

IN THE MATTER OF PATRICIA FOX,
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D. J. Leverton (in the chair)
Mr. D. Glass
Mrs S. Gordon

Date of Hearing: 25th September 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made by Jennifer Johnson, a solicitor employed by The Law Society at the Solicitors Regulation Authority at 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE, on behalf of The Law Society on 17th April 2007 that an Order be made by the Tribunal directing that as from a date to be specified in such Order no solicitor should, except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with his practice as a solicitor Patricia Fox of Forest Hill, London, SE23, a person who was or had been a clerk to a solicitor, or that such other Order might be made as the Tribunal should think right.

The allegations were that the Respondent:-

1. Entered into a private arrangement with Mr W, a client of her employer, Charles Kirit & Co Solicitors, to receive monies from him for the purpose of discharging a confiscation order made against him on 20th June 2005 by Woolwich Crown Court and failed to seek approval and/or authority for such arrangement from her supervising solicitor or any partners of the firm.

2. She failed to notify her supervising solicitor or any partner of the firm of the receipt of the monies pursuant to the above arrangement.
3. She failed to pay the monies received into the client account of Charles Kirit & Co but instead retained the same in her own personal account from August 2005 to 31st January 2006.
4. Withdrawn.
(At the opening of the hearing the Applicant submitted that allegation 4 added nothing to allegations 1 - 3 and he sought to withdraw it. The Tribunal consented thereto).

And that the Respondent had in the opinion of The Law Society occasioned or been a party to, with or without the connivance of the solicitors by whom she was or had been employed or remunerated, an act or default in relation to that solicitors practice which involved conduct on her part of such a nature that in the opinion of the Society it would be undesirable for her to be employed or remunerated by a person in connection with his or her practice.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Jennifer Johnson appeared on behalf of the applicant and the Respondent was represented by Peter Harland Cadman of Russell-Cooke Solicitors of 8 Bedford Row, London, WC1R 4BX.

The evidence before the Tribunal included an indication that the Respondent did not contest the making of the Order pursuant to Section 43 as sought.

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

The Tribunal ORDERS that as from 25th day of September 2007 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 Patricia Fox of Forest Hill, London, SE23, a person who is or was a clerk to a solicitor and the Tribunal further Order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,316.00 inclusive.

The facts are set out in paragraphs 1 to 10 hereunder:-

1. The Respondent, who was not a solicitor, had been employed as a clerk by Charles Kirit & Co Solicitors of Stratford, London, E15 4QZ.
2. On 11th March 2004 Mr W had been convicted of four offences of possession of Class A drugs with intent to supply. At that time he was represented by the firm where the Respondent worked as a clerk. In July 2004 the solicitor instructed by Mr W and the Respondent commenced employment with a new firm and Mr W transferred his instructions to the new firm on 19th July 2004 and the Respondent continued to act for him.

3. Confiscation proceedings were commenced against Mr W which culminated in an Order made by Woolwich Crown Court on 20th June 2005 that he pay into Greenwich Magistrates' Court £40,000 by 20th December 2005 and that in default of payment he serve 18 months imprisonment to run consecutively with any other period of imprisonment that he was already serving. The schedule of the available assets showed that the bulk of the money was to come from the proceeds of sale of vehicles and the equity in a property as well as money held in bank accounts.
4. Until at least 24th September 2005 the Respondent continued to act for Mr W for example in relation to trying to recover his personal possessions held by the police and making enquiries as to a motor car ordered by Mr W.
5. On 27th December 2005 Mr W wrote to the Respondent's firm complaining that monies had been paid to the Respondent which had been kept by her. He said that he had authorised the Respondent by a Power of Attorney to collect money from various places in order to satisfy the confiscation order, that she had collected £9,000, that she had said that she had put in a high interest account, that she had ignored his attempts to communicate with her subsequently, and that she told Mrs W that she had now lent the money to her sister and it could not be paid until February 2006. Mr W stated that he received an extra 18 months sentence due to the Respondent's failure to pay the money into Court.
6. Mrs W asserted that she had given the Respondent £9,000 (£300 in cash and £8,700 in a cheque made out to the Respondent at her request) which should have been paid to the Court.
7. The Respondent's employers held an investigation meeting with the Respondent on 6th January 2006 at which she admitted taking £3,100 from an account of Mr W and taking £300 cash and a cheque for £8,700 from his wife on or about 5th August 2005. She said that it had always been her intention to pay the sums into Court but she had become confused as the time to pay the money into Court came and went. She said that she still had the money.
8. On 12th January 2006 the Respondent was summarily dismissed from her employment for gross misconduct.
9. On 31st January 2006 the Respondent paid the sum of £12,100 to her former employers and the money was subsequently forwarded to the Confiscation Unit towards the outstanding Confiscation Order.
10. The Respondent's employers reported her conduct to The Law Society by letter dated 11th January 2006. The Respondent's initial response dated 4th June 2006 was inter alia, that she had assisted Mr W to gather assets amounting to £12,100 but she had done this in her personal capacity; she also said that police had decided to take no further action against her. In a subsequent letter of 10th August 2006 the Respondent stated that Mr W had been concerned that his assets fell short of £40,000 and she had gathered the assets at Mr W's specific request and had retained them pending further instructions.

The Submissions of the Applicant

11. The facts spoke for themselves and the Respondent had accepted that a Section 43 Order should be made in respect of her.
12. The Applicant sought the costs of and incidental to the application and enquiry in the figure of £1,316.00.

The Submissions of the Respondent

13. The Respondent had indicated at an earlier stage that she would not oppose the making of the Order in respect of her. She recognised that the Order was regulatory in its nature and was not punitive.
14. The Respondent had not paid the monies received by her into client account. Mr W had had ongoing difficulties with his wife in connection with an unsold asset. The Confiscation Order was unusual. The Respondent had held the money safely and Mr W had known where the money was.
15. The police had investigated whether or not theft had taken place and took no further action.
16. The Respondent was to be given credit for the fact that she replied promptly to all correspondence addressed to her and she had instructed a solicitor to represent her.
17. The Respondent had been a solicitor's clerk for some eight years and the Tribunal was invited to give due weight to the written references handed up in her support all of which spoke highly of her honesty and competence and the fact that she would go "the extra mile" for her clients.
18. In accepting that a Section 43 Order should be made in respect of her the Respondent recognised that she had fallen short of what she should have done. She had been proud of her role within the solicitors' profession and it would be right that she should be able to gain employment within that profession with the consent of The Law Society.
19. The Respondent had not worked at all for a period of some twenty months.
20. The Respondent's actions had no effect upon the term of imprisonment served by Mr W.

The Tribunal's Findings.

21. The Tribunal found the allegations to have been substantiated, indeed they were not contested. The Respondent accepted that it would be appropriate and proportionate that an Order pursuant to Section 43 be made in respect of her. The Tribunal has given due weight to the written testimonials which spoke highly of the Respondent's integrity and competence. The Tribunal accepted that the Respondent had not sought to deprive Mr W of his money but rather she had acted extremely foolishly in not

ensuring that monies passed to her had been paid into her employing firm's client account.

22. The Tribunal concluded that the costs sought on behalf of The Law Society were entirely reasonable and the Tribunal also ordered the Respondent to pay those costs fixed in the sum of £1,316.00.

Dated this 8th day of November 2007

On behalf of the Tribunal

D J Leverton
Chairman