

IN THE MATTER OF BERNARDO DE ABBEVILLE PAZ-PENA DE VIRE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mr A H B Holmes
Mr G Fisher

Date of Hearing: 5th July 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 6th December 2006 that Bernardo De Abbeville Paz-Pena De Vire, solicitor of Barbican, London, EC2Y and Madrid 28016, Spain might be required to answer the allegations made 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 each of the following respects:-

- (i) that he failed to deliver or alternatively delayed in delivering to the Law Society an Accountant's Report for the period ending 31st March 2003, contrary to Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
- (ii) that he failed to comply with a direction of a Law Society Adjudicator dated 7th May 2004;

- (iii) that he failed to deliver or alternatively delayed in delivering to the Law Society an Accountant's Report for the period ending 31st March 2004 contrary to Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
- (iv) that he failed to comply with a direction of a Law Society Adjudicator dated 8th February 2005.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 5th July 2007 when Paul Robert Milton appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent.

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

The Tribunal Orders that the Respondent, Bernardo De Abbeville Paz-Pena De Vire of Barbican, London, EC2Y, solicitor, do pay a fine of £2,000, such penalty to be forfeit to Her Majesty the Queen. The Tribunal further Orders that unless the Respondent within 90 days files with the Law Society all the outstanding Accountant's Reports in respect of his former practice of De Vire and Co or successfully applies to the Law Society for a waiver in respect of such reports, then he shall be suspended from practice for an indefinite period to commence on 4th October 2007.

AND the Tribunal further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £991.

The facts are set out in paragraphs 1 to 34 hereunder:-

1. The Respondent, born in 1964, was admitted as a solicitor in 1993 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 De Vire & Co of 311 Cromwell Tower, Barbican, London, EC2Y 8DD. He did not hold a current Practising Certificate and was not currently practising as a solicitor.

Failure to deliver an Accountant's Report for the period ending 31st March 2003

3. The Accountant's Report for the firm of De Vire & Co for the year ending 31st March 2003 was originally due to be filed with the Law Society on or before 30th September 2003. However, the Respondent emailed the Law Society on 30th September 2003 to request an extension of time to 30th November 2003 to deliver that Accountant's Report. A copy of the Respondent's email was before the Tribunal. The Respondent explained that the reason for the delay was due to his transition from a manual accounting system to a computer based accounting system, and due to his accountant being heavily engaged with tax work.
4. The Law Society granted the Respondent an extension of time to 30th November 2003 to deliver the Accountant's Report. However, on 28th November 2003 the Law Society received a further request for an extension of time to 31st December 2003. A

copy of the Respondent's request was before the Tribunal. The Law Society granted this further extension of time.

5. On 31st December 2003 the Law Society received a further request for an extension of time to file the Accountant's Report to 31st January 2004. The Respondent stated in his letter that work was in hand to prepare the Accountant's Report. The Compliance Directorate of the Law Society granted him an additional extension of time until 31st January 2004.
6. On 9th February 2004 the Law Society wrote to the Respondent stating that it had failed to receive the outstanding Accountant's Report whilst requesting that the Respondent send the outstanding Report to the Law Society as soon as possible. The Law Society received a letter from the Respondent dated 27th February 2004 in which he confirmed that he had failed to receive a statement confirming balances on a retention account held in Spain and until this was received it would not be possible for him to check this or sign the Accountant's Report. The Respondent however confirmed that as soon as the Report was completed he would deliver it to the Law Society in Chancery Lane "as a matter of urgency".
7. Following the failure of the Respondent to deliver the outstanding Accountant's Report the matter was referred to the Compliance Directorate of the Law Society for investigation on 2nd March 2004.
8. On 11th March 2004 the Society wrote to the Respondent requesting his explanation for the Accountant's Report being outstanding. The Respondent responded by emailed letter dated 30th March 2004.
9. The Respondent again stated that the main reason for the delay in filing the Accountant's Report was his transition from a manual to a computer based accounting system. The Respondent commented that he had encountered difficulties with the inputting of data, the way the data was presented, and with the format of the final output. The Respondent also stated that he had been ill and his Accountant had been unavailable to prepare the Report being engaged in other tax work. The Respondent also stated that he had been awaiting a bank statement from overseas to confirm the balance on a retention account. Without that statement, the Respondent believed he was unable to sign the Accountant's Report.
10. Finally the Respondent added that he intended to deliver the outstanding Accountant's Report in person to the Law Society at Chancery Lane "as soon as possible".

Failure to comply with the direction of a Law Society Adjudicator dated 7th May 2004

11. On 7th May 2004 a Law Society Adjudicator considered the matter of the outstanding Accountant's Report for the year ending 31st March 2003.
12. The Adjudicator expected the Respondent to deliver to the Law Society the outstanding Accountant's Report for his former firm of De Vire & Co for the year ending 31st March 2003 within 28 days from the date of the letter notifying him of the decision, failing which the Adjudicator decided to refer the Respondent's conduct to the Tribunal without further notice.

