

IN THE MATTER OF PAUL BERNARD SYLVESTER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

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Mr K W Duncan (in the chair)  
Mr R B Bamford  
Mr G Fisher

Date of Hearing: 21st May 2009

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## **FINDINGS**

of the Solicitors' Disciplinary Tribunal  
Constituted under the Solicitors' Act 1974

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An application was duly made on behalf of the Law Society by James Moreton, solicitor and partner in the firm of Bankside Law Solicitors, Thames House, 58 Southwark Bridge Road, London SE1 0AS on 24<sup>th</sup> October 2008 that Paul Bernard Sylvester of PB Sylvester & Co, 73 Mitcham Lane, London SW16 6LY 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:-

- (i) He failed to act in his clients' best interests.
- (ii) He failed to deal openly and co-operatively with correspondence from the Solicitors Regulation Authority and from the Legal Complaints Service.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 21<sup>st</sup> May 2009 when James Moreton appeared as the Applicant and the Respondent appeared and was represented by Robert Roscoe.

The evidence before the Tribunal included the admissions of the Respondent and a medical report from Dr Mitra dated 30<sup>th</sup> April 2009.

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

The Tribunal Orders that the Respondent, PAUL BERNARD SYLVESTER of Flat 24, Lambeth Towers, Kennington Road, London, SE11 6NJ (formerly of PB Sylvester & Co, 73 Mitcham Lane, London, SW16 6LY), solicitor, do pay a fine of £10,000.00, 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 £3,500.00.

**The facts are set out in paragraphs 1 - 11 hereunder:-**

1. The Respondent was born in 1946 and was admitted as a solicitor on 15<sup>th</sup> May 1985. His name remained on the Roll of Solicitors.
2. At all material times, the Respondent carried on practice on his own account under the style of PB Sylvester & Co of 73 Mitcham Lane, London SW16 6LY.
3. In or about July 2004, the Respondent was instructed to act for the purchaser of commercial premises located at H Road, (“the property”). By letter dated 8<sup>th</sup> July 2004, the Respondent was instructed to act for NatWest, as lender of funds, in relation to the taking of a first legal charge over the property. On 13<sup>th</sup> December 2004 the Respondent signed a Certificate of Title relating to the property and returned the document to NatWest.
4. By letters addressed to the Respondent dated 23<sup>rd</sup> April 2005, 13<sup>th</sup> July 2005 and 25<sup>th</sup> November 2005, NatWest requested the Respondent to provide documentation and information relating to the bank’s charge over the property. The Respondent failed to respond to this correspondence.
5. NatWest wrote to the Respondent on 15<sup>th</sup> June 2006 expressing concern that the Respondent had failed to register the bank’s charge over the property. The Respondent was requested to investigate the matter and to take steps to register the bank’s charge without further delay. The Respondent failed to reply.
6. Between 30<sup>th</sup> November 2006 and 25<sup>th</sup> March 2008 Cobbetts LLP, representing NatWest, wrote to the Respondent on numerous occasions regarding his failure to register the bank’s legal charge. The Respondent was given a number of opportunities to register the bank’s legal charge and wrote a number of letters to Cobbetts LLP indicating that information was awaited from the Land Registry. He failed to provide copies of correspondence from the Land Registry and Cobbetts LLP drew the matter to the attention of the Legal Complaints Service (“LCS”).
7. The Respondent wrote to the LCS in June 2007 advising that “the file was following completion put away without the registration aspects being completed, and has been overlooked” and having retrieved the file from storage, “I am now dealing urgently with the registration aspects of the matter”. Despite being given an opportunity to conciliate the matter with Cobbetts LLP the Respondent failed to provide an update on the registration process. In August 2007 the Respondent advised the LCS that he

was waiting to hear from the Land Registry but by December 2007 he had still failed to register the legal charge and could not give the LCS an explanation for the delay. He agreed to forward his files to Cobbetts LLP so they could register the bank's charge.

8. On 31<sup>st</sup> January 2008 the Respondent wrote to Cobbetts enclosing various documents but apparently failing to provide his correspondence files. On 25<sup>th</sup> March 2008 Cobbetts advised the Solicitors Regulation Authority ("SRA") that the Respondent had failed to provide evidence of payment of stamp duty.
9. The matter was raised formally by the SRA in a letter dated 2<sup>nd</sup> April 2008. The Respondent replied by letter dated 30<sup>th</sup> April 2008 but failed adequately to address the issues raised by the SRA in their letter of 2<sup>nd</sup> April 2008, or to provide the required information.
10. By letter dated 14<sup>th</sup> May 2008, the SRA advised the Respondent that it did not consider the letter of 30<sup>th</sup> April 2008 to be a substantive response to the requests set out in the letter of 2<sup>nd</sup> April 2008. The Respondent was asked to provide the required information and to clarify whether or not stamp duty had been paid.
11. The Respondent replied by letter dated 20<sup>th</sup> May 2008, stating his view that the allegation had been dealt with in correspondence; that Cobbetts had agreed to deal with the registration aspects of the matter; and that the new allegation was not justified or that it required any more substantive response than had already been given. With regard to the matter of stamp duty, the Respondent failed to address the specific questions raised by the SRA, the tenor of his reply being that he was unable to deal with the issue because he no longer had the file.

