

IN THE MATTER OF STANLEY SHERWIN BELLER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Gibson (in the chair)
Mr J P Davies
Mrs S Gordon

Date of Hearing: 5th July 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 Jonathan Richard Goodwin of Jonathan Goodwin Solicitor Advocate, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 12th December 2006 that Stanley Sherwin Beller of 43 Portland Place, London, W1B 1QH might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

At the opening of the hearing the Applicant sought to withdraw the second of two allegations. The Respondent agreed and the Tribunal consented thereto. The remaining allegation was that the Respondent had been guilty of conduct unbecoming a solicitor in that he had failed to comply with professional undertaking(s).

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 5th July 2007 when Jonathan Richard Goodwin appeared as the Applicant and the Respondent was represented by John Robson of Counsel instructed by CMS Cameron McKenna solicitors of 1st Floor, 100 Leadenhall Street, London, EC3A 3BP.

The evidence before the Tribunal included the admissions of the Respondent and the following documents were handed up at the hearing: A bundle containing a consent order, a letter written by CMS Cameron McKenna of 24th January 2007 and a copy of the Law Society's Adjudicator's Decision. These documents were handed up on behalf of the Respondent.

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

The Tribunal Orders that the Respondent Stanley Sherwin Beller of Beller & Co, 43 Portland Place, London, W1B 1QH, 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 £5,500 inclusive.

The facts are set out in paragraphs 1 to 9 hereunder:-

1. The Respondent, born in 1948, was admitted as a solicitor on 15th June 1976. His name remained on the Roll of Solicitors. At the material times the Respondent practised on his own account under the style of Beller & Co from offices at 43 Portland Place, London, W1B 1QH.
2. On or about 13th April 2006 the Law Society resolved to intervene into the Respondent's practice.
3. By letter dated 31st March 2006 the Respondent wrote to the Law Society in which, inter alia, he indicated that he had given a number of undertakings in respect of which he was in breach. The recipients of the undertakings and the sums of money the Respondent undertook to pay were as follows:-

(i)	Streathers (Solicitors to Mr F)	£270,000.00
(ii)	Talfourds (Solicitors to Mr O'C)	£560,000.00
(iii)	Hatten Aspen Glenny (Solicitors to R Properties Ltd)	£635,000.00
(iv)	Bank Leumi Trustees (Trustees for Mr K & Co)	£5,000,000.00
		<u>£6,465,000.00</u>
4. The Law Society received a complaint from Messrs Lawrence Graham Solicitors by letter dated 10th April 2006 in connection with their client, the Trustees of Z Trust. The Respondent wrote a letter to Lawrence Graham in which he said:-

“we hereby confirm that we continue to hold the sum of £1million strictly to your order. Interest has accrued thereon at the rate of 2.58% per annum (£70.68 per day) since 20th August 2004, a period of 271 days.

We are delighted to note that you and Mr Y are going to complete the purchase of 100% of the share capital of B and would ask that you remit to us a further sum of £1.2million and which we will continue to hold to your order pending completion. We attach our client account details herewith.

We confirm that these additional funds will also continue to accrue interest pending completion.”

5. On the basis of the Respondent’s confirmation that he was holding and would hold money strictly to their order, the Trust transferred £1.2million to the Respondent’s client account on 20th May 2005. No further instructions were provided to the Respondent to the Trust. No authority was given to transfer the monies to Mr Y, as the transaction was not ready for completion.
6. Lawrence Graham became concerned in particular when, during a telephone conversation between a representative of the Trust and the Respondent on 27th March 2006, and following a request that the funds be returned to the Trust, the Respondent explained that the monies had been transferred to Mr Y, at the request of Mr Y, and without instructions from the Trustees.
7. Summary judgement was obtained against the Respondent by the Trustees of the Trust on 15th November 2006.
8. Messrs Streathers Solicitors wrote to the intervening agents of the Law Society by letter dated 18th August 2006. Streathers acted for Ms B. They complained that the Respondent had failed to comply with his undertaking which was as follows:-

“8th November 2005

Dear D

[Property at London SW1]
[Ms B to Mr Y]

In consideration of your client [Ms B] proceeding today to completion of the sale of the above property to our client Mr Y, we hereby undertake to remit to your firm’s client account or to such other account as your client may reasonably nominate the sum of £4,150,000 on or before 8th August 2006.

