

IN THE MATTER OF KWAKU AFRIFA-YAMOAHA, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A G Ground (in the chair)  
Mr J P Davies  
Lady Bonham Carter

Date of Hearing: 19th April 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 David Elwyn Barton, solicitor advocate of 5 Romney Place, Maidstone, Kent, ME15 6LE on 14th November 2006 that Kwaku Afrifa-Yamoah, solicitor of Clapham Road, London, SW9 might be required to answer the allegation contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegation against the Respondent was that he had been guilty of conduct unbefitting a solicitor in the following respect, namely, having been a principal for the purposes of the Solicitors Indemnity Rules 1996, he failed to pay his proportion of an outstanding deductible due as a consequence of a claim brought against Waran and Co by a former client of that firm.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 19th April 2007 when David Elwyn Barton appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included a statement of Mr Afrifa-Yamoah passed to the Tribunal by Messrs Afrifa and Partners with their letter of 17th April 2007.

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

The Tribunal Orders that the Respondent, Kwaku Afrifa-Yamoah of Clapham Road, London, SW9, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 19th day of April 2007 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,737.

**The facts are set out in paragraphs 1 to 5 hereunder:-**

1. The Respondent, born in 1947, was admitted as a solicitor in 1994. At the material times he practised in partnership under the style of Waran and Co at 5a Clapham Common South Side, London, SW4 7AA.
2. On 20th August 2004 the Solicitors Indemnity Fund wrote to the Respondent asking him to pay a deductible of £1,500 following the settlement of a claim.
3. The Respondent denied being a principal and denied being in partnership.
4. Evidence that the Respondent was in partnership at the material time, namely 21st August 1996, was contained in a letter from Waran Narayan solicitors dated 4th January 1995; letters to and from Mrs V dated 26th April 2005 and 3rd May 2005, with an example of the firm's letterhead; and Form ARF1 for the year 1st May 1996 to 30th April 1997 which named the Respondent as a partner.
5. On 25th November 2005 the Adjudication Panel refused the Respondent's appeal against a decision of the Law Society's Adjudicator in which the Respondent was "expected" to pay the deductible of £1,500. That deductible remained unpaid.

**The Submissions of the Applicant**

6. The Respondent was a partner in the firm of Waran and Co at the material times and was thus a principal. For the purposes of the Indemnity Rules he was therefore liable to pay the deductible as claimed by the Solicitors Indemnity Fund. He had not done so.

**The Submissions of the Respondent  
(in a summary of his beforementioned statement)**

7. The Respondent was in voluntary retirement and was of no fixed address. He confirmed that he had worked with the firm of Waran and Co on a self-employed basis. He had paid 50% of his earnings to the firm every month. He was never a partner or a principal in that firm. At no time did he draw any money from the firm's account as a partner, nor did he receive any profits as a partner at the end of the year.
8. Letters which the Applicant claimed evidenced the Respondent's status as a partner had been written by Mrs VW without his knowledge or consent.
9. There was no written partnership agreement. He had not been listed as a partner in the 1996 Accountant's Report for that firm and he had not seen the Accountant's Reports which listed him as a partner until they were produced to him in the course of the current proceedings.

10. Mr Afrifa-Yamoah was not a principal in the firm of Waran and Co and was not liable to pay the deductible as had been claimed.
11. Mr Afrifa-Yamoah in his statement set out his understanding of the law relating to partnership, submitting that in the circumstances the Applicant's application should be dismissed as he had never been a partner in the firm of Waran and Co, and thus he was not responsible or liable to pay a proportion of an outstanding deductible.

#### **The Tribunal's Findings**

12. The Tribunal found the allegation to have been substantiated.

#### **The Tribunal's Decision and its Reasons**

13. The Tribunal rejected the Respondent's assertion that he was not a principal in the practice of Waran and Co. He had been described as a partner in a document submitted to the Law Society and was held out as a partner on that firm's letterhead of which his practice in the firm would have made him aware. He has the liability of a partner if he is held out as such, regardless of the absence or content of any written or other agreement. The deductible has not been paid. The Respondent is liable for such payment.
14. The Tribunal considered it appropriate to order that the Respondent be suspended from practice for an indefinite period. It is unlikely that any application by him to have that period of suspension brought to an end would be favourably dealt with if the Respondent could not show that he had not met his obligation to pay the deductible due to the Solicitors Indemnity Fund, and could not provide a satisfactory explanation for his previous non-compliance with such obligation.
15. The Respondent should pay the Applicant's costs, the quantum of which the Tribunal considered to be entirely reasonable, fixed in the sum of £3,737.

Dated this 25<sup>th</sup> day of May 2007  
On behalf of the Tribunal

A G Ground  
Chairman