

IN THE MATTER OF ALISON MANNING
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs K Todner (in the chair)
Mr I R Woolfe
Mr J Jackson

Date of Hearing: 6th May 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Jayne Willetts, solicitor, advocate and partner of Townshends LLP, Cornwall House, 31 Lionel Street, Birmingham, B3 1AP on 5th February 2008 that an Order under Section 43 of the Solicitors 1974 Act (as amended) be made by the Tribunal directing that as from the date to be specified in such Order no solicitor, recognised body or Registered European Lawyer shall employ or remunerate Alison Manning of Church Street, Clifton, Bedfordshire, who was or had been employed or remunerated by Paul Norton & Co, 154-156 Marsh Road, Leagrave, Luton, Bedfordshire, LU3 2QL except in accordance with permission in writing granted by The Law Society for such period or that such other Order might be made as the Tribunal should think right.

The allegations against the Respondent were that she had been guilty of conduct of such a nature that in the opinion of The Law Society it would be undesirable for her to be employed by a solicitor in connection with his practice as a solicitor, the particulars of which were:-

1. She acted in the sale of the property, GA, for both vendor and purchaser in June 2004 when she had a personal interest in the transaction and when there was a conflict between her interests and that of her clients and a conflict between the interests of her clients.
2. She failed to prepare a transfer document for the sale of GA in June 2004 and failed to notify the Inland Revenue and HM Land Registry of the sale.
3. She acted for the vendor on the resale of GA in October 2004 when she had a personal interest in the transaction and when there was a conflict between her interests and that of her client.
4. She prepared sham contract and transfer documentation in connection with the resale of GA in October 2004.
5. She failed to maintain accurate accounting records for both the sale of GA in June 2004 and its subsequent resale in October 2004.
6. She made improper withdrawals of client monies thereby resulting in a shortfall on client account.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 6th May 2008 when Jayne Willetts appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the report of The Law Society's Forensic Investigation Unit Officer. The Respondent had indicated by letter that she did not intend to attend the hearing.

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

The Tribunal Orders that as from the 6th day of May 2008 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 Alison Manning of 3 Clifton Farm Barns, Church Street, Clifton, Bedfordshire, SG17 5EX a person who is or was a clerk to a solicitor and the Tribunal further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,913.00.

The facts are set out in paragraphs 1 - 20 hereunder:-

1. The Respondent was unadmitted and was employed as a conveyancing clerk at Paul Norton & Co Solicitors from 1998 to 2005.
2. The Forensic Investigation Unit of The Law Society commenced an inspection at the firm of Paul Norton & Co on 2nd February 2005. The Investigation Officer ("the IO") subsequently prepared a Report dated 3rd April 2006 an extract from which was before the Tribunal.

3. The Respondent had acted for a Mr T in connection with the purchase of property. On 1st September 2004 she sent a cheque for £9,750.00 drawn on client account to the Inland Revenue when there were no funds standing to the credit of that client's account. A shortfall remained on client account until 5th October 2004. The Respondent admitted in interview with the IO that there had been an improper withdrawal from client account and that she had been "helping a friend out".
4. On 4th February 2005, shortly after the investigation commenced, the Respondent requested her employer Mr Norton to retrieve a file in the name of Mr B from his file archives.
5. Mr Norton located in the archives a file containing post completion matters only. He subsequently located at the firm's offices a file relating to the sale of the property, GA, that contained very few documents.
6. On 7th February 2005 the Respondent admitted to Mr Norton that she had been involved in a "sub-sale" of GA with Mr B, a mortgage broker from which she had received £4,000.00. Mr Norton then dismissed the Respondent for gross misconduct.
7. An analysis of the documents on the GA file established that the Respondent acted on behalf of Mr BT in the sale for £108,500 in June 2004 to Mr B, for whom she also acted.
8. Completion took place on 24th June 2004 according to a letter of that date to Mr & Mrs BT from the Respondent.
9. On 11th June 2004, two cheques totalling £101,000 were credited to the client ledger. The cheque account was in the name of Mr JK although there was no evidence on the file to indicate what connection he had with this matter.
10. It was later identified that the Respondent was personally connected with Mr JK in that she had borrowed £110,000 from him in order to facilitate the purchase by Mr B. The Respondent sent letters to him on her personal letter heading dated 28th February 2005 and 4th March 2005 indicating that the loan would be repaid on 17 March 2005.
11. The Respondent was asked by a Law Society caseworker by letter dated 5th June 2006:-

“5. Please explain why cheques were accepted from a "Mr JK" in respect of the sale by Mr BT. Please identify who Mr JK is and why he was supplying funds for a matter which appears to have nothing to do with him. What steps were taken to ensure compliance with Money Laundering Regulations 2003?”

The Respondent replied by letter dated 30th June 2006 saying:-

“As to Mr JK . This was a personal loan. I was satisfied completely regarding Money Laundering Regulations 2003.”