We confirm that we have our client’s irrevocable written authority to give this undertaking and his irrevocable written retainer which will continue in force until this undertaking has been performed.

This undertaking is signed by Stanley Beller of Beller & Co.

Yours faithfully

[signed]

BELLER & CO”

9. The Respondent had accepted that he was in breach of a number of undertakings to include those referred to above. The Respondent had acted for his client, Mr Y, for many years.

The Submissions of the Applicant

10. In the matter of the Z Trust no information as to the date of the transfer from the Respondent's client account, the account that the monies were transferred to or why the Respondent believed he was in a position to transfer that money without the consent of the trustees had been provided by the Respondent.
11. The Respondent accepted that he had been in breach of a number of undertakings. He had indicated that he had dealt with the monies that he was holding subject to undertakings in reliance upon what his client, Mr Y, had told him.
12. The relevant principle contained in the Guide to the Professional Conduct of Solicitors (18.02) provided that "a solicitor who fails to honour an undertaking is prima facie guilty of professional misconduct. Consequently the Office for the Supervision of Solicitors (now the Law Society) will expect its implementation as a matter of conduct".
13. The Respondent had produced no compelling reason why he released a significant sum of money that he was holding to the order of the Z Trust. His action illustrated a degree of recklessness that gave cause for concern. Some £2million had been the subject of litigation and the Tribunal was told that the litigation had been compromised on agreed terms. All of the money had been recovered.
14. It was pointed out that the undertakings given by the Respondent which he had breached related to some £6.5million. It was the Respondent's case that no loss had been sustained by any of the persons to whom undertakings had been given. No applications had been made to the Law Society's Compensation Fund. Nevertheless, undertakings were the basis upon which the solicitors' profession conducted business. If it were not possible fully to rely upon a solicitor's undertaking during the course of day-to-day practice, both the solicitors' profession and the public would be adversely affected both in terms of delay and cost. The Respondent should have considered whether he was in a position to discharge the undertakings he had given prior to giving them and his position should the eventuality arise should he not be able to comply.
15. The Applicant accepted that credit should be given to the Respondent for writing to the Law Society and making his position plain at an early stage. Nevertheless the Respondent had been in breach of a number of undertakings and that was professional misconduct at a serious end of the scale.

The Submissions of the Respondent

16. It was accepted that the giving of undertakings was fundamental to the working of the solicitors' profession.

17. The Tribunal was invited to consider the Respondent's culpability in these matters. In each case when the Respondent gave his undertaking it was capable of being fulfilled. It had not been suggested that the Respondent had been dishonest.
18. The intervening agents had been in possession of all of the papers relating to the firm since April 2006, it had all the details of the Respondent's firm's bank account and there had been no suggestion that anything had not been in proper order.
19. It was the Respondent's position that his client Mr Y, for whom he had acted for many years, had suffered a nervous breakdown. He understood that the problem arose following the breakdown of a major transaction which Mr Y's city solicitors were conducting on his behalf. Mr Y had been reliant upon that transaction to meet financial obligations in respect of which the Respondent had given undertakings.
20. Upon hearing of the problems the Respondent convened two meetings at his offices with various creditors. Upon hearing of the problems the Respondent's City firm resigned as Mr Y's solicitors. Subsequently they had refused to supply a schedule of assets which had been produced to the Respondent and Mr Y's bankers on an earlier occasion.
21. The Respondent had given the undertakings not only in reliance on what Mr Y had told him but also having had a level of comfort from his City solicitors.
22. The Respondent had been holding various securities valued at some £15million on behalf of Mr Y. The Respondent had left the package of securities out of the safe at a time when Mr Y was visiting him in the office and understood that Mr Y had taken them.
23. With regard to the monies held to the order of Z Trust, Mr Y had told the Respondent that he had agreed with a trustee that those funds could be released to him and the Respondent had duly released them. The representative of Z Trust had concluded at least one other US\$5million deal with Mr Y which the Respondent was sure would not have occurred if what Mr Y had told him about the £2.2million was not true.
24. The Respondent had been badly misled by a client who had decamped to the United States.
25. The reality was that the Respondent had been duped.
26. The Respondent had used £177,000 of his own money to cover the shortfall that arose on client account when a cheque given to him by Mr Y had been dishonoured.
27. The litigation relating to the monies which had been subject to undertakings concluded on 30th April 2007 when all parties reached an agreement in full and final settlement of their claims against the Respondent. As part of that settlement the Respondent entered into an IVA and contributed an agreed sum.
28. The litigation had been very stressful and time consuming for the Respondent and following the intervention his Practising Certificate had been suspended for the period between April 2006 and January 2007.