13. The Respondent was informed of the decision of the Adjudicator on 10th May 2004. The Accountant's Report for De Vire & Co for the year ending 31st March 2003 remained overdue and outstanding.

Failure to deliver an Accountant's Report for the period ending 31st March 2004

14. The Respondent was due to deliver to the Law Society an Accountant's Report for his former firm of De Vire & Co for the year ending 31st March 2004 on or before 30th September 2004.
15. On 30th September 2004 the Law Society received a request from the Respondent for an extension of time until 15th October 2004 in which to deliver the Report.
16. The Respondent explained that he needed further time in which to deliver the Report as the firm was undergoing a transition from a manual to a computer based accounting system. The Respondent also stated that he had delayed in producing the books of account to his accountant because some ledgers were untidy in comparison with those of previous years, although his accountants commented that they had seen worse in their day-to-day practice, and he hastened to add that all the entries and double entries, running balances etc were legible and complete. As a result there had been significant delays which would not normally have occurred in commencing the audit process that led to the production of the Accountant's Report.
17. The Respondent added that further intervening factors such as his accountant being engaged in tax work and a period of illness had added further delay. The Respondent stated that the Accountant's Report had been put in hand and that the accounting paperwork was still with his accountant. He requested in this letter an extension of time in which to deliver the outstanding Report until "Friday 8th October or Friday 15th October 2004 as a final deadline. The agreed date would operate as a final deadline offered on a "last chance" basis without further excuse or recourse".
18. On 27th October 2004 the Regulation Unit received a further request from the Respondent for another extension of time to 15th November 2004 in which to deliver the Accountant's Report for the year ending 31st March 2004.
19. On 3rd November 2004 the Regulation Unit of the Law Society wrote to the Respondent requesting further comments in support of his extension request application. No response was received from the Respondent to this letter.
20. On 7th December 2004 the Regulation Unit wrote a further letter to the Respondent explaining that, as he had not submitted any further extension requests in relation to the Report for the year ending 31st March 2004, that Accountant's Report was now classed as outstanding. In addition an explanation was requested of the Respondent as to why the said Accountant's Report had not been delivered. The Respondent did not respond to this letter.

Failure to comply with a direction of a Law Society Adjudicator dated 8th February 2005

21. On 8th February 2005 a Law Society Adjudicator considered the Respondent's request for an extension of time until 15th November 2004 in which to deliver the outstanding Accountant's Report for the year ending 31st March 2004.
22. The Adjudicator refused to grant the Respondent's request.
23. The Adjudicator found that the Respondent had not provided a satisfactory explanation in support of his request for an extension of time and had failed in any event to deliver the outstanding Accountant's Report by the requested extension date of 15th November 2004. No further extension requests had been received. Accordingly the Adjudicator did not consider that it was in the interest of clients to grant the Respondent's extension request. The Adjudicator found that the Accountant's Report for De Vire & Co for the year ending 31st March 2004, which was due to be delivered on or before 30th September 2004, had not been delivered in breach of Section 34 of the Solicitors Act 1974 (as amended).
24. The Adjudicator expected the Respondent to file the outstanding Report within 28 days of the letter notifying him of the decision, failing which the conduct of the Respondent would be referred without further notice to the Tribunal.
25. The Respondent was notified of the decision of the Adjudicator on 11th February 2005. The Accountant's Report for De Vire & Co for the year ending 31st March 2004 remained overdue and outstanding.

Waiver request from delivering the outstanding Accountant's Reports for the years ending 31st March 2003 and 31st March 2004

26. On 30th June 2006 the Regulation Unit of the Law Society wrote to the Respondent following his request in a letter dated 30th September 2005 for a waiver from the requirement to deliver a cease to hold Accountant's Report for his former firm for the period 1st April 2004 to 12th July 2005.
27. The Respondent was informed that in order for such a waiver to be processed he would need to submit copies of his client account bank statements covering all the relevant periods from 1st April 2002 to 12th July 2005. He was asked to submit the copy statements within 14 days.
28. On 17th July 2006 after no response from the Respondent to the Regulation Unit's letter dated 30th June 2006, the Regulation Unit wrote again to the Respondent enclosing a further copy of the letter dated 30th June 2006. The Respondent telephoned the office on 17th July 2006 apologising for not getting in touch sooner because he had been suffering from depression. He stated that he would send in copies of the requested bank statements.
29. On 7th August 2006 the Regulation Unit wrote to the Respondent again requesting copies of his client account bank statements covering the period 1st April 2002 to 12th July 2005.

