

IN THE MATTER OF JOHN DAVID ANDERSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mrs J Martineau
Mr G Fisher

Date of Hearing: 18th March 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by Katrina Elizabeth Wingfield, solicitor and member in the firm of Pennington Solicitors LLP, Abacus House, 33 Gutter Lane, London, EC2V 8AR on 27th September 2007 that John David Anderson formerly of Bailey Smailes Heap Marshall, solicitors of 6 New North Parade, Huddersfield, HD1 5JP, solicitor (now retired) 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 that he had been guilty of conduct unbefitting a solicitor in each of the following respects namely:-

- (i) that he acted in breach of Rules 1(d) and (f) of the Solicitors Practice Rules 1990 in that he failed to supply information to the Official Receiver, thereby breaching his obligations under s.312 of the Insolvency Act 1986;
- (ii) that he acted in breach of Principle 30.04 of the Guide to Professional Conduct of Solicitors 1999 (8th Edition) in that he failed to respond promptly and substantively to correspondence from the Solicitors Regulation Authority.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 18th March 2008 when Katrina Elizabeth Wingfield appeared as the Applicant and the Respondent did not appear and was not represented.

At the commencement of the hearing the Applicant drew the attention of the Tribunal to the correspondence from the Respondent to the Applicant dated 12th and 17th March 2008 and the letter to the Tribunal dated 17th March 2008. The Applicant gave details of service of the documentation which had not been returned. The Respondent had however indicated in his correspondence that he had only very recently become aware of the hearing date of 18th March. The Applicant said that all documentation had been served on the former practice address being the only address known to her until the previous week after which she had reserved all papers on the Respondent's home address. The Tribunal noted from the correspondence that he did not wish to seek an adjournment. It was clear that he had now received all the documentation. It was right that the matter proceed.

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

The Tribunal Orders that the Respondent, John David Anderson of Bailey Smailes Heap Marshall, Solicitors, 6 New North Parade, Huddersfield, HD1 5JP, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 18th day of March 2008 and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties.

The facts are set out in paragraphs 1 - 17 hereunder:-

1. The Respondent born in 1947 was admitted as a solicitor in 1975 and his name remained on the Roll of Solicitors. At the relevant time the Respondent practised in partnership with others under the style of Bailey Smailes Heap Marshall, solicitors of Huddersfield. The Respondent has now retired from practice.
2. By a letter dated 8th September 2006 the Insolvency Service informed The Law Society that the Respondent had failed to provide the information requested by them pursuant to a Bankruptcy Order made on 26th May 2006 against the Respondent's client, a Mr A. The Insolvency Service also alleged that the Respondent had failed to respond to their telephone calls and correspondence.
3. By a letter dated 15th June 2006 the Insolvency Service advised the Respondent that a Bankruptcy Order had been made against his client Mr A on 26th May 2006. In this letter the Insolvency Service stated that they understood that the Respondent acted for Mr A in the sale of his property in February 2006. The Insolvency Service explained that the solicitors acting for the purchaser had informed them that prior to their registration of a new proprietor the Bankruptcy Order was made thereby preventing anything being registered on the property. In this letter the Insolvency Service asked the Respondent to provide them with Mr A's forwarding address, a copy of the completion statement (showing the sale price, all charges that were redeemed from the sale and the amount of surplus funds that were sent to Mr A) and information as to whether Mr A requested that the Respondent made payments to unsecured creditors from the sale proceeds. The Insolvency Service also asked the Respondent to provide a copy of the valuation of the property, information as to whether Mr A and the purchaser were connected in any way, bank details for Mr A and any other documents which might be of use to the Official Receiver. The Respondent did not respond to this letter.