12. On completion the Respondent sent a cheque to Mr BT for £71,485.15 leaving a debit balance of £6,876.75 on client account. A transfer was made on 30th June 2004 from the client ledger of Mr L of £6,876.75 to clear the debit balance.
13. The Respondent acted for Mr B who was the purchaser of GA as well as for the vendor, Mr BT. In providing funding to facilitate the purchase of the property there was a conflict between the Respondent's interest and those of her clients and in acting for both parties there was a conflict between the interests of her two clients.
14. The Respondent sent letters all dated 16th July 2004 to the local council and the water and gas utility companies stating that she acted for Mr B who purchased the property on 24th June 2004 and that the property would be empty for some time.
15. There was no evidence found to indicate that stamp duty had been paid in relation to the purported purchase by Mr B or that the property was registered in his name at HM Land Registry.
16. The Respondent also acted in the subsequent resale of GA on behalf of Mr B for £122,000.00 to a Mr FN in September 2004. The property was still shown at HM Land Registry as being registered in the name of Mr BT according to office copy entries.
17. The Respondent prepared the contract, dated 30th September 2004, for the sale of GA in the name of Mr BT. She also drew up the Transfer in the name of Mr BT. Both of these documents were fictitious as Mr BT was no longer the owner of GA.
18. The sale was completed on 15th October 2004.
19. There was no client ledger account for Mr B relating to the resale of GA. The deposit monies of £12,200.00 (4th October 2004) and completion monies of £109,800.00 (15th October 2004) were credited to a client ledger account in the name of Heritage Properties Limited. A company search revealed that the Respondent was a director and company secretary of and shareholder in Heritage Properties Limited.
20. The ledger revealed that a payment of £23,779.51 from the sale monies was made to Mr M (husband of the Respondent) on 19th October 2004. Further, a payment of £10,644.84 was made to Ways 4 Development Limited on 18th October 2004. A company search revealed that Mr B was a director and company secretary of and shareholder in Ways 4 Development Limited. That company was dissolved on 3rd April 2007.

The Submissions of the Applicant

21. The Respondent was involved in funding the purchase of GA and there was a conflict or risk of conflict between her interests and those of her client Mr BT. There had been no evidence that Mr BT had been informed by the Respondent of her personal interest in the transaction.
22. The Respondent had admitted in a letter which she addressed to The Law Society on 30th June 2006 that she had assisted Mr B with the purchase and funding of the

renovation work in the form of a personal loan. The sum of £4,024.68 was paid by her to Mr B representing a share of the profits after resale.

23. The Respondent had a direct personal financial interest in the resale of GA and therefore had a conflict of interest between her own interests and those of her client.
24. In all of the particular circumstances it was right that an Order pursuant to Section 43 of the Solicitors Act 1974 should be made in respect of the Respondent so that her future employment within the solicitors' profession might be subject to the regulation of The Law Society.

The Submissions of the Respondent

25. The Respondent did not make submissions directly in connection with the disciplinary hearing. She had however written to The Law Society letters dated 30th June 2006 and 14th March 2007 in which she said:-

“I am a Director and Secretary of Heritage Properties Limited. I did not instruct Paul Norton & Co to act for Heritage. It had initially been my intention to purchase a property under the name of Heritage but this did not proceed. Neither the file nor ledger was altered to reflect the change of mind. As to disclosure of my interest in Heritage this was known to Mr M. I did not consider it necessary to inform Mr Norton of Heritage when the purchase was not proceeding.

I cannot recall the exact number of times I acted but there were at least four transactions. Mr T was known personally to me. His daughter was a full time member of the staff at Paul Norton & Co. The expression "...helping a friend out" has been taken completely out of context. I said to Miss T that I had agreed for the disbursements and legal costs to be held over for four weeks after completion (the period within which stamp duty and disbursements did not need to be paid) until Mr T had arranged additional funds with his Bank. I had spoken to his Bank and they had assured me that monies would be forthcoming as they were making overdraft facilities available.

I told N my Assistant not to do the after completion work on the T case until the balance of moneys were received. Unfortunately N forgot and drew a cheque for the stamp duty. I noticed the error and I arranged with Mr M to cancel the cheque - which he did. The cheque never left the office it was stapled into the cheque book. However the bookkeeper had overlooked the fact the cheque had been cancelled as she had input the data without noticing the cancellation. Mr M did not balance the books for that month until early the following month and therefore the accounts showed the cheque going out but in practice it had not left the office. The account was not overdrawn. When Mr T's cheque came in to the office instead of waiting for the cheque to clear N again (without my knowledge) drew a further cheque for stamp duty which Mr Norton duly signed.

Unfortunately Mr T's cheque needed to be represented due to an error on the part of his Bank. The Bank then rectified this error and Mr T's cheque

cleared. I was on holiday from Monday 4th October 2004 until Monday 11th October 2004 and had not known of the shortfall, the error made by N nor the balancing of the books with the Mr L account until my return to the office. Mr M discovered the shortfall when he came to balance the books for September in early October. By way of correction Mr M transferred monies from the Mr L account to the T account to balance the books. It was not the first time that Messrs M and Norton had used the Mr L account in this way. I did not instigate this balancing process.

