

IN THE MATTER OF JOHN ASHER LOCKWOOD, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Miss N Lucking
Mr M C Baughan

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 by George Marriott, solicitor and partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes MK5 8NL on 23rd May 2008 that John Asher Lockwood of Box 31, Karoi, Zimbabwe, solicitor 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 right.

The allegations against the Respondent were that:-

1. He misappropriated client funds. This allegation was pursued on the basis that the Respondent was dishonest;
2. He wrongly held himself out as a partner in a firm of solicitors. This allegation was pursued on the basis that the Respondent was dishonest;
3. He persuaded clients to enter into unlawful agreements in that they were not compliant with the Conditional Fee Agreements Regulations 2000;

4. He contravened The Solicitors Separate Business Code;
5. He failed to progress matters on behalf of numerous clients;
6. He failed to deal with communications from his clients;
7. He failed to respond adequately and substantively to the Solicitors Regulation Authority.

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

At the commencement of the hearing the Applicant confirmed that in accordance with the Tribunal's Order made on 9th December 2008, an advertisement had been placed in The Journal which was the daily paper in the Washington, Tyne and Wear area on 27th February 2009. There had been no contact from the Respondent or any representative on behalf of the Respondent and the Applicant asked the Tribunal to accept substituted service had taken place and that the matter could proceed in the Respondent's absence. The Tribunal were satisfied that the advertisement was sufficient service of proceedings upon the Respondent and Ordered that the matter should proceed in the absence of the Respondent.

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

The Tribunal Orders that the Respondent, John Asher Lockwood of Box 31, Karoi, Zimbabwe, 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 £10,368.08.

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

1. From 28th February 2000 to 28th August 2000 the Respondent was a trainee in the firm called McCarron & Smallcombe working from 1 Beach Road, South Shields, Tyne & Wear NE53 2QA.
2. Between 28th August 2000 and 14th February 2001 the Respondent remained unqualified working from the same firm as above. On 15th February 2001 the Respondent was admitted as a solicitor and remained with the same firm until 16th September 2001. Thereafter The Law Society records do not record him as being attached to any solicitors' practice in England and Wales. The Respondent was born on 25th March 1963.
3. In December 2002 McCarron & Smallcombe ceased to practise. The Respondent's last known address is Box 31, Karoi, Zimbabwe.
4. The late Mr McCarron who died in February 2004 and Mr Smallcombe were partners in McCarron & Smallcombe (the firm) where the Respondent was initially a trainee.
5. In late 2000 the Respondent expressed an interest in land acquisition issues facing Zimbabwean farmers. The Zimbabwean Government had embarked upon a policy of dispossessing farmers without compensation in order to re-distribute land. The policy

was accompanied by some violence and it attracted much international opprobrium. The Respondent suggested that the firm should pursue matters on the farmers' behalf in order to seek compensation from the British Government. As a result, the Respondent made a number of visits to Zimbabwe in 2000 and 2001.

6. The Respondent prepared a paper for prospective clients. The paper made favourable representations concerning the Respondent's credentials, a team capable of delivering compensation, an action plan, how compensation would be achieved, various websites to be looked at, and an advantageous cost structure provided the firm was successful in the claims. The prospective clients were told that to become a client they would have to pay £1,000 and enter into a Contingency Fee Agreement.
7. The Respondent prepared various Contingency Fee Agreements. The agreements required an up-front non-refundable payment of £1,000 and provided that if the case was successful the £1,000 would be deducted from costs and the client would pay 1% of any damages recovered, with costs and disbursements limited to a further ½% of damages recovered. The Contingency Fee Agreement envisaged that Court proceedings might well be necessary.
8. Payments were received into the firm's Zimbabwean client account from 11th September 2000 and certain payments were withdrawn from the client account. There was no evidence that the clients were notified or approved of withdrawals.
9. The Respondent notified The Law Society in a letter dated 26th September 2000 to the effect that the firm had registered case details with the Multi Party Action Group at The Law Society. Preliminary advice was obtained from a QC dated November 2000 a copy of which was before the Tribunal.
10. The Respondent was coy about releasing any information other than the preliminary advice from the QC concerning the success of any prospective litigation and refused to disclose the basis of his case even by April 2001 hiding behind privilege.
11. In April 2001 the Respondent, who was never a partner in the firm, created notepaper indicating that he was a partner and gave the firm two addresses which it never had. He acknowledged receipt of ZW 160K (then £1,000) from a client.
12. The Respondent then formed JAL Legal Consultants Limited (the company), which was registered with Companies House in England on 11th June 2001. The Respondent was a director and his wife was director and secretary. The company was struck off the register at the Respondent's request in June 2004.
13. JAL's publicity material promoted a close association with the firm, and described the Respondent as a solicitor. The service it offered could only be offered through a Solicitors' Practice. Similar optimistic documents were prepared as had been for the firm and a similar Contingency Fee Agreement was prepared. In November 2000, long before its registration, the company accepted monies from Zimbabwean farmers.
14. The Respondent placed an advertisement in "The Farmer", which was a magazine circulating in Zimbabwe, between 26th June and 2nd July 2001 offering the services of the company. Shortly after the Respondent left McCarron & Smallcombe, the firm

