

IN THE MATTER OF BRENDAN JOHN SALSBURY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. I. R. Woolfe (in the chair)
Mrs J. Martineau
Mr. S. Marquez

Date of Hearing: 18th December 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 Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Hertfordshire SG14 1BY on the 8th June 2007 that Brendan John Salsbury of Holden and Co Solicitors, 3 Bank Street, Ashford, Kent TN23 1BX 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 right.

The allegation was that the Respondent had been guilty of conduct unbecoming a solicitor in that on the 14th July 2006 at Croydon Crown Court he was convicted of an offence involving dishonesty, namely obtaining a money transfer by deception contrary to Section 15A of the Theft Act 1968 for which he was sentenced to a conditional discharge for 12 months and ordered to pay £300.00 costs.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Stephen John Battersby appeared as the Applicant and the Respondent was represented by Mr. D Roach of Counsel.

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

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

The Tribunal Orders that the Respondent, Brendan John Salsbury of 3 Bank Street, Ashford, Kent, TN23 1BX, 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 £1,475.00.

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

1. The Respondent, born in 1958, was admitted as a solicitor in 1984. At the material time he was a partner in the firm of Funnell & Perring Solicitors of Hastings, East Sussex.
2. The Respondent was convicted of obtaining a money transfer by deception after a lengthy trial at the conclusion of which he was acquitted of 24 other offences. The Respondent altered a cheque which had originally been drawn in his favour in the sum of £862.50 to read £1,862.50.
3. The Law Society wrote to the Respondent on 1st December 2006 inviting him to explain his conduct. In his reply of 15th December 2006 the Respondent explained that the offence had occurred as a result of work which he was carrying out as secretary to the trustees of a school body. He did not consider that he had acted dishonestly but he understood that he was bound to accept the verdict of the jury in relation to the count on which he had been convicted. He considered that he had been entitled to the sum of £1,862.50.

The Submissions of the Applicant

4. Whilst it was accepted that the Respondent had not committed the offence for which he was convicted in the course of practising as a solicitor and the Respondent was to be given credit for his immediate report of the conviction to The Law Society, the Tribunal was invited to give due weight to the sentencing comments of his Honour Judge Timothy Stow QC who, although he acknowledged that the Respondent considered that he was entitled to the extra £1,000 which he added to the face of the cheque, stated "nevertheless it is plainly an offence which no solicitor should even contemplate, let alone commit."

The Submissions of the Respondent

5. The Respondent had been clerk to the trustees of a school. The Tribunal was invited to consider in full the sentencing remarks of his Honour Judge Timothy Stow QC which gave a clear indication as to the seriousness to be attached to the offence. He pointed out that the Respondent had added the £1,000 to the cheque in circumstances where, although he considered he was entitled to it, he did not want to approach the Trustees to ask for a further £1,000 or to ask them to countersign or initial any alterations to the cheque because he would then have had the chore of explaining to them how the amount suddenly jumped from £862.50 to £1,862.50.

6. The learned Judge pointed out that the trial had lasted for about a fortnight with an indictment containing 25 counts where the Respondent had been convicted only on one of them. The Judge was of the view that he could take an exceptional course and imposed the sentence of a conditional discharge for 12 months. The level of dishonesty on the part of the Respondent had been negligible as he was entitled to the amount appearing on the face of the cheque after he amended it. He had done no more than gain the payment due to him a matter of a few days earlier than he would have done had he asked the trustees for a further sum.
7. The Respondent had been a former pupil of the school and had been asked to become clerk to the trustees of the school charity for a modest stipend. He was not engaged in that capacity as a solicitor or through his solicitors firm.
8. The trustees had obtained a government grant in order to improve the school's facilities. The job of the clerk to the trustees became very much more onerous than it had been hitherto. It had been agreed that the Respondent be paid for extra work undertaken over and above his modest stipend. Difficulties had been created when a trust of modest size had received large amounts of money.
9. It had been the practice of the Respondent to ask the trustees for cheques on account of costs. He submitted an annual account which acknowledged the sums that he had been paid during the year. It had been a somewhat casual arrangement. When the Respondent asked for a cheque the Trustees gave it to him. At a time when he had been given a cheque for £862.50 when he was entitled to an additional £1,000 he had foolishly altered the cheque.
10. There had been a general allegation that the Respondent had been overpaid by the trustees. That had not been the case but the Respondent had been advised to pay money back to the trustees which he had done. As a result the chairman of the trustees had decided not to commence civil proceedings against the Respondent.
11. The Respondent's action had been irregular and sloppy but he had not dishonestly sought to get money to which he was not entitled.
12. The Tribunal was invited to take the view that the scope of the dishonesty on the part of the Respondent was at such a low level that the Tribunal could in the particular and unusual circumstances of this case take an exceptional view.
13. The Respondent's personal mitigation was secondary. The results of what had occurred had been disastrous for the Respondent both in connection with his practice as a solicitor and in his personal life.
14. A solicitor's goodwill was his greatest asset. The Respondent had been well known in Hastings and as a result of what happened had found himself too embarrassed to go out in the town. He had lost his partnership at the firm where he had spent the whole of his professional life. He had lost his goodwill in that firm, and friendships and relationships with clients. The Respondent had had to resign his appointment as Deputy Coroner for East Sussex. He had also resigned from all of the charitable bodies on which he served.