4. On 23rd June 2006 the Insolvency Service sent a follow up letter to the Respondent enclosing a letter to be forwarded to Mr A. In the letter to Mr A the Insolvency Service asked again for the information they had requested in their letter dated 15th June 2006 and informed the Respondent that Schedule 2 of the Data Protection Act 1998 allowed him to disclose this information to the Official Receiver.
5. By a letter dated 28th June 2006 the Respondent confirmed that Bailey Smailes Heap Marshall solicitors had forwarded the letter to Mr A for his "urgent attention".
6. On 30th June 2006 the Insolvency Service wrote to the Respondent. The Insolvency Service asked the Respondent again in this letter to inform them of Mr A's current address (as requested in their letter dated 23rd June) and to respond to their questions in their letter to him dated 15th June 2006 as soon as possible.
7. The Deputy Official Receiver wrote to the Respondent again on 20th July 2006 again requesting the information as detailed in the Insolvency Service's letters to him dated 15th, 23rd and 30th June 2006. In this letter the Deputy Official Receiver also informed the Respondent that the Insolvency Service had received information that in addition to acting for Mr A in the sale of the property, his firm had also acted for Mr A in the purchase of a property. The Deputy Official Receiver informed the Respondent in this letter that the lack of information prejudiced the Official Receiver's ability to discharge his statutory duty to protect and collect the bankruptcy estate assets and that if they did not receive a response from the Respondent within seven days of the date of the letter, the correspondence would be referred to The Law Society.
8. The Insolvency Service wrote to the Respondent on 1st August 2006 further to his conversation with the Deputy Official Receiver. The Insolvency Service acknowledged that the Respondent was having difficulty in gathering the information required but requested that he provided an estimate as to how much longer this would take. The Insolvency Service offered an alternative in this letter, in that they invited the Respondent to contact their office to arrange for his files to be made available to the Official Receiver, either by him forwarding them or through their collection of the files. There was no reply to this letter.
9. By a letter dated 7th August 2006 the Insolvency Service again requested the required information be made available by the Respondent. There was no reply to this letter.
10. By a letter dated 20th September 2006 The Law Society wrote to the senior partner at Bailey Smailes Heap Marshall solicitors, informing them of "allegations of professional misconduct" made by the Insolvency Service.
11. On 29th September 2006 the Respondent wrote to The Law Society indicating that he would peruse the file and contact The Law Society "further in due course". On 3rd October 2006 the Respondent wrote to the solicitors to The Law Society referring to his letter dated 29th September 2006, saying that he awaited hearing from them.
12. On 5th October 2006 the solicitor to The Law Society wrote to the Respondent detailing the allegations made against the Respondent and his obligations under Principle 30.04 of the Guide to Professional Conduct of Solicitors 1999. There was no reply to this letter.

13. The solicitor to The Law Society wrote to the Respondent on 20th October 2006 enclosing a copy of the letter to the Respondent dated 5th October 2006, to which there had been no reply. The solicitor warned the Respondent in this letter that should they not hear from him within the next eight days, he would run the risk of disciplinary proceedings being brought against him by The Law Society, in line with Principle 30.04. There was no reply to this letter.
14. The Law Society solicitor telephoned the Respondent on 1st November 2006 and left a message for him to return the call as soon as possible. The Respondent did not return the call.
15. By a letter dated 10th January 2007 The Law Society informed the Respondent that the matter was being referred for a formal decision by the Adjudicator and enclosed a copy of the case note prepared by the solicitors to The Law Society, which was to be considered by the Adjudicator. The Respondent was also informed in this letter that he had fourteen days from the date of the letter to add his comments to the case note. There was no reply to this letter.
16. The Solicitors Regulation Authority wrote to the Respondent on 30th January 2007 informing the Respondent that as they had not received any representations from him, they had sent the case note for adjudication. The Respondent was informed that he would be informed of the decision in writing as quickly as possible.
17. By a letter dated 1st March 2007 the Solicitors Regulation Authority provided the Respondent with a copy of the Adjudicator's Decision dated 20th February 2007 and informed him that the matter had been referred to the Tribunal.

The Submissions of the Applicant

18. The Respondent had not made any specific admissions in his correspondence although admissions might be implied from his reference to his apparent lapse of professional duty. The Applicant would seek to prove the allegations on the documentation.
19. In relation to allegation (i) the Respondent in his letter to the Applicant of 12th March 2008 had written:-

“Once I was made aware that there was no privity between Solicitor and Client so far as the Insolvency Service was concerned, I did provide them with full detail of their requirements.”

The Applicant did not know whether the Respondent had subsequently provided the information but accepted that his assertion might well be correct.