30. On 29th August 2006 the Respondent telephoned the office saying that he would send in copies of the client account bank statements and that he had also approached his accountants with a view to submitting the outstanding Accountant's Reports. Following this telephone conversation no copy client account bank statements or the outstanding Accountant's Reports were forthcoming from the Respondent.
31. On 29th September 2006 the Regulation Unit wrote again to the Respondent outlining the many previous requests that had been made of him to provide copies of the client bank account statements which had not been forthcoming.
32. The Respondent was also reminded that the Adjudicator's decisions made on 7th May 2004 and 8th February 2005 to refer his conduct to the Tribunal for his failure to file outstanding Accountant's Reports for the periods ending 31st March 2003 and 31st March 2004 had not been rescinded. The Respondent was told that unless, as previously requested, he provided the copy client account bank statements for the period 1st April 2002 to 12th July 2005 within 14 days the Reports for the periods ending 31st March 2003 and 31st March 2004 would be considered as outstanding and his conduct would be referred to the Tribunal.
33. On 20th October 2006 the Respondent emailed the caseworker in the Regulation Unit saying that he was aware of some outstanding correspondence with the Law Society and the matter of the Accountant's Reports. He stated that this would be one of the first matters to receive his attention.
34. On 13th November 2006 the Applicant received a fax from the Chief Executive Officer of 'Fabricaciones Militares' in Spain, an organisation to which the Respondent had previously acted as a business adviser. This letter stated that the Respondent had been subject to a 'medical intervention' in Spain and was undergoing rehabilitation. The letter also stated that the Respondent intended 'to complete his procedures with [the Law Society] and no longer wishes to practise law in the future'.

The Submissions of the Applicant

35. The Reports referred to in the allegations remained outstanding, as did the Reports for the year ending 31st March 2005 and the period ending 12th July 2005, this being the date that the Respondent had indicated that he had closed his client account.
36. The Respondent had been provided with the opportunity to obtain a waiver provided he supplied the relevant bank statements, but he had not done so.
37. The Applicant had served the relevant Notices on the Respondent on 19th February 2007 but had received no Counter-Notice.
38. The Applicant sought his costs in the sum of £991.

The Submissions of the Respondent

39. The Respondent had run a small specialist practice. He had been effective at client work and had had no complaints or claims. His clients had been satisfied. The firm had however struggled financially and the Respondent had had to close it. This had

led to him having no money and becoming depressed as referred to in correspondence. He had suffered serious bouts of depression in 2005 and 2006 and indeed had been in a Spanish psychiatric hospital when he received the papers in these proceedings.

40. The Respondent agreed that the Reports were outstanding and agreed the facts and allegations but felt that the way the case had been presented did not show his point of view. For this reason he had put in a written statement dated 3rd July 2007 to which the Tribunal was referred.
41. The Respondent had been in practice for 10 years and had never caused any damage to clients. He had not filed his Accountant's Reports as a result of his state of mind. With treatment he had now pulled himself round. Additionally he had been unable to raise money for the Reports and was currently unemployed. Friends had however reluctantly agreed to lend him the money to pay an accountant.
42. There had been no harm to the public. The Respondent did not intend to practise law again but was an orderly person and would appreciate the opportunity to put things right and to close things with honour. He was now in a better mental state and could organise himself to get the papers.
43. The Respondent submitted that 180 days would be a reasonable time to allow him to produce the Reports. If he failed he would have exhausted the Tribunal's patience. If the Tribunal imposed a shorter period he might miss it by a day.
44. In relation to costs the Respondent said he would not dispute the costs but would need time to pay.

The Findings of the Tribunal

45. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
46. The Tribunal had taken careful note of the Respondent's explanations regarding his ill-health but noted also that the first Accountant's Report had been due in 2003. Accountant's Reports were an essential part of the protection provided by the regulator to the public. The Respondent had been given an opportunity to seek a waiver in respect of the Reports subject to the safeguard of sending in his bank statements, but he had failed to do even that. Given the long period over which the Respondent had failed to comply with this important professional requirement, the Tribunal felt it was appropriate to impose a fine. The Tribunal would also make an order which was designed to encourage the Respondent to finish the matter with the dignity which he had requested, although the Tribunal considered that 180 days was an excessive period and would give the Respondent 90 days in which to file the outstanding Reports. If he failed to take this final opportunity he would be suspended from practice. The Tribunal would also order the Respondent to pay the Applicant's costs.
47. The Tribunal ordered that the Respondent, Bernardo De Abbeville Paz-Pena De Vire of Barbican, London, EC2Y, solicitor, do pay a fine of £2,000, such penalty to be

forfeit to Her Majesty the Queen. The Tribunal further ordered that unless the Respondent within 90 days files with the Law Society all the outstanding Accountant's Reports in respect of his former practice of De Vire and Co or successfully applies to the Law Society for a waiver in respect of such reports, then he shall be suspended from practice for an indefinite period to commence on 4th October 2007.

The Tribunal further ordered that the Respondent do pay the costs of and incidental to this application and enquiry fixed in the sum of £991.

DATED this 7th day of September 2007
on behalf of the Tribunal

R B Bamford
Chairman