a criminal offence resulting in a sentence of imprisonment was a serious matter and the Tribunal felt that he had damaged the reputation of the profession in the eyes of his clients and the public and it was right that the Order sought should be granted.
21. The Tribunal made an Order that as from 19th day of June 2008 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 shareholder of an incorporated solicitor's practice Nigel Barry Gladstein of Arundel, West Sussex, a person who is or was a clerk to a solicitor.
22. The Tribunal further Ordered that Nigel Barry Gladstein do pay the costs of and incidental to the application and enquiry fixed in the sum of £22,478.67.

Dated this 17<sup>th</sup> day of October 2008  
On behalf of the Tribunal

Miss T Cullen  
Chairman