

IN THE MATTER OF SAMUEL JONATHAN LAWSON WHATLEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr K W Duncan (in the chair)
Miss T Cullen
Mr S Marquez

Date of Hearing: 2nd June 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (“SRA”) by James Moreton a partner in the firm of Bankside Law Solicitors, Thames House, 58 Southwark Bridge Road, London SE1 0AS on 11th September 2008 that Samuel Jonathan Lawson Whatley, solicitor, of Clapham & Collinge, The Point, 1 August Street, Sheringham, Norfolk NR26 8LA might be required to answer the allegation contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegation made against Samuel Jonathan Lawson Whatley (“the Respondent”) was that he had failed to comply with the terms of an undertaking promptly or at all.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 2nd June 2009 when James Moreton appeared as the Applicant and the Respondent was not present and was not represented.

The evidence before the Tribunal included letters from the Respondent dated 22nd August 2008, 20th October 2008, 10th February 2009, 4th March 2009 and a letter from Hansells dated 23rd September 2008.

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

The Tribunal Orders that the Respondent, Samuel Jonathan Lawson Whatley of Godwick Lodge, Tittleshall, King's Lynn, Norfolk, PE32 2RJ, solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,750.00.

The facts are set out in paragraphs 1 - 14 hereunder:-

1. The Respondent, born in 1954, was admitted as a solicitor in 1979. His name remains on the Roll of Solicitors.
2. At all material times, the Respondent had carried on practice on his own account under the style of Whatley Smith & Co., The Point, 1 August Street, Sheringham, Norfolk NR26 8LA. According to Law Society records, the firm had ceased to trade on 30th September 2007 and the Respondent is now retired from practice as a solicitor.
3. On 19th June 2007 a Practice Standards Advisor of the SRA had attended the Respondent's firm and had carried out a Practice Standards Unit monitoring visit. The Advisor had subsequently produced a Practice Standards Report.
4. The Respondent had acted for Mr HA in the sale of a property ("the property"). Messrs Hansells had acted for Mrs EA in respect of matrimonial proceedings.
5. Correspondence passing between Hansells and the Respondent had revealed the existence of an undertaking relating to how the net proceeds of sale were to be held following the sale of the property.
6. By letter to Hansells dated 20th September 2005, the Respondent had suggested that the net proceeds be divided equally, each firm holding one half strictly to the other's order.
7. On 26th September 2005, Hansells had written to the Respondent confirming their client's agreement to the property sale proceeding on the basis that if, at the time of completion, an agreement had not been reached regarding the division of the net proceeds of sale, then each firm should hold one half of the proceeds strictly to the other's order.
8. The client ledger for Mr HA had shown that £159,070.00 had been received on 30th November 2005. The client ledger had also shown that on the same day, in breach of his undertaking, the Respondent had transferred the sum of £30,000.00 to HSBC. This and other payments made on 30th November 2005 had resulted in a balance of £33,700.90 remaining on Mr HA's client ledger.
9. By letter dated 20th December 2005, Hansells had written to the Respondent requesting a cheque for £32,999.24, confirming that the amount, representing half of the sale proceeds, would be held in accordance with their undertaking. The letter had made it clear that monies could not be released to either party until agreement had been reached as to the division of such.

10. On 7th March 2006 the Respondent had written to Hansells enclosing a cheque for £32,999.24 stating that the money was to be held under the terms previously agreed in correspondence. The client ledger had shown that this payment had resulted in a balance of £1,783.64. The Respondent had failed to inform Hansells that he was not retaining half of the net proceeds of sale in compliance with his undertaking.
11. The matter had been raised with the Respondent in a letter from the SRA dated 24th September 2007. The Respondent had replied by letter dated 5th October 2007, inter alia, explaining:-
 - (a) That his failure to pay half of the net proceeds of sale to Hansells until 7th March 2006 had been an oversight.
 - (b) That payment of £30,000 from the sale proceeds on 30th November 2005 had been in discharge of his client's personal borrowing from HSBC and had been made in error.
 - (c) That he had been holding the balance of the proceeds on behalf of Mr HA.
 - (d) That he would advise the SRA when sums that should have been held in full had been replaced in his firm's client account for the purpose of his undertaking.
12. The SRA had written to the Respondent on 24th October 2007 requesting further information and again on 9th November 2007.
13. On 13th November 2007 the Respondent had written to the SRA in response confirming, inter alia, that he had still not informed Hansells of his failure to retain half of the net proceeds of sale in accordance with his undertaking.
14. The matter had been considered by an Adjudicator of the SRA on 25th January 2008 when a decision had been made that the Respondent's conduct be referred to the Solicitors Disciplinary Tribunal.

The Submissions of the Applicant

15. The Applicant referred the Tribunal to the allegation and took the Tribunal through the relevant facts and the supporting documentation. He also referred the Tribunal to the letter from Hansells dated 23rd September 2008 in which they had confirmed that the Respondent was formally released from his undertaking. The Applicant also referred the Tribunal to letters from the Respondent dated 22nd August 2008, 20th October 2008, 10th February 2009 and 4th March 2009. The Applicant submitted that there had been a clear breach by the Respondent of his undertaking.

The Decision of the Tribunal

16. Having considered all the evidence, including the correspondence from the Respondent and the helpful submissions of the Applicant, the Tribunal was satisfied that the allegation was proved. It noted that the Respondent had admitted the

allegation in so far as it related to the delay in fulfilling the undertaking. However, the Tribunal found a clear breach of the undertaking given by the Respondent to hold half of the sale proceeds, being the sum of £32,999.24, strictly to the order of Hansells solicitors. In breach of his undertaking, monies had been paid out by the Respondent to discharge his client's liabilities. The Tribunal noted Hansells' letter of 23rd September 2008 formally releasing the Respondent from his undertaking.

17. In the particular circumstances the Tribunal considered a penalty of £1000.00 to be appropriate together with costs of £3,750.00 and so ordered.

Dated this 21st day of December 2009

On behalf of the Tribunal

K W Duncan
Chairman