29. The Respondent had been granted a Practising Certificate by the Law Society on 3rd January 2007 subject to the condition that he might act as a solicitor only in employment which had first been approved by the Law Society and that he was not a member, office holder or share owner of an incorporated solicitors practice, that he was not a sole principal, partner or salaried partner of any solicitors practice and that he should immediately inform any actual prospective employer of those conditions and the reasons for their imposition.
30. The Respondent was working for a solicitor in London some three days a week, the Law Society having consented to such employment. The Respondent's salary represented a substantial drop in income from that which he achieved as a sole principal.
31. The events outlined had caused the Respondent huge financial consequences. He was a married man whose wife did not work. He had two children. His monthly outgoings were substantial, including repayment of a large mortgage. He had had to cash in an endowment policy. A former employee of the Respondent had formed his own firm and had taken all ongoing client files of the Respondent's firm. He had been reluctant to pass files to the Respondent. There had been no billing for work done up to the date of the intervention and the Respondent had not, therefore, been paid for work which he had done.
32. The Respondent did not enjoy the best of health, having undergone surgery in 2004. One of the Respondent's children suffered psychological problems.
33. The Respondent regretted what had happened, in particular that the securities upon which he relied to ensure compliance with his undertakings had been placed in the firm's safe. The Tribunal was invited to give the Respondent credit for the steps he had taken to rectify the situation. Arrangements had been made for a freezing order on Mr Y's assets in June 2006.
34. The reality of the situation was that the Respondent was an honest man who had been tricked. He had certainly learnt a hard lesson.

The Tribunal's Findings

35. The Tribunal found the allegation to have been substantiated, indeed it was not contested.

Previous Findings of the Tribunal

36. Following a hearing on 3rd February 2004 the Tribunal found four of five allegations made against the Respondent not to have been substantiated but found allegation (i), that he failed properly to protect and/or have due regard to funds as were paid into and out of his client account absent any underlying transaction, to have been substantiated in part.

37. In its written Findings of 9th April 2004 the Tribunal said:-

“The Tribunal found allegation (i) proved in part. There was an absence of written instructions from the clients or written confirmation to the clients and there was therefore a breach of Rule 22 of the Solicitors Accounts Rules. This had been a pattern of behaviour by the Respondent repeated many times. The purpose of the Rule was to prevent solicitors using client account as they wished and saying that they were acting on clients’ verbal instructions. The Rule was there to protect the public and its repeated breach did amount to conduct unbecoming a solicitor even though in this case there was no suggestion of dishonesty on the part of the Respondent.

The gravamen of allegation (i) however was that the Respondent had received and dealt with monies on behalf of his clients when there was no underlying transaction. The Tribunal did not consider that the current state of the Rules was such that it was necessarily conduct unbecoming a solicitor to make payments on behalf of a client where there was no underlying legal transaction. In considering a solicitor’s conduct it was necessary to take into account all the circumstances surrounding the financial transaction a solicitor was making through his client account. The Tribunal had been referred by the Applicant to the cases of Wayne and Wood & Burdett. The Tribunal however accepted the submissions on behalf of the Respondent that the conduct of the Respondent could be distinguished from the misconduct found in those cases. In this case the Tribunal was satisfied that the Respondent acted only on behalf of a small number of clients in a niche practice. He knew his clients well and most of them he had known for a very considerable period of time. He had formed a view from frequent meetings and dealings with those clients that they were respectable. The Tribunal had heard evidence from two of the Respondent’s clients. The evidence of Mr Y in relation to the payments from the General ledger account was compelling. There had been regular advice to Mr Y from the Respondent on a number of matters and Mr Y’s astonishment had clearly been heartfelt that the Respondent was facing allegations in connection with making payments of Mr Y’s money from client account on his instructions for the discharge of a range of debts. Many solicitors quite properly disbursed monies on behalf of their clients and with their clients’ specific instructions in circumstances where they were holding that money on behalf of the clients without carrying out any current underlying legal transaction. It was difficult to draw the line between circumstances where a solicitor might be acting improperly and where he was acting perfectly properly but in this case the Tribunal was satisfied that the absence of legal transactions in respect of some of the movements of funds on behalf of long established clients did not establish a cause of conduct which amounted to conduct unbecoming a solicitor.

