

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JOHN COLES, solicitor's clerk (The Respondent)
A person (not being a solicitor) employed or remunerated by a solicitor

Upon the application of Mr Stephen Battersby
on behalf of the Solicitors Regulation Authority

Mrs J Martineau (in the chair)
Mr R B Bamford
Mr S Howe

Date of Hearing: 7th September 2010

FINDINGS & DECISION

Appearances

Mr Stephen Battersby, solicitor and partner of Jameson & Hill, 72-74 Fore Street, Hertford, Herts, SG14 1BY appeared as the Applicant on behalf of the Solicitors Regulation Authority ("SRA").

The Respondent did not appear and was not represented. He had however addressed an email communication to the Tribunal immediately prior to the hearing.

Application

On 5th May 2010 the Applicant made application to the Tribunal that an Order under s.43(2) of the Solicitors Act 1974 (as amended) be made by the Tribunal from a date to be specified in the following terms:

- (i) no solicitor shall employ or remunerate in connection with his practice as a solicitor;
- (ii) no employer of a solicitor shall employ or remunerate in connection with the solicitor's practice;

- (iii) no recognised body shall employ or remunerate;
- (iv) no manager or employee of a recognised body shall employ or remunerate in connection with the business of that body John Coles of 29 North Street, Pembroke Dock, Dyfed, SA72 6QT except in accordance with Law Society's permission.

Allegation

The allegation against the Respondent, John Coles was that he, being a person who is or was involved in a legal practice but was not a solicitor, had in the opinion of The Law Society (Solicitors Regulation Authority) ("SRA") occasioned or been a party to, with or without the connivance of a solicitor, acts or defaults in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in ss.1A of s.43 Solicitors Act 1974 (as amended). It was alleged that the Respondent had acted dishonestly in connection with the events leading to the allegation.

The factual background

1. Whilst employed as a litigation clerk by the solicitors' firm, Layton & Co of Haverfordwest, Dyfed between 1st October 2005 and 30th April 2007, he misappropriated monies belonging to clients.
2. Until he was dismissed from his employment on 30th April 2007 the Respondent worked for Layton & Co as an unadmitted clerk dealing with litigation matters.
3. In October 2005 the Respondent was dealing on behalf of Mr and Mrs S with a boundary dispute. On 14th October 2005 Mr and Mrs S handed a cheque for £400 to the Respondent on account of costs. The Respondent informed them that the firm's details were changing so they did not insert the name of the payee. The Respondent inserted his own name and presented the cheque on 17th October 2005.
4. In early 2007 the Respondent was dealing with Miss PS in a property dispute. She made a payment of £600 into the firm's client account on account of Counsel's fees on 22nd March 2007. On 30th March 2007 the Respondent made a bank transfer request for £400 to be transferred to the personal bank account of Miss PS. Miss PS was the Respondent's landlady and she had accepted the £400 in settlement of rent due.
5. On 18th August 2006 the Respondent acknowledged receipt of funds from a client Ms H for whom he was acting on a personal injury matter. The funds were never paid into the firm's client account.

The Respondent's mitigation

6. The Tribunal reviewed the following documents submitted by the Applicant:
 - (i) the Rule 8 Statement;
 - (ii) a copy of an extract from the Forensic Investigation Report of 16th July 2009; and

(iii) other documents referred in the Applicant's List of Documents.

7. The Tribunal reviewed the following documents submitted by the Respondent:

(i) his aforementioned email communication dated 6th September 2010.

Findings as to fact and law

8. The Respondent, in his email, admitted the facts and the Tribunal found those facts to have been proved as set out above.

9. With regard to the question of dishonesty the Tribunal applied the two part test in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Tribunal found that in taking money from clients and from his employer's client account for his own purposes the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he was personally entitled to such money and therefore he knew that what he was doing was dishonest by those same standards.

Mitigation of the Respondent

10. In his aforementioned email the Respondent said that he had hoped to attend the hearing but had been unable to do so. No disrespect to the Tribunal was intended by his non-attendance. The Respondent had been unable to drive for medical reasons. He apologised.

11. The Respondent had found it difficult to deal with the matters before the Tribunal as they related to a chaotic and unhappy period in his life. The Respondent gave details of this. The confusion and distress suffered in his life outside work affected his performance and conduct at work. His mental condition had disintegrated.

12. The Respondent anticipated the penalty that the Tribunal would impose namely an indefinite ban for working in any legal practice. Because of his health issues the Respondent worked only part-time and would never seek to return to legal practice.

13. The Respondent said that his employer should bear no blame for his actions and the Respondent recognised that he should have gone to his employer as soon as he realised that he could no longer cope with the mental and emotional demands of legal practice. Had he done so both his employer and the Respondent would have been happier, the matters before the Tribunal would not have arisen and the Respondent would not have lost a valued and longstanding friendship. The Respondent said that his employer was a good and compassionate man and he extended to him and to the Tribunal his unreserved apologies.