#### **The Submissions of the Applicant**

12. The Applicant submitted that the Respondent had failed to act in the best interests of his clients (the purchaser and NatWest Bank) in that he had failed to promptly register the property to protect the purchaser's interest and the mortgagee's charge. Furthermore, he had failed to deal with correspondence from the SRA and from the LCS openly and cooperatively.
13. The Applicant confirmed that he wished to pursue an application for his costs which had been agreed with the Respondent in the sum of £3,500.00.

#### **The Submissions of the Respondent**

14. The Respondent admitted the allegations but wished the Tribunal to take into account some matters that had not been mentioned by the Applicant. There were two significant features of this case, firstly, there was no reference to the watershed of the death of Mrs H who was the Respondent's partner. The Tribunal was referred to a medical report from Dr Bivona dated 8<sup>th</sup> December 2008 which set out the background to her death, which had taken place while the Respondent and Mrs H had been on holiday abroad. In that report Dr Bivona had said,

“In my professional opinion the fact that Mr Sylvester declined counselling treatment and did not consult me often over the years is indicative of him endeavouring to deal with depression himself and is of itself indicative of the severe degree of depression that he must have been suffering”.

15. The Respondent confirmed that the Applicant had not been informed about these circumstances as the Respondent did not want to put Mrs H’s death forward in any way, as an excuse. Prior to these events the Respondent had failed to register the bank’s legal charge but the bank had not suffered any loss or damage and the Respondent had paid Cobbetts’ costs of £1,500.00 for attending to the matter. Indeed, Cobbetts LLP had instructed the SRA that they did not wish to pursue the Respondent for any disciplinary matters but simply wished to resolve the issue for their client’s benefit.
16. The Respondent accepted there had been an oversight and he had failed to register the borrower’s interest and that he had not responded immediately to letters. In December 2006 he retrieved the file and agreed to sort the matter out and intended to do so but this was just one of those matters that he put off dealing with. He apologised for the oversight and stressed there had been no loss to the bank.
17. The report from Dr Bivona confirmed the Respondent had been severely traumatised by the death of his partner in January 2007, this had been an unexpected loss and was the source of severe depression. Even now the Respondent had no clear recollection of how he coped in the period following his partner’s death. He had now closed down his practice and retired. He was not a well man, indeed he was awaiting an operation.
18. The Tribunal was referred to a number of references produced on behalf of the Respondent and asked to take these into account. He had already spent about £6,000.00 on costs related to the closure of his practice and he confirmed that the Applicant’s costs in the sum of £3,500.00 had been agreed. He apologised to the Tribunal for his errors.
19. This had been the first time the Respondent had appeared before the Tribunal.

### **The Findings of the Tribunal**

20. The Tribunal found the allegations to have been substantiated, indeed they were not contested. However, the Tribunal was concerned to find that the Respondent had appeared before the Tribunal on two previous occasions on 30<sup>th</sup> November 1995 and 18<sup>th</sup> March 1997. The circumstances of those appearances had not been dissimilar to the circumstances before the Tribunal today and indeed, in 1997 he had been found to have failed to honour an undertaking to a bank regarding payment of the net proceeds of sale. There were also a large number of accounts breaches.
21. The Tribunal was concerned that Mr Roscoe had indicated, presumably on the Respondent’s instructions, that this had been the first time the Respondent had appeared before the Tribunal when this was clearly not the case. The allegations before the Tribunal today were serious and all the more so when considering the previous appearances and the findings on those occasions.

22. Whilst there had been no evidence that the bank had suffered any loss or damage as a result of the Respondent's failure to register their legal charge, the bank's position had been jeopardised and the consequences could have been much worse.
23. Solicitors were in a position of trust and were expected to act in their clients' best interests, protecting their clients' position and ensuring they would not suffer any adverse consequences in the future. The Respondent had clearly failed to do this and, taking into account his previous appearances, the Tribunal had seriously considered depriving him of his ability to practice.
24. However, the Tribunal had taken into account the references provided and the medical evidence and in all the circumstances considered the appropriate sanction was to fine the Respondent £10,000.00 and order him to pay the costs as agreed at £3,500.00.
25. The Tribunal Ordered that the Respondent, PAUL BERNARD SYLVESTER of Flat 24, Lambeth Towers, Kennington Road, London, SE11 6NJ (formerly of PB Sylvester & Co, 73 Mitcham Lane, London, SW16 6LY), solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,500.00.

Dated this 27<sup>th</sup> day of November 2009

On behalf of the Tribunal

K W Duncan  
Chairman