For these reasons the Tribunal found allegation (i) proved in respect of the absence of written instructions but not in respect of the absence of underlying transactions.

Penalty

While the Tribunal had found that the Respondent had not obtained the appropriate written instructions from his clients the Respondent had now put forward confirmation from at least one client that he had been acting on instructions. Nevertheless the Tribunal considered this to be a serious matter and did not accept the submission made on behalf of the Respondent that had that matter stood alone it

would not have been put as one of conduct unbefitting a solicitor. The appropriate penalty for the repeated breach, in the absence of any dishonesty, was a fine in the sum of £4,000.00.

Costs

The allegations against the Respondent dealt with an area of considerable difficulty and the Tribunal considered that the case had been properly brought. The Respondent could have provided his documentation at an earlier stage in the proceedings which might have led to a reduction in the number of allegations against him. The Respondent had proffered his clients for meetings but the Tribunal accepted the view put forward by Mr Freeman that what mattered was not the knowledge of the Respondent's clients but of the Respondent. Further the hearing had been prolonged by the challenge in the Respondent's evidence to the evidence of Mr Freeman upon which Mr Freeman had not been cross-examined. Balanced against those factors only four of the five original allegations had been substantiated against the Respondent. In all of the circumstances the Tribunal considered that the appropriate order was for the Respondent to pay half of the Applicant's costs to include half of the costs of the Investigation Accountant.

The Tribunal made the following order:-

The Tribunal order that the Respondent, Stanley Sherwin Beller of 43 Portland Place, London, W1B 1QH solicitor, do pay a fine of £4,000.00, such penalty to be forfeit to Her Majesty the Queen, and they further order that he do pay half of the costs of and incidental to this application and enquiry to be subject to detailed assessment unless agreed."

The Tribunal's Sanction and its Reasons at the conclusion of the hearing in July 2007

38. The giving of undertakings by solicitors forms the bedrock of many transactions conducted by solicitors on behalf of clients. The use of solicitors' undertakings enables that business to be conducted with speed and efficiency and at considerable saving of cost to clients.
39. The Respondent gave undertakings to four recipients covering a sum of money totalling over £6.4million. He had also confirmed that he would continue to hold at first the sum of £1million and later the sum of £1.2million strictly to the order of the Z Trust.
40. The Respondent had found himself in a position where he had to write to the Law Society to notify it that he might not be able to comply with his undertakings. He gave an explanation relating to his non-compliance.
41. It was entirely unacceptable for a solicitor to put himself in a position where he was unable to comply with professional undertakings. In his letter of 17th May 2005 the Respondent had unequivocally stated that he was holding monies strictly to the order of the Z Trust. When the monies were required by the Z Trust, the Respondent had

paid away the monies prior to that request. The Trust had, in reliance on the Respondent's first unequivocal statement that he was holding £1million to the order of Z Trust, paid a further sum of £1.2million to him also on the basis that such money was being held strictly to the order of the Trust. Despite his unequivocal agreement to hold the monies to the order of the Z Trust those monies were not available when the Trust required them in March of 2006.

42. The Tribunal wished to express considerable alarm that the Respondent had paid no heed to the warning inherent in the Tribunal's earlier Findings following a hearing in February 2004.
43. Solicitors and others are entitled to rely on the undertakings of solicitors and to have no doubt that those undertakings will be discharged in full. Any departure from the strict duty to comply fully and timeously with an undertaking on the part of a solicitor serves to destroy the good reputation of solicitors and may well prejudice the interests of the client concerned.
44. The Tribunal has taken into account the Respondent's explanations and his mitigation. It has also taken into account the Findings of the earlier Tribunal. The Tribunal has noted that all monies the subject of the undertakings have been recovered and that the Respondent has played a part in that. Nevertheless the fact remains that on five occasions the Respondent gave professional undertakings upon which the clients placed absolute reliance and he did not discharge them. In those circumstances the Tribunal considered it both appropriate and proportionate to order that the Respondent be struck off the Roll of Solicitors.
45. It was right that the Respondent should pay the costs of and incidental to the application and enquiry. The Tribunal had been told that the Respondent accepted his liability for costs and the quantum had agreed at £5,500. The Tribunal therefore made an order that the Respondent pay the Applicant's costs fixed in the sum of £5,500.

DATED this 15th day of August 2007
on behalf of the Tribunal

A G Gibson
Chairman