As to Mr T's identity I did have a copy of his passport and proof of address. The proof of identity is on one of the files. I had met Mr T and knew the passport and proof of address to be accurate...

Mr B was the original purchaser of GA. The relationship between myself and Mr B was a business relationship in that he was and to my knowledge still is the mortgage advisor owning part of the premises which Mr Norton rents. Mr B has no relationship with Heritage Properties past or present.

I totally reject any suggestion that I either deleted the computer file or altered the completion statement referred to in paragraph 23. I did not. I was at home in Clifton on Saturday morning 5th February 2005. When my files went to archive they were complete.

The archives comprise a lock up garage to which only Messrs M and Norton have access. Mr Norton relocated all dead files in the office to the archives on and before 31st January 2005.

As to Mr B's name appearing on the documentation I reiterate that when the files were archived to the best of my knowledge all the relevant papers were in the files.

With regard to the payment mentioned at paragraph 25. I did not receive any commission. GA was purchased by Mr B. The property was renovated and sold. Mr BT received the full agreed purchase price from Mr B. I assisted Mr B with the purchase and funding of the renovation works in the form of a personal loan. The sum of £4024.68 was paid to me by Mr B representing a share of the profits after resale. It was not a commission.

As to Mr K. This was a personal loan. I was satisfied completely regarding Money Laundering Regulations 2003.

This was a mathematical error and did not come to light until Mr M had balanced the books at the beginning of the following month for the previous month. When Mr M pointed out the problem I immediately rectified the matter by getting another cheque but in the interim Mr M credited the account from the Mr L account. He then authorised the payment into these accounts.

Messrs Norton and M authorised all transfers from the Mr L account to any account which was overdrawn at the end of the month to balance the books. I had no authority at any time over the movement of funds in or out of the Mr L

account. Messrs Norton and M had been balancing the books in this way for some time.

Mr BT was happy to accept £250. The remainder was Paul Norton & Co costs for sorting the matter out as the property was unsaleable without access to and from the property.

Mr BT signed the Transfer. The moneys were credited to the ledger of Heritage Properties as I had originally loaned Mr B moneys in order for him to purchase and renovate GA...

I have never been a signatory to Paul Norton & Co firm's Client Bank account nor Office account and have never been authorised to instruct the Bank to make telegraphic transfers. Messrs Norton and M were the only persons who signed cheques and telegraphic transfer letters to the Bank.

It was my job to pay in cheques to the Bank and I would write up the Bank paying in book and take the cheques to the Bank. All the payments/transfers detailed at paragraphs 17, 31, 35 and 49 were signed by Mr Norton. As to payment/transfer detailed at paragraph 32 this was done by Mr M when balancing the books at the beginning of the month for the previous month. I did not authorise this. As to payment/transfer detailed at paragraph 34 Mr M asked me to split the cheque payment. It was paid into the Bank on the paying in slip for the two accounts to pay back the money borrowed from the Mr L account. This I did on Mr M's instruction.

The bills and statements were balanced from the information on the ledgers with Messrs M or Norton if I needed clarification. Before the end of each month I was under considerable pressure from Messrs M and Norton to put through as much as I could for costs and disbursements in order to cover the office expenses. The books were balanced by Mr M early the following month.

I trust my reply provides you with the clarification you are seeking”

In her letter of 24th March 2007 the Respondent said:-

“Dear Ms F

I acknowledge receipt of your letter and enclosures of 14th March 2007. I am dismayed and upset that you continue to write to the incorrect address despite previous notifications as to my actual address.

I have nothing further to add to my letter dated 30th June 2006. This matter has dragged on for over two years to the detriment of my health and I seek closure.

As regards the last paragraph of your letter on the subject of costs I fail to understand how I can be liable for any costs associated with this investigation given that I am not a practising solicitor nor a member of The Law Society.”

The Tribunal's Findings

26. The Tribunal found the allegations to have been substantiated. It was clear that the Respondent had not behaved as a solicitor's clerk should and it was right that her future employment within the solicitors' profession be formally regulated. The Tribunal made the Order sought. Having heard the Applicant's explanations as to the calculation of the costs which she sought, bearing in mind that some of the costs had been borne by the Respondent's employer, Mr Norton, the Tribunal concluded that it would be fair that the proportion of costs sought by the Applicant be payable by the Respondent. The Tribunal was aware that the Respondent did not consider that she was liable for costs but, of course, such liability does fall upon her under the provisions of the Solicitors Act 1974 (as amended). The Tribunal therefore ordered the Respondent to pay the costs of and incidental to the application and enquiry fixed in the sum sought, namely £6,913.00.

Dated this 12th day of July 2008

On behalf of the Tribunal

K Todner
Chairman