20. In relation to allegation (ii) the only responses from the Respondent prior to the issue of proceedings had been his letters of 29th September 2006 to The Law Society and 3rd October 2006 to the solicitors to The Law Society (paragraph 11 above).
21. The Respondent had retired from practice at the end of March 2007. He had indicated a number of health issues and an inability to cope with stress during the course of his

last period of practice. The Applicant had written to the Respondent the previous day to suggest that he write to the Tribunal setting out his mitigation.

22. The Applicant sought her costs in accordance with her schedule of costs which had been sent to the Respondent. The Respondent had indicated some surprise at the reference to an "Agent". This was in fact a reference to the Respondent's former partner and had been corrected in the schedule now before the Tribunal. The Respondent had indicated that he had had no chance to consider the schedule carefully.

The Submissions of the Respondent

23. The Respondent's submissions were set out in his letter to the Tribunal of 17th March 2008.
24. The Respondent had understood that his former partner had explained the circumstances surrounding the Respondent's decision to take early retirement from the profession but he now understood that he had been incorrect in that belief.
25. The only mitigation which the Respondent could offer for his apparent lapse of professional duty was his inability adequately to cope with the stresses imposed upon him over the last few years, the unacceptable working conditions in which he found himself and difficulties from some professional relationships. During his forty years in the profession the Respondent had always tried to put the interests of his clients first, sometimes to the detriment of his personal family life.
26. The Respondent referred to the effect on him of a specific claim against the practice by a client of a former partner which carried with it the prospect of bankruptcy closely followed by the firm's potential liability in another area both of which had contributed to his mental breakdown.
27. Negotiations with the Respondent's partners for retirement were prolonged to the extent that whilst his retirement took effect from 30th September 2006 the retirement deed was only executed at the end of January 2007 and the partner in charge then submitted an application for the renewal of the Respondent's practising certificate in October 2007 contrary to the Respondent's original intention. The Respondent had never had the intention of bringing the reputation of the profession into disrepute and during his career had had the honour of serving as president of his local law society.
28. The Respondent made certain points relating to the delivery of communications to him in the proceedings.

The Findings of the Tribunal

29. The Tribunal had considered carefully the documentation, the submissions of the Applicant and the representations of the Respondent in correspondence to the Tribunal and to the Applicant. While the Respondent's letter to the Tribunal of 17th March 2008 implied admissions to the allegations for the avoidance of doubt the Tribunal was also satisfied from the documentation that the allegations were substantiated.

30. The Tribunal considered that this was a very sad case. The Tribunal noted that some of the alleged failures on the part of the Respondent related to a period when according to his letter of 17th March he thought his retirement had taken place. The Tribunal further noted that the Respondent accepted that he had been wrong in thinking that his client/professional duty prevented him from disclosing information to the Insolvency Directorate. The Respondent had accepted that he had made a mistake and as far as the Tribunal was aware he did supply the information at some point subsequent to the issue of the Applicant's Rule 4 Statement.
31. The matters before the Tribunal would not be at the most serious end of the scale. The Tribunal in considering the public interest however had to take into account what the Respondent had said about his ability to cope with the stresses and strains of the practice of a solicitor at this point. The Respondent had said that he wanted to leave practice and could not cope. He had referred in his letter of 12th March 2008 to the Applicant to "mental pressure from the work in particular with anything that became complicated and found myself increasingly unable to face up to certain matters, including this one". In the circumstances the Tribunal was satisfied that the proper approach was to impose an indefinite suspension from practice on the Respondent. The Tribunal emphasised that this was not imposed on the basis of a severe punishment but rather on the basis that by his own admission the Respondent did not feel capable of coping with the stresses of being a solicitor at the moment. If at any stage the Respondent felt able to come and explain to the Tribunal what had happened and justify why he should be permitted to practise again it would be open to him to do so at any time.
32. The Respondent had indicated that he had not had an opportunity to consider the Applicant's schedule of costs and the Tribunal would order that costs be subject to a detailed assessment unless agreed.
33. The Tribunal Ordered that the Respondent, John David Anderson of Bailey Smailes Heap Marshall, Solicitors, 6 New North Parade, Huddersfield, HD1 5JP, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 18th day of March 2008 and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties.

Dated this 6th day of August 2008
On behalf of the Tribunal

A G Ground
Chairman