

IN THE MATTER OF JOHN HOWARD POULTEN, MARTYN JAMES WEYMOUTH
TRENERRY, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A. G. Ground (in the chair)
Mr L. N. Gilford
Mr J. Jackson

Date of Hearing: 3rd November 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Ian Ryan, a partner and member of Finers Stephens Innocent LLP, 179 Great Portland Street, London W1W 5LS on 10th September 2008 that John Howard Poulten and Martyn James Weymouth Trenerry, solicitors, both of Mullis & Peake, Eastern house, 8-10 Eastern Road, Romford, Essex RM1 3PJ, 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.

On 23rd July 2009 the Tribunal Ordered that the Applicant have leave to withdraw all the allegations against the First Respondent, the First Respondent to pay a contribution of £7,000 towards the Applicant's costs and leave was granted to the Applicant to withdraw allegation 5 against the Second Respondent, Mr Trenerry.

The allegations against the Second Respondent, Mr Trenerry were that:

4. He wrote directly to the client of another solicitor when he knew that other solicitor was still acting, in breach of Principle 19.02 of the Guide to the Professional Conduct of Solicitors (8th edition) 1999 ("the Guide").

5. Withdrawn

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 3rd November 2009 when Ian Ryan appeared as the Applicant, and the Second Respondent appeared and was represented by Mr David Morgan of RadcliffesLeBrasseur, 5 Great College Street, Westminster, London SW1P 3SJ.

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

The Tribunal Orders that the respondent, Martyn James Weymouth Trenerry of Mullis & Peake, Eastern House, 8 - 10 Eastern Road, Romford, Essex RM1 3PJ, solicitor, do pay a fine of £1,000, 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 £10,000.

The evidence before the Tribunal

The evidence before the Tribunal included a Rule 5 statement with accompanying bundle, the witness statement of the Second Respondent dated 7th October 2009 with accompanying exhibit, a witness statement of Mrs Sophia Hadji Michael ("Mrs H-M") dated 11th August 2008 with accompanying exhibits, references in respect of the Second Respondent and the sworn oral evidence of the Second Respondent.

The facts are set out in paragraphs 1-30 hereunder:

1. The Second Respondent was admitted as a solicitor in November 1998 and his name remains on the Roll of Solicitors.
2. At all material times the Second Respondent was a partner in the firm of Mullis & Peake Solicitors ("the firm") at 8-10 Eastern Road, Romford, Essex RM1 3PJ.
3. The firm was acting in the probate of the Will of BM who died on 9th August 2002 and was instructed by Mrs H-M.
4. BM's Will named Mrs H-M as sole beneficiary and executrix. The Will was contested by BM's brother, CM, who would be entitled to BM's estate if the Will was invalid. Mr CM resided in Greece and contended that BM's Will was invalid because he was of unsound mind when he made it and/or that Mrs H-M had exercised undue influence. Mr CM was represented by Mr A, a solicitor.
5. On 30th January 2003, the firm were notified that a caveat against the grant of probate had been entered on Mr CM's behalf by his solicitor Mr A. The address for service stated in the caveat was Mr A's business address. Consequently, Mr A was 'on the court record' as acting for Mr CM.
6. The firm served a warning on Mr A on 11th February 2003 and he subsequently entered an appearance to the warning on behalf of Mr CM.
7. The handling of the probate dispute on behalf of Mrs H-M was at this point transferred from the firm's Probate Department to their Litigation Department and

thereafter treated as a contentious matter. The file was initially handled by another solicitor, but the Second Respondent had overall responsibility for the matter.

