

IN THE MATTER OF MALCOLM CONGREVE BROWN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R Nicholas (in the chair)
Mr I R Woolfe
Mr M G Taylor CBE DL

Date of Hearing: 2nd April 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London WC1R 4BX on 24th January 2007 that Malcolm Congreve Brown, solicitor, of Sheriff House, The Broadway, Farnham Common, Slough, Berkshire SL2 3QH (now of Farnham Royal, Slough, Berkshire, SL2 3QH) 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 as follows:-

- (a) That his books of account were not properly written up contrary to the Solicitors Accounts Rules.
- (b) That he withdrew monies from client account in breach of Rule 22 Solicitors Accounts Rules 1998.
- (c) That he utilised client's funds for the benefits of other clients.
- (d) That he did not remedy breaches of Solicitors Accounts Rules promptly contrary to Rule 7 Solicitors Accounts Rules 1998.

- (e) That he used clients' funds for his own purposes.
- (f) That he withdrew cash improperly from client account.
- (g) That he used a suspense client ledger account contrary to Rule 32 (16) Solicitors Accounts Rules 1998.
- (h) That he made secret profits.
- (i) That he acted and/or continued to act in circumstances where there was a conflict of interest or a significant risk of conflict of interest between clients.
- (j) That he transferred funds between clients when there was no prior written authority by both clients contrary to Rule 30 Solicitors Accounts Rules 1998.
- (k) That he permitted his firm and his firm's client account to be used in circumstances where there was no underlying legal work to be undertaken.
- (l) That he failed to take any or any adequate checks concerning client monies received into his firm's client account.
- (m) That he released confidential client information to a third party without the authority of his client.
- (n) That he permitted his firm improperly and/or dishonestly to be involved in a conveyancing transaction that was in fact fraudulent.
- (o) That he permitted his firm's client account improperly and/or dishonestly to be involved in a conveyancing transaction that was in fact fraudulent.
- (p) That he permitted a Return to be forwarded to the Inland Revenue as to the value of a conveyancing transaction which he knew or ought to have known was improper and/or dishonest.

By a Supplementary Statement of Peter Harland Cadman dated 3rd March 2009 it was further alleged against the Respondent as follows:-

- (q) That he had been convicted of a criminal offence namely conspiracy to defraud.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 2nd April 2009 when Peter Harland Cadman, solicitor, appeared as the Applicant and the Respondent did not appear and was not represented.

This matter had originally been listed for mention before the Tribunal on 2nd April 2009. At the commencement of the hearing the Applicant asked the Tribunal to dispose of the matter at a substantive hearing on the basis of the supplementary statement only and asked that the matter set out as allegations (a) to (p) be left to lie on file. Mr Cadman said that the Respondent had on 11th March 2009 indicated his consent to this and said that he would not be attending the hearing. The Respondent was a serving prisoner. The Respondent had

admitted allegation (q). The Tribunal agreed to hear the matter on the basis outlined by the Applicant noting the Respondent had consented to this.

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

The Tribunal Orders that the Respondent, MALCOLM CONGREVE BROWN of Farnham Royal, Slough, Berkshire, SL2 3QH, 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 £17,459.87.

The facts are set out in paragraphs 1 - 3 hereunder:-

1. The Respondent, born in 1930, was admitted as a solicitor in 1963. His name remained on the Roll of Solicitors.
2. At all material times the Respondent practised under his own name as Malcolm C Brown Solicitors, Sheriff House, The Broadway, Farnham Common, Slough, Berkshire, SL2 3QH.
3. The Respondent appeared at Reading Crown Court on 18th December 2008. He pleaded guilty to an allegation of conspiracy to defraud. A copy of the certificate of conviction was before the Tribunal together with a copy of the Judge's sentencing comments.

The Submissions of the Applicant

4. The Applicant referred the Tribunal to the sentencing remarks of the learned Judge who had said:-

“This was an audacious, carefully planned, sophisticated conspiracy to defraud by a number of individuals, involving a high-jacked identity, fabricated and forged documents and forged signatures. The ultimate loss to the Land Registry was over £8 million. The price agreed between Atona and Glenside Investments Ltd was £2.75 million and on 8th October 2004 you, Malcolm Brown, were paid £2.4 million.

As far as you are concerned, Mr Brown, you of course are a man of previous good character and have pleaded guilty and I give you credit for just over twenty per cent for your plea of guilty...But you abused your position as a solicitor and when solicitors represent parties in legal transactions, parties on the other side are entitled to rely on their honesty. It seems to me that of the four of you in the dock, you, Malcolm Brown, are the most culpable of the four.”

A sentence of 4 years and 9 months imprisonment had been imposed on the Respondent.

5. The Applicant sought his costs in the sum of £17,459.87. The Applicant had had to prepare the case on the basis of proving all the allegations. This had been a clever fraud. The Applicant gave the Tribunal an indication of the work he had had to

undertake. There had been a previous application made by the Respondent to the Tribunal to adjourn the substantive hearing before the Tribunal because of the criminal proceedings, and that application has been made only a few weeks before the intended date of the substantive hearing.

6. Initially the Respondent had indicated that the allegations in the criminal proceedings were denied although he had changed his plea three weeks before the commencement of the trial.
7. The Applicant had written to the Respondent on 24th March 2009 regarding his costs. In addition a costs schedule was sent to him prior to the previous adjourned substantive hearing.
8. The Applicant was mindful of the principles set out in the case of Merrick v The Law Society [2007] EWHC 2997 (Admin). The Respondent had been given an opportunity to comment on the costs but had not done so and the Applicant sought his full costs.

The Findings of the Tribunal

9. The Tribunal found allegation (q) to have been substantiated, indeed it was not contested.

Previous appearance of the Respondent before the Tribunal

10. At a hearing on 4th July 2000 the following allegations were substantiated against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in each of the following particulars:-
 - i) that he had failed to pay Counsels' fees as the same became due.
 - ii) that he failed to take all necessary steps to facilitate payment of Counsels' fees in Legally Aided cases.
11. The Tribunal in 2000 had said as follows:-

“The Tribunal was deeply concerned by the attitude of the Respondent despite the stress he had been undergoing at the time. He had decided that he was not going to pay fees incurred by someone he had employed and had tried to distance himself from the employee. He had made very improper allegations against Chambers. He had only recently paid the outstanding fees. Such behaviour brought the profession into disrepute. The Tribunal therefore ordered that the Respondent Malcolm Congreve Brown of Sherriff House, The Broadway, Farnham Common, Buckinghamshire, SL2 3QH solicitor, pay a fine of £3,500 such penalty to be forfeit to Her Majesty the Queen and they further ordered him to pay the costs of and incidental to the application and enquiry.”

Hearing on 2nd April 2009

12. The Tribunal noted the serious nature of the Respondent's offence and subsequent conviction. Such conduct by a solicitor had an appalling effect on the reputation of the profession. The Tribunal was satisfied that the appropriate penalty was to strike the name of the Respondent off the Roll of Solicitors.
13. The Tribunal had considered carefully the Applicant's submissions as to costs. The Applicant had drawn the attention of the Tribunal to the case of Merrick v The Law Society but the Tribunal felt able to accept the Applicant's submissions as to why an order for the payment of the Applicant's full costs should be made and the Tribunal would so order.
14. The Tribunal Ordered that the Respondent, Malcolm Congreve Brown of Farnham Royal, Slough, Berkshire, SL2 3QH, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £17,459.87.

Dated this 19th day of June 2009
On behalf of the Tribunal

R Nicholas
Chairman