closed the Zimbabwean client account. It was not known how much was in the client account. No progress was made with regard to the litigation.

15. On 22nd October 2001 the firm was contacted by one of the farmers wanting to know progress but received no reply.
16. Concerns continued to grow among the farmers and the Independent newspaper on 26th August 2003 carried an article headed "Show us the money, please".
17. A firm of solicitors (Stumbles & Row) based in Zimbabwe were instructed to pursue the Respondent for the return of monies paid. Their agents (Bishop and Sewell) based in the UK made contact with the Legal Complaints Service in August 2003.
18. The matter was raised with the Respondent by letter dated 9th August 2006. The Respondent contacted the SRA on 14th August 2006 to state that he was no longer a Member of The Law Society and that he believed their investigation was outside their remit. The SRA wrote to the Respondent on 16th August 2006 to state that as he was still on the Roll of Solicitors, his replies to enquiries would be required.
19. On 6th September 2006, the Respondent contacted the SRA to advise that he was seeking advice in connection with the matter and that he had no intention of practising again. No further communication was received from the Respondent.
20. The Legal Complaints Service identified a minimum of 27 Zimbabwean farmers who each had paid the Respondent the sum of £1,000 and reimbursed the farmers that sum in full settlement of their claims.

The Submissions of the Applicant

21. The Respondent was not present and had not responded to the Applicant or to the Tribunal. Allegations 1 and 2 were made on the basis of dishonesty but, the Applicant submitted the Tribunal could find any or all of the allegations proved without any element of dishonesty. The Tribunal were referred to the case of Twinsectra Ltd – v - Yardley and Others [2002] UKHL 12 for the test on dishonesty. The Applicant submitted that the preliminary advice obtained from the QC in November 2000 was guarded as to the prospects of success and the paper prepared by the Respondent for prospective clients was far more confident than Counsel's opinion.
22. Sometime in July 2001, the Respondent had left McCarron & Smallcombe and whilst it was not known how much was in the client account, the Applicant submitted that the monies were transferred to the Respondent's company, JAL Legal Consultants Limited. However, no progress had been made with regard to litigation and the Respondent had not replied to communication from the farmers. Furthermore, the Respondent did not register his Zimbabwean address with The Law Society. The Applicant submitted that both the objective and subjective tests referred to in the case of Twinsectra were satisfied and the Respondent had acted dishonestly as he had taken payments from clients without making it clear what those payments were for, or given a clear explanation of how the moneys had been utilised.
23. The Tribunal were referred to a number of documents, which included the following:

- (i) A cheque stub from September 2000 showing a cash payment to the Respondent from the Zimbabwean client account in the sum of £361.69 but no indication as to what it related.
 - (ii) Bank statements and client account ledgers showing monies paid in by clients and then subsequently paid out without any or any proper explanation.
24. The Applicant also submitted the Respondent had used Contingency Fee Agreements whereas in fact there should have been in place Conditional Fee Agreements as the Respondent was seeking to recover a direct share of the proceeds of litigation. The Applicant asked the Tribunal to conclude the evidence clearly led to a finding that the Respondent:-
- (a) Took monies from the Zimbabwean farmers using unlawful Contingency Fee Agreements and failed to progress their matters.
 - (b) Took monies in a company JAL Legal Consultants Limited controlled by the Respondent from the Zimbabwean farmers and failed to progress their matters or provide any explanation of progress.
 - (c) Made no attempt to return any of the monies to the Zimbabwean farmers.
 - (d) Misappropriated a minimum of £27,000 of those funds.
25. The Applicant also sought an Order for his costs and provided the Tribunal with a schedule indicating his costs amounted to a total of £10,368.08.

