

IN THE MATTER OF JULIAN ANTHONY NORTON HERON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J C Chesterton (in the chair)
Mr E Richards
Mr S Marquez

Date of Hearing: 8th October 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society on 20th April 2007 by Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack, Roscoe & Colman of 70 Marylebone Lane, London, W1U 2PQ that Julian Anthony Norton Heron of East Street, Mayfield, East Sussex, 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 thought right.

The Respondent subsequently notified the Tribunal that his address was 51 Patteson Road, Ipswich.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor (in either or both of the following particulars) namely:

- (a) that he failed to act in the best interests of his client in breach of Rule 1(c) of the Solicitors Practice Rules 1990;
- (b) that his conduct was likely to compromise or impair his good repute as a solicitor or of the solicitors' profession in breach of Rule 1(d) of the Solicitors Practice Rules 1990;

- (c) that he improperly withdrew client money from client account and in breach of Rule 22 of the Solicitors Accounts Rules 1998 and that in doing so his conduct was dishonest;
- (d) that he failed to deal promptly and substantively with correspondence from The Law Society.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 8th October 2007 when Robert Simon Roscoe appeared as the Applicant and the Respondent did not appear and was not represented. He had however addressed a letter dated 5th October 2007 to the Tribunal which is set out in full under the heading "The Submissions of the Respondent".

The evidence before the Tribunal was that contained in the affidavit of service lodged with the Tribunal and that annexed to notices served pursuant to the Civil Evidence Acts and under Rule 18 of the Tribunal's Rules of Procedure. The Tribunal accepted that no counter-notices had been served upon the Applicant. The Tribunal further noted that in his before-mentioned letter of 5th October 2007 the Respondent denied the nature of the claim against him.

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

The Tribunal Orders that the Respondent, Julian Anthony Norton Heron of Patteson Road, Ipswich, 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 £5,300.00.

The facts are set out in paragraphs 1 - 11 hereunder:

1. The Respondent, born in 1960, was admitted as a solicitor in 1990. His name remained on the Roll of Solicitors.
2. At the material time the Respondent practised in partnership under the style of Pegram Heron, solicitors of 27a High Street, Heathfield, East Sussex until 16th October 2003 ("the firm").
3. On 26th May 2005, following contact from the firm, The Law Society's Investigation Manager ("the IM") attended the firm for the purpose of inspecting the firm's books of account and other documents.
4. The IM's Report dated 25th January 2006 was before the Tribunal.
5. The Respondent revealed that in 2002 the Respondent had conduct of a conveyancing transaction on behalf of Mr and Mrs S ("the clients"). The transaction involved the exchange of one residential property owned by the clients for another property plus a cash sum of £140,000.
6. At the time of completion, the Respondent had obtained from the clients the sum of £12,000 on account of stamp duty that he advised the clients would be incurred on the purchase. Stamp duty of £1,400 was paid by the firm on 3rd September 2002.

7. On or about 12th September 2002, the Respondent paid the balance of £10,600 to the Inland Revenue in respect of stamp duty incurred in the transfer of a property purchased and occupied by the Respondent ("the Respondent's property"). The property was jointly owned by the Respondent and his (life) partner, Ms W.
8. In October 2004 the firm was instructed to transfer the Respondent's property from the joint ownership of the Respondent and Ms W into the sole name of Ms W following a re-mortgage. At that stage the firm discovered that moneys held for the clients had been used by the Respondent to pay the stamp duty on his own property.
9. On 19th April 2004 the firm had received a credit to client account of £10,600 on behalf of Ms W. This sum was used to rectify the imbalance.
10. The firm had received a letter dated 2nd November 2004 from the clients' new solicitors, Gaby Hardwicke, complaining that the Respondent had approached the clients and asked them to sign an authority dated 1st November 2004 purportedly allowing the Respondent personally to use their moneys held in respect of stamp duty and had also asked them not to seek independent legal advice before signing the document. The clients did not sign the document but delivered it unsigned to Gaby Hardwicke.
11. The Respondent declined to provide any explanation to the IM. He did not respond promptly or at all to letters sent to him by The Law Society.

The Submissions of the Applicant

12. The facts spoke for themselves.
13. The Applicant sought the costs of and incidental to the application and enquiry and had notified the Respondent that the sum which he sought was £5,688. The Applicant accepted that he has spent rather less time on advocacy than he had anticipated.

The Submissions of the Respondent

(The Respondent's beforementioned letter dated 5th October 2007)

14. "I have today received your letter 13th September 2007 informing me of the hearing on 8th October. I have separated from the owner of [the Respondent's property] on rather bad terms, and am now resident at the above address in Ipswich. Please do not send any further correspondence to the Sussex address as it is doubtful that I will get it.

I understand the nature of the claim against me, which I totally deny. You will note that it was made, certainly initially, by a disgruntled ex-employee of mine who was about to lose her job due to her, and my ex-partner's inability to keep the business afloat after my suspension.

I am also advised that the client to whom the money belonged has now declined to back me up due to legal advice. Please be assured that my

non-attendance at the hearing is not meant as any sign of disrespect to the Tribunal, only of my intention to get on with the rest of my life.

I loved being a solicitor, and genuinely believed I was a good one. My suspension in 2003 came as an enormous shock to me as I had been advised by my solicitor that I was looking at a fine as no evidence had been produced (as there was none) that I had been dishonest. The suspension ruined my legal career as sure as if I had been struck off and put, in less than 18 months, eleven valued employees out of work.

Yours faithfully
J A N Heron"

The Findings of the Tribunal

15. The Tribunal found all of the allegations to have been substantiated. The Tribunal noted that only allegation (c) was put as an allegation involving dishonesty. The Tribunal found in respect of allegation (c) that the Respondent had behaved dishonestly.

Previous Findings

16. At a hearing before the Tribunal on 16th October 2003 the following allegations were found to have been substantiated against the Respondent (the Second Respondent in those proceedings) namely that he:-
- (a) took unfair advantage of a client by overcharging or attempting to overcharge for work done;
 - (b) failed to pay to a former client immediately the refund due following a determination of a remuneration certificate;
 - (c) failed to deal promptly with communications relating to the matter of a former client;
 - (d) acted in both transactions for seller and buyer not having obtained the written consent of both contrary to Practice Rule 6(2)(a)(i);
 - (e) acted in both transactions for seller and buyer where both parties were not established clients contrary to Practice Rule 6(2)(b)(i);
 - (f) acted in both transactions for lender and borrower where a conflict of interest existed contrary to Practice Rule 6(3)(a)(i);
 - (g) failed to notify in writing the institutional lender in both transactions that he was acting for seller, buyer and lender contrary to Practice Rule 6(3)(b)(ii);
 - (h) failed to take any reasonable steps to check the identity of the borrower in the first transaction contrary to Practice Rule 6(3)(c)(i);

- (i) failed in both transactions to follow the guidance given in The Law Society's Green Card (property fraud) and Blue Card (money laundering) contrary to Practice Rule 6(3)(c)(i);
- (j) failed in both transactions to report on how the borrower said the balance of the purchase price was to be provided and that he did not have control over payment of all the purchase monies contrary to Practice Rule 6(3)(c)(iv);
- (k) failed to report to the lender in the second transaction the variation in purchase price contrary to Practice Rule 6(3)(c)(iv);
- (l) failed to report that the seller (in the second transaction) had not owned or been registered proprietor for at least six months contrary to Practice Rule 6(3)(c)(v).

17. In its written findings dated 27th November 2003 the Tribunal said:-

"In relation to the Second Respondent the Tribunal had considered very seriously whether to strike his name from the Roll of Solicitors. In addition to the allegations relating to the overcharging the Tribunal had found him to be grossly reckless and irresponsible in the way he conducted his conveyancing practice. The Tribunal had accepted in relation to dishonesty his evidence that he had not been personally involved in these matters. The total lack of supervision of unqualified staff had however effectively allowed transactions bearing the hallmarks of mortgage fraud to be conducted through his office. The faxes addressed to him personally from clients had on the face of it indicated mortgage fraud yet there had been no system in place to alert the Second Respondent to such matters. The pressures of practice were not sufficient excuse to justify the Second Respondent's reckless approach. Although the Tribunal accepted the Second Respondent's evidence insofar as he denied dishonesty, that evidence had been unsatisfactory insofar as it demonstrated his lack of involvement and in his repeated assertions that he could not remember matters. Again the Tribunal had considered carefully the submissions made on behalf of the Second Respondent. Given that dishonesty had not been proved against him the Tribunal felt able to mark the seriousness with which it viewed these matters by a period of suspension together with the payment costs.

The Tribunal Order that the Respondent, Julian Anthony Norton Heron of 27a High Street, Heathfield, East Sussex, TN21 8JR solicitor, be suspended from practice as a solicitor for the period of 2 ½ years to commence on the 16th day of October 2003 and they further Order that he be jointly and severally liable to pay the costs of and incidental to this application and enquiry fixed in the sum of £9,250.39".

The Tribunal's Decision

The Tribunal concluded that the deliberate taking of clients' moneys held for the purposes of stamp duty by a solicitor to meet his own stamp duty liability would be regarded by normal people as a dishonest act and in using his clients' money in this way the Respondent did so deliberately and with conscious impropriety, this being underlined by the fact that within the firm's bookkeeping records it did appear that moneys received by the firm for stamp duty had been paid out in connection with stamp duty on the ledger of the client from whom the money had been received. The Tribunal concluded that recording the payment out of the money in this manner was a deliberate attempt by the Respondent to conceal what he had done, and that was itself dishonest.

The Tribunal's decision on sanction

18. The Tribunal found that the Respondent had behaved dishonestly. The Tribunal took into account the Respondent's letter dated 5th October 2007. The deliberate, and dishonest, taking of clients' money to be used for his own purposes by a solicitor would not be tolerated either by the solicitors' profession or by this Tribunal. The Tribunal concluded that the appropriate and proportionate sanction to impose upon the Respondent was that of a striking off Order. It was right in the circumstances that the Respondent should pay the costs of and incidental to the application and enquiry and having borne in mind the Applicant's calculation and his indication that his costs should be rather less than initially calculated the Tribunal Ordered that the Respondent pay the Applicant's costs fixed in the sum of £5,300.

Dated this 6th day of December 2007
On behalf of the Tribunal

J C Chesterton
Chairman