8. The firm (via the other solicitor) engaged in correspondence with Mr A concerning the validity of the BM's Will between April 2003 and April 2004. During this period:-
 - (i) Mr A stated in a letter to the firm dated 22nd April 2003 that "my client does not speak or read English". Mr A made it clear in a further letter that documents needed to be translated for Mr CM.
 - (ii) The precise circumstances were disputed by the parties, but it appears that Mrs H-M visited Greece, where she made attempts to negotiate direct with Mr CM and/or through Mr CM's Greek lawyers. In May 2003 Mr A stated in correspondence to the firm that "my client states that he has been approached by your client and asked to attend a meeting with her at the offices of her Greek lawyers in Athens with a view to signing a settlement agreement. My client naturally refused and would ask your client not to approach him again save through correspondence between your good selves and myself. My client is not opposed in principle to a settlement but it must be negotiated through the solicitors for the parties....."
 - (iii) By a letter to Mr A dated 16th February 2004, the firm asked if Mr A was instructed to accept service of proceedings. Mr A confirmed in response that he was instructed to accept service of proceedings.
 - (iv) In April 2004, Mr A made a without prejudice offer on Mr CM's behalf. However, no further correspondence took place between the firm and Mr A until January 2005.
9. In about September/October 2004, the other solicitor left the firm and the Second Respondent assumed day to day conduct of the matter. By an internal memo dated 20th October 2004, the Second Respondent confirmed that "I have now read into this file".
10. The Second Respondent arranged to have a meeting with Mrs H-M in January 2005 to discuss how to proceed, and on 21st January 2005 the Second Respondent re-commenced correspondence with Mr A.
11. On 16th February 2005, the Second Respondent again reviewed Mrs H-M's file. At about the same time, the Second Respondent forwarded a letter from Mr A headed "WITHOUT PREJUDICE SAVE AS TO COSTS" to the solicitor acting for the mortgagee of the property in question, prompting Mr A to write a letter of complaint which he asked to be passed to the firm's most senior partner. The Second Respondent passed Mr A's letter of complaint to the complaints partner, with a memo dated 25th February 2005 stating, "The matter has been at stalemate for + 18 months with Mrs H-M failing to give instructions and frustrating any attempt to deal with the probate".

12. From February 2005 onwards, Mrs H-M provided the Second Respondent with periodic instructions to the effect that a settlement might be reached and was being negotiated with Mr CM in Greece. The Second Respondent noted on file that Mrs H-M “wanted to avoid the wrath of Mr A” and that “there are moves afoot in Greece to try and resolve this matter without the interference of Mr A.”
13. The mortgagee’s application to appoint a personal representative was heard in Barnet County Court on 1st March 2005. Mr A appeared at the hearing on behalf of Mr CM as an intervener. The application was adjourned for the mortgagees to file an amended application and written evidence to be served on the firm and Mr A.
14. In April 2005, during the Second Respondent’s absence on holiday, Mrs H-M informed the firm that a settlement had been reached in Greece with Mr CM. Mrs H-M wanted to know the best way of bringing the dispute in the UK to an end and in particular to stop Mr A from acting. She was advised that Mr CM should have independent Greek lawyers to advise him on the settlement; that the Greek settlement would have to be communicated to Mr A; that Mr A’s retainer would have to be terminated (by Mr CM’s Greek lawyers); and that Mr CM should then appoint a new English solicitor to apply to withdraw the caveat. The advice was recorded in writing on the firm’s file.
15. On 20th April 2005, the Second Respondent spoke with Mrs H-M and made a handwritten file note recording “Deal had been done – all beneficiaries are agreed/disinstructing”. On 22nd April 2005, the Second Respondent had another conversation with Mrs H-M in which they discussed “whether Mr A could be sacked”; and on 25th April 2005, the Second Respondent noted that Mr A had agreed to the mortgagee’s application being further adjourned.
16. On 19th May 2005, Mrs H-M again instructed the Second Respondent that a settlement had been reached in Greece with Mr CM and that the M family were happy to remove the caveat in the UK. On learning of this, an Associate in the firm’s Private Client Department sent an internal memo to the Second Respondent dated 20th May 2005 in which she referred to the agreement reached regarding the withdrawal of the caveat and stated that:

“I understand that we have been asked to prepare the withdrawal [of the caveat], but would draw to your attention that, as the original receipt/acknowledgement given when the caveat was entered must accompany the withdrawal, it would seem to me that this will need to be dealt with by Mr CM’s Solicitors [i.e. Mr A] who, no doubt, hold the same having lodged the caveat in the first place.”
17. In early June 2005, the firm were asked by Mrs H-M to prepare a letter for Mr CM to help formalise the Greek settlement. Her request was dealt with by another member of the firm. He prepared a draft letter to Mr CM (in English), but explained in writing to Mrs H-M that, “The letter must come from ‘you’ as we are prohibited by Law Society Rules from contacting Mr CM directly”. He shared Mrs H-M’s concerns “that Mr A will seek to disrupt the settlement you have reached”, although the draft letter informed Mr CM that, whilst Mr CM could personally write to the Probate Registry asking for the caveat to be removed, “it would be more proper for you to

instruct Mr A to remove the caveat on your behalf and to 'stand down' generally". The draft letter also requested Mr CM to let Mrs H-M have a copy of his letter of instruction to Mr A (i.e. to remove the caveat).

