

IN THE MATTER OF SEAN CHRISTOHER GARLAND HAGAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mr P Kempster
Mrs V Murray-Chandra

Date of Hearing: 13th February 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 Paul Robert Milton, solicitor employed by the Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 15th August 2006 that Sean Christopher Garland Hagan of Rhyl, Conwy, Wales, 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 fit.

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

- (i) Failed to deliver or alternatively delayed in delivering to the Law Society Accountant's Reports for the period ending 30th April 2004 and 30th April 2005 contrary to Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
- (ii) Failed to comply with a direction of an Adjudicator dated 26th April 2006.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 13th February 2007 when Paul Robert Milton appeared as the Applicant and the Respondent did not appear and was not represented.

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

The Tribunal Orders that the Respondent, Sean Christopher Garland Hagan of Rhyl, Denbighshire, Wales, solicitor, do pay a fine of £1,000, 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 £261.

The Tribunal further Orders that unless the Respondent delivers to the Law Society by 29th March 2007 the Accountant's Reports for Hagan & Co for the periods ending 30th April 2004 and 30th April 2005 then he shall be suspended from practice as a solicitor for an indefinite period to commence on the 30th day of March 2007.

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

1. The Respondent, born in 1963, was admitted as a solicitor in 1988 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practice on his own account under the style of Hagan & Co of 433a Green Lanes, London, N4 1HA. The Respondent closed his practice on 15th August 2005. He did not hold a current Practising Certificate.

Accountant's Report for the period ending 30th April 2004

3. On 5th October 2005 the Law Society wrote to the Respondent noting that the Accountant's Report for Hagan & Co for the year ending 30th April 2004 was outstanding. The Report was due to be delivered to the Law Society on or before 20th August 2005 (after an extension of time had been granted by the Law Society) and remained outstanding.
4. The Respondent provided a substantive reply on 19th October 2005 where he made reference to a previous letter dated 21st September 2005 to the Law Society at Redditch which stated that he appreciated that the Report was due for delivery by 24th August 2005 and apologised for the delay but that he was unable to forward the Report "without delay" due to financial difficulties at the firm.
5. The Respondent stated that he was unable to afford the accountant's fee and that he did not know how to overcome this difficulty. The Respondent stated that he would be grateful if any further action could be stayed pending a review in three months' time. He hoped then that his financial position would have improved to an extent that he was able to afford to commission an Accountant's Report and to pay the accountant's fee.
6. On 23rd November 2005 an Adjudicator considered the outstanding Accountant's Report for Hagan & Co for the year ending 30th April 2004 and decided to stand over consideration of the matter for three months.

Accountant's Report for the period ending 30th April 2005

7. On 13th December 2005 the Law Society wrote to the Respondent noting that the Accountant's Report for Hagan & Co for the period ending 30th April 2005 was outstanding. This Report was due to be delivered to the Law Society on or before 31st October 2005 and remained outstanding.
8. On 22nd December 2005 the Respondent replied. The Respondent stated that essentially the reasons for the delay were identical to those in relation to the Accountant's Report for the year ending 30th April 2004, in short that he was unable to afford the Accountant's fee and did not know how to overcome this. The Respondent stated again in his letter to the Law Society of 22nd December 2005 that he would be grateful if the matter could be stayed pending a review of both the Accountant's Reports for the years ending 30th April 2004 and 30th April 2005.

Failure to comply with a direction of the Adjudicator

9. Prior to the review by an Adjudicator of the situation regarding the outstanding Accountant's Reports for the years ending 30th April 2004 and 30th April 2005 the Respondent was asked for his representations. His representations were set out in a letter dated 31st March 2006.
10. In his letter the Respondent commented that he should be able to deliver both outstanding Reports, together with the Report that fell due at the end of April 2006, by the end of May 2006.
11. The Adjudicator considered this matter and the Respondent's representations on 26th April 2006. A copy of the Adjudicator's Decision was before the Tribunal.
12. The Adjudicator expected the Respondent to file the outstanding Accountant's Reports for the years ending 30th April 2004 and 30th April 2005 within six weeks of being notified of the Adjudicator's decision, failing which the Adjudicator decided to refer the Respondent's conduct to the Tribunal without further notice.
13. The Respondent was notified of the decision of the Adjudicator on 27th April 2006. The Accountant's Reports for Hagan & Co for the years ending 30th April 2004 and 30th April 2005 remain outstanding at the date of the hearing before the Tribunal.

The Submissions of the Applicant

14. The Respondent had confirmed that he would not be attending the hearing and the Tribunal was referred in his absence to his Statement of Truth dated 23rd January 2007. The Applicant had served the relevant Notices on the Respondent.
15. The Respondent's Accountant's Reports referred to in allegation (i) remained outstanding. The Respondent had agreed that the Tribunal could be informed that the Report for the period ending April 2006 was also outstanding. As at the date of the Respondent's Statement of Truth, the sum of £5,265.15 remained on client account. The Respondent had said that he hoped to submit the outstanding Reports in March 2007.

16. The Respondent had admitted the facts in most respects but did not accept that they amounted to conduct unbefitting a solicitor. The Applicant disagreed. It was vital that the Rules relating to Accountant's Reports be adhered to by solicitors in order to protect public confidence in the profession.
17. The Applicant sought his costs in the sum of £261. The Respondent had indicated that he would leave the matter of costs to be decided by the Tribunal.

The Submissions of the Respondent

18. The Respondent's submissions were set out in his Statement of Truth dated 23rd January 2007.
19. The Respondent said that in his letter of 31st March 2006 he had said that he should be able to deliver the Reports by the end of May 2006, not that he would do so as stated by the Applicant in his statement. The Respondent referred to the financial difficulties which had prevented him filing the Reports by this date. He said that due to ongoing financial difficulties he had been unable to file the Reports before the Tribunal hearing.
20. In mitigation the Respondent set out his current financial circumstances and details relating to his client account. He would be trying to bill those client matters with balances remaining on client account to try to clear the account by 30th April 2007, the date to which his firm's next Report had to be prepared.
21. The Respondent should be able to deliver the three outstanding Reports during March 2007. He apologised for the delay and profoundly regretted that he had been unable to comply with the Adjudicator's Decision.
22. The Respondent asked the Tribunal to take account of his previous unblemished record. He did not intend to practise as a solicitor in the future but wished to leave the profession without a stain on his reputation.
23. Having regard to the mitigating circumstances the Tribunal was asked not to find that the Respondent had been guilty of conduct unbefitting a solicitor.
24. In relation to costs the Respondent referred the Tribunal to previous correspondence and said he intended to petition for his own bankruptcy.

The Findings of the Tribunal

25. The Tribunal considered carefully the documentation including the representations made by the Respondent in correspondence and his Statement of Truth dated 23rd January 2007. The Respondent had accepted that he had not filed the required Accountant's Reports. The Respondent, like other solicitors, had a duty to comply with these important regulations which enabled the public to have confidence that clients' money was properly dealt with. The Tribunal considered the mitigation put forward by the Respondent but was satisfied that his failure to file the Reports, which were long overdue, amounted to conduct unbefitting a solicitor.

26. The Tribunal noted from correspondence that the Respondent had previously indicated that the outstanding Reports should be submitted by a certain date and this had not happened. The Respondent retained money on client account. The situation could not be allowed to continue indefinitely. The Tribunal would impose a fine of £1,000 for the Respondent's failure to file the outstanding Reports but would also impose a period of indefinite suspension if the Respondent did not deliver the Reports to the Law Society by 29th March 2007.
27. The Tribunal would also order that the Respondent pay the Applicant's costs.
28. The Tribunal made the following Order:-

The Tribunal Orders that the Respondent, Sean Christopher Garland Hagan of Rhyl, Denbighshire, Wales, solicitor, do pay a fine of £1,000, 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 £261.

The Tribunal further Orders that unless the Respondent delivers to the Law Society by 29th March 2007 the Accountant's Reports for Hagan & Co for the periods ending 30th April 2004 and 30th April 2005 then he shall be suspended from practice as a solicitor for an indefinite period to commence on the 30th day of March 2007.

DATED this 21st day of May 2007
On behalf of the Tribunal

A H B Holmes
Chairman