The Findings of the Tribunal

26. The Tribunal had considered carefully the documentation and the submissions of the Applicant. In the absence of any evidence or submissions put forward by the Respondent, the Tribunal was satisfied from the documentation available to it that all the allegations were substantiated, including the allegation of dishonesty.
27. The Tribunal were concerned that the Respondent had obtained money from the Zimbabwean farmers and had not accounted for that money or given any explanation as to how it had been used. The Respondent, in the paper prepared for prospective clients, had said Counsel had been briefed to deal with a number of specific legal questions listed in the paper. However there was no evidence before the Tribunal that Counsel had indeed been instructed to deal with these issues and the only advice before the Tribunal, from a QC in November 2000, was guarded.
28. Furthermore, the Tribunal were very concerned that the Respondent set up a company in June 2001 and it appeared that shortly after this the Zimbabwean client account at McCarron & Smallcombe was closed and the balance of that account could not be accounted for. The Tribunal had been provided with evidence of payments being made to the Respondent's company which appeared to be from a Zimbabwean farmer but it was not clear what had happened to those funds. There were also other

instances where monies had been paid to the Respondent's company but not accounted for.

29. A number of affidavits had been provided from various clients of the Respondent all confirming that monies had been paid to the Respondent but that those monies had not been accounted for and the clients in question had not received any compensation in relation to the matters on which the Respondent had been instructed.
30. The Tribunal noted from a letterhead of McCarron & Smallcombe Solicitors dated 24th April 2001 that the Respondent had held himself out as a partner of the practice. The Tribunal had not been provided with any evidence that the Respondent was indeed a partner of the practice at that time, having only been admitted as a solicitor two months earlier. The letterhead also contained an address in Zimbabwe which The Law Society had not been notified of.
31. The Tribunal considered the test of dishonesty in *Twinsectra*, which required the Tribunal to be satisfied beyond reasonable doubt that the Respondent had not behaved as a reasonable and honest person and that he knew that his behaviour was dishonest. In relation to allegations 1 and 2 the Respondent had not claimed that he was acting honestly and had he done so, the underlying facts were that the Tribunal would not have believed him. The failure to provide any explanation and the attempt to question the Law Society's jurisdiction entitle the Tribunal to conclude that this Respondent had no honest belief that his misappropriation of client funds and his holding himself out as a partner were capable of an honest explanation. The Tribunal were satisfied that a reasonable, honest and competent solicitor would regard as dishonest the obtaining by the Respondent of money from clients, and the refusal to give any account of how it had been used, coupled with the fact that there was no evidence that the Respondent had progressed client matters as instructed to do so, convince the Tribunal that the Respondent's actions were dishonest. Furthermore the Respondent described himself as a partner when there was no evidence to confirm he was indeed a partner and he has provided no evidence to the contrary. As the Respondent had failed to provide any explanation to these matters, and indeed had asserted the Authority's investigation was outside their remit as he was no longer a member of The Law Society and therefore refused to co-operate with their enquiries, the Tribunal were satisfied that his conduct was dishonest.
32. The Tribunal were also satisfied that the Respondent's total failure to provide any proper explanation to his clients as to what work was being carried out, or indeed how their monies had been spent demonstrated that the public needed to be protected from him and he was not fit to be on the Roll of Solicitors. His conduct had brought the reputation of the profession into disrepute and clients had suffered as a result of his behaviour. He had declined to cooperate with his regulatory body and indeed, when approached by them simply responded by saying he was no longer a member of The Law Society and therefore did not believe the regulating body had any authority to investigate him. He had breached his fiduciary duty to clients, he had failed to safe guard client monies or to account properly for the manner in which they had been used and he had failed to cooperate with his regulating body. In the circumstances, the Tribunal considered the only appropriate Order was to strike the Respondent off the Roll of Solicitors. The Tribunal also Ordered he pay the Applicant's costs as claimed.

33. The Tribunal must express some concern that a matter brought to the attention of the SRA (then the OSS) in August 2003 and the subject of adverse comment in the UK Press (the Independent 26th August 2003) was not initiated before the Tribunal for nearly 5 years i.e. on 23rd May 2008.
34. The Tribunal Ordered that the Respondent, John Asher Lockwood of Box 31, Karoi, Zimbabwe, solicitor, be struck off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,368.08.

Dated this 4th day of December 2009

On behalf of the Tribunal

A H Isaacs
Chairman