18. On 21st June 2005, Mr A wrote to the firm stating that:-

“I am instructed that your client visited my client in Athens and told him that there had been a recent court hearing in London when I appeared on his behalf but failed to speak with the result that your client won the case. Would you please confirm that this is entirely untrue. Would you also please let me have a copy of the Order made on 1st March”.

On 22nd June 2005, the Second Respondent made a file note of a conversation with Mrs H-M as follows:-

- “1. deal concluded – signed and translated (to authenticate)
2. terminated relationship with A
copy document to A/caveat lifted/seek co-operation to lift”

19. The same day Mr A faxed the firm to place on record that Mrs H-M had visited him in person and he had explained to her that “as she had instructed solicitors, she could only deal with me through yourselves”. Mr A asked if the firm still had instructions on behalf of Mrs H-M and, if not, he asked them to remove themselves from the court record.
20. On 1st July 2005, the firm responded to Mr A stating that he should take instructions from Mr CM or remove himself from the court record. At the same time, another member of the firm also wrote to Mrs H-M enclosing Court Form N434 (Notice of Change of Solicitor) for her to pass to Mr CM and stated that “if it is the case then EM’s brother no longer wishes to instruct Mr A then BM’s brother should write to the court to inform the court that he no longer wishes to instruct Mr A in this matter and will be acting on his own behalf (or will be appointing fresh solicitors)”. A Notice of Change was never filed or served by Mr CM.
21. On 5th July 2005, the firm received an official translation of a statement made by Mr CM in Greece before a notary public on 16th June 2005, which recorded that Mr CM accepted that BM’s Will was valid and that he waived any dispute before the English Courts seeking to annul the Will.
22. On 8th July 2005, the Second Respondent advised Mrs H-M that even with the statement made in Greece there were still problems in lifting the caveat in the UK because the original receipt (i.e. that held by Mr A) needed to be produced. On 12th July 2005 the Second Respondent wrote to Mr A, forwarding a copy of the English translation of the statement and asking him to provide the official receipt so that the firm could apply to list the caveat.

23. On 15th July 2005 the Second Respondent spoke to a Mr A and made a hand written file note that Mr A had written to Mr CM for instructions to release the official receipt. The same day, the Second Respondent wrote to the Leeds District Probate Registry with a copy of the translation of the statement made in Greece on 16th June 2005. The Second Respondent informed the Registry that “we understand that relations between Mr CM and his solicitor, Mr A, had broken down and are fraught. Mr A, we understand, is unwilling or unable to provide to us the official receipt for the caveat”
24. The Registry responded that a summons to discontinue the caveat by consent could be made to the Ipswich District Probate Registry (where Mrs H-M’s application for the grant of probate had been made). There were two blank Forms of Consent Summons on the firm’s file: one addressed to Mr A on Mr CM’s behalf; the other addressed to Mr CM in person in Greece. The former was never sent to Mr A; the latter was forwarded to Mr CM in Greece via Mrs H-M.
25. On 5th August 2005, the Second Respondent wrote to the Ipswich District Probate Registry and forwarded a copy of the translation of the statement. The Second Respondent invited the court to deal with the summons without the attendance of Mr CM “or his former solicitor Mr A”. The Second Respondent wrote to the Ipswich District Registry again on 9th August 2005, stating that “we do not wish to involve the former solicitor Mr A”.
26. On 9th August 2005, the Second Respondent also sent a Form of Consent Summons to Mrs H-M which he had signed on her behalf, for her to obtain Mr CM’s signature.
27. On 15th September 2005, the Second Respondent faxed a draft letter to Mrs H-M. The draft letter, which was to come from the Second Respondent at the firm not Mrs H-M, was addressed to Mr CM. The draft letter informed Mr CM that he would not incur any costs or other financial penalties if he signed the Consent Summons (i.e. to remove the caveat); and that, provided he returned the signed Consent Summons to the firm by 1st October 2005, the application to discontinue the caveat would be dealt with as an administrative matter.
28. The Second Respondent’s draft letter was amended at Mrs H-M’s request so that a shorter deadline of 19th September 2005 was imposed for Mr CM to return the signed Consent Summons.
29. On 4th October 2005, Mr A wrote to the firm stating that he had received clear instructions to maintain the caveat; that the statement made in Greece on 16th June 2005 had been procured by “deceit and blackmail”; and that Mrs H-M had been harassing and intimidating Mr CM’s family in order to persuade him to withdraw the caveat. Mr A also complained that the Second Respondent had been in direct contact with Mr CM in breach of Principle 19.02 of the Guide. The Second Respondent’s responded that he had been instructed that Mr CM had terminated Mr A’s retainer.
30. On 25th November 2005 Mr A sent a “without prejudice” letter to the firm stating that his client had indicated that he would be willing to withdraw his caveat on payment by Mrs H-M of the sum of £16,000 towards Mr A’s costs in the matter.

