

IN THE MATTER OF NICHOLAS JAMES FOSTER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr I R Woolfe
Mrs N Chavda

Date of Hearing: 16th 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 Ian Ryan, a partner and member of Finers Stephens Innocent LLP of 179 Great Portland Street, London W1W 5LS on 22nd October 2008 that Nicholas James Foster, solicitor of Vine Cottage, Caistor Lane, Caistor Saint Edmund, Norwich, Norfolk, NR14 8QZ might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against Nicholas James Foster (the Respondent) were as follows:-

1. That he had deliberately and improperly utilised clients’ funds for his own benefit, and/or the benefit of a third party, and/or the benefit of other clients.
2. That he had deliberately and improperly utilised funds belonging to Northern Rock for the benefit of his wife.
3. That he had acted in a situation where his interests had conflicted with those of a client.

4. That he had acted in a way which was fraudulent, deceitful, or otherwise contrary to his position as a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 16th June 2009 when Ian Ryan appeared as the Applicant, the Respondent was not present.

The evidence before the Tribunal included the admissions of the Respondent to the allegations including the element of dishonesty.

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

The Tribunal Orders that the Respondent, Nicholas James Foster of Vine Cottage, Caistor Lane, Caistor Saint Edmond, Norwich, Norfolk, NR14 8QZ, 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 £20,052.22.

The facts are set out in paragraphs 1 – 6 hereunder:-

1. The Respondent, born in 1967, was admitted as a solicitor in 1992. Although his name remained on the Roll, he was not practising as a solicitor.
2. At all material times the Respondent had practised in partnership under the style of Cole & Co Solicitors (“the firm”) at 23 Tombland, Norwich, Norfolk, NR3 1RF. He had resigned on 8th February 2007.
3. Following a phone call from one of the partners at the firm, an Investigation Officer of the SRA had carried out an inspection of the firm’s books of account and produced a Report dated 10th October 2007.
4. The Investigation Officer had been unable to express an opinion as to whether the firm had held sufficient funds to meet its liabilities to clients. However she had been able to ascertain that a minimum cash shortage existed at 31st January 2007 of £61,752.94; that cash shortage had been rectified by the remaining partners of the firm on 29th March 2007.
5. The Respondent had been written to by the SRA for an explanation on 14th November 2007 and 4th December 2007. The Respondent had failed to reply to those letters.
6. The Report had been considered by an authorised Officer of the SRA on 31st December 2007 and the Respondent’s conduct had been referred to the Solicitor’s Disciplinary Tribunal on that date.

The Submissions of the Applicant

7. The Applicant explained that the Respondent admitted the four allegations and that those allegations involved very serious professional misconduct. The Applicant referred the Tribunal to the detailed Forensic Investigation Report of 10th October 2007. He took the Tribunal through some of the factual situations in that Report. The

Applicant submitted that the Respondent had behaved dishonestly in respect of all the allegations.

8. The Respondent had acted for five clients in the purchase of 19 holiday cottages using only one client ledger. Following their completion, the Respondent had utilised the remaining balance on that client ledger of £32,500.00 in the purchase of a property by his wife. There had been no confirmation on the file that the Respondent had been authorised to utilise the balance in that way.
9. The Applicant explained that the Respondent had acted for a Mr B. During that transaction Northern Rock had sent loan monies of £10,710.00 twice resulting in a surplus balance on the client ledger of £10,736.87 as at 5th September 2005. The Respondent had utilised that surplus to assist in the purchase of a property by his wife.
10. The Respondent had acted for a Mr M. As at 24th May 2005, following the completion of the transaction, the client ledger had a surplus balance of £6,664.62. In July 2006 the Respondent had utilised some £6,500.00 of that balance for his own use without any authorisation.
11. The Respondent had acted for Mr C and Miss D on a purchase. After the completion of their transaction, as at 17th April 2002, there had been a surplus balance of £5,937.94 on the client ledger. On 23rd June 2006 the client had utilised those funds for his own use.
12. In October 2006 the Respondent had acted for Mrs C on a sale. However, his client had not been aware that the Respondent had borrowed monies to fund the purchase of her property. Insufficient monies had been retained to settle the estate agents' fees of £3,290.00.
13. In January 2006 the Respondent had acted for Ms B on a sale. On 9th June 2006 the client's ledger noted a payment of £1,500.00 to Mr JB. That payment had been unrelated to Ms B's sale. In fact it had been a payment by the Respondent to his building contractor.
14. The Respondent had acted for a Ms KE on a sale and purchase. As at October 2006 a surplus balance of £1,270.88 had remained on the client ledger in respect of the sale and purchase. The Respondent had utilised a sum of £1,300.00 from that client account in respect of an unrelated matter; his wife's purchase of a property.

The Submissions on behalf of the Respondent

15. The Tribunal noted a letter from Messrs Belmores Solicitors dated 4th June 2009, written on behalf of the Respondent, together with a note from the Respondent as to his financial position.

The Decision of the Tribunal

16. Having considered all the evidence and the helpful submissions of the Applicant, the Tribunal found all the allegations both admitted by and proved against the Respondent.

17. The Tribunal was also satisfied that the Respondent had been acting dishonestly and that his actions would be considered dishonest by the standards of reasonable and honest people and that by those standards, the Respondent himself had realised that his conduct was dishonest.
18. In order both to safeguard the public and to uphold the reputation of the profession, the Tribunal considered it necessary to strike the Respondent off the Roll of Solicitors. The Tribunal noted that the Respondent had been involved in a catalogue of dishonest acts. Those acts had involved gross professional misconduct which had brought the profession into serious disrepute. The Tribunal ordered that the Respondent should pay the costs fixed at £20,052.22.

Dated this 8th day of December 2009

On behalf of the Tribunal

W M Hartley
Chairman