15. The events had been the final straw in the break up of the Respondent's marriage. His wife had upon divorce been awarded the matrimonial home. The Respondent had two teenaged children.
16. Since 2002 the Respondent had been preoccupied with the criminal charges. The matters had been hanging over his head for some five years.
17. The Respondent had suffered considerable loss of earnings and was now employed by a firm at its Ashford office at a salary which marked a considerable decrease in his income.
18. The Respondent and his present employer had attended before the Tribunal.
19. The Respondent had suffered from having too much on his plate. By his action he had not gained anything over and above that to which he was entitled. The payment would have been shown in the annual statement he produced for the trustees. In reality the Respondent had been guilty of an error of judgement at a time when he was simply taking on too much.
20. The Respondent had been able to gain employment with a fellow solicitor and practised at that firm subject to the severe restrictions which had been placed on his practising certificate.
21. The Respondent was a generous man who undertook a great deal of charitable work and it was his generosity that had led him to take on too much which led to his downfall. The Respondent's offence had been extremely unusual and the result of his stupidity and sloppiness. The Respondent had suffered a great deal.
22. It was not necessary to order that the Respondent's name be struck off the Roll. The Tribunal was invited to take the view that the seriousness of the Respondent's position could be marked by the imposition of a period of suspension together with a recommendation to The Law Society that the public and the solicitors' profession could be protected by the maintenance of strict conditions on the Respondent's practising certificate. This would take into account the fact that the Respondent recognised and deeply regretted his inappropriate action and his most unfortunate lapse but he had begun to work his passage back.
23. The Respondent accepted that he should bear responsibility for the Applicant's costs and had agreed the figure.

The Tribunal's Findings

24. The Tribunal found the allegation to have been substantiated, indeed it was not contested.
25. The Tribunal considered the matters placed before it with an element of sadness. The Respondent had been guilty of an act of great stupidity when he sought to increase a cheque payable to him by a figure of £1,000.00. The Tribunal accepted the Respondent's explanation that the amended figure was properly the sum due to him but he nevertheless had been convicted of a criminal offence involving dishonesty.

26. The Tribunal recognised that as a result of this act of stupidity the Respondent had already suffered a great deal.
27. The Respondent had very properly admitted the allegation, and the matter with which the Tribunal had to grapple was the question of the appropriate sanction to be imposed upon the Respondent. The Tribunal gave very careful consideration to all of the submissions made on behalf of the Respondent but it had to recognise that the fortunes of an individual did not carry as much weight as the need to protect the good reputation of the solicitors' profession. The profession's collective reputation for trustworthiness was its most valuable asset and the Tribunal concluded that the public's perception of the profession's absolute trustworthiness would be damaged if a solicitor convicted of a criminal offence involving dishonesty were not to be made subject to the ultimate sanction.
28. The Tribunal concluded that it was both appropriate and proportionate to order that the Respondent be struck off the Roll of Solicitors.
29. It was right, as the Respondent himself acknowledged, that he should pay the Applicant's costs and the Tribunal ordered the Respondent to pay the costs fixed in the sum which had been agreed of £1,475.00 inclusive.

Application for Stay

30. Following the pronouncement of the Tribunal's order an application was made on behalf of the Respondent that the filing of the order with The Law Society be stayed.
31. The Tribunal was of the view that it had made a Striking Off Order in view of the Respondent's conviction for a criminal offence involving dishonesty and where the Tribunal's order was founded upon the dishonesty of a Respondent it did not consider it appropriate, in view of its duty to protect the public and the good reputation of the solicitors' profession, to make an order delaying the coming into force of its Striking Off Order. The Tribunal refused the stay but pointed out that it remained open to the Respondent to make an application for a stay to the Divisional Court.

Dated this 13th day of February 2008

On behalf of the Tribunal

I R Woolfe
Chairman