The Submissions of the Applicant

31. It was submitted by the Applicant that the Second Respondent acted in breach of Principle 19.02 of the Guide when he wrote directly to Mr CM on 15th September 2005. The Respondent had taken his eye off the ball and ignored or failed to notice that Mr A was still involved. The allegation was not of the most serious kind.
32. The Applicant indicated that the allegation was admitted and that costs had been agreed in the sum of £10,000.

The Witness Statement of Mrs H-M

33. Mrs H-M stated that, on 22nd June 2005, she informed the Respondent that Mr CM had terminated his retainer with Mr A and that that was based upon information given to her verbally by Mr CM himself.

The Oral Evidence of Mr Trenerry, the Second Respondent

34. Mr Trenerry confirmed that the contents of his witness statement dated 7th October were true. In that statement he had said that Mrs H-M informed him by telephone on 22nd June 2005 that CM had terminated his retainer with Mr A and that the agreement had been duly notarised according to Greek law. Mr Trenerry indicated that he should not have accepted Mrs H-M's instructions concerning that matter and he apologised to the Tribunal and the SRA.
35. Mr Trenerry also confirmed that he had only written one letter to Mr CM in Greece and admitted that he had not received any direct evidence from Mr CM concerning his intentions but only that via Mrs H-M.
36. Mr Trenerry confirmed that the matter had now been resolved. He said that this was an isolated incident and he had never had any complaint made against him before. He accepted that he should have checked more carefully at the time that Mr CM had actually severed his connection with Mr A.

The Submissions of the Respondent

37. Mr Morgan said on behalf of Mr Trenerry that he had always believed that CM's retainer of Mr A had been terminated. Mrs H-M's case in general had been very difficult, with difficult characters involved and this was an isolated incident.
38. The Respondent wished to draw the attention of the Tribunal to the case of D'Souza – v – The Law Society [2009] EWHC 2193 (Admin) in relation to means and any financial penalty. His client's means were limited and he had already been effectively penalised by agreeing to the £10,000 in respect of costs in the case.

The Tribunal's Findings and its Reasons

39. The Tribunal found the allegation proved, in fact it had not been contested.

40. It found that the Respondent's actions in this case had been ill-judged but not intentional. No evidence had been put forward of any harm to Mr CM as the result of the Respondent's actions. However, if the Respondent had genuinely believed that the retainer with Mr A had been terminated he should have communicated directly with Mr A and the court to check the veracity of his information received via Mrs H-M. It had not been sufficient to accept Mrs H-M's assurances in the matter as it was well known to the Respondent that she and Mr A were at odds with each other.
41. The case was an unusual one and the Tribunal had considered all of the evidence put before it most carefully. Having taken into account the seriousness of the matter and the Respondent's limited resources, the Tribunal had decided that the most appropriate penalty would be a fine of £1,000. It also noted that costs in the sum of £10,000 had already been agreed.
42. The Tribunal Orders that the respondent, Martyn James Weymouth Trenerry of Mullis & Peake, Eastern House, 8 - 10 Eastern Road, Romford, Essex RM1 3PJ, solicitor, do pay a fine of £1,000, 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 £10,000.

Dated this 16th day of March 2010
On behalf of the Tribunal

Mr A.G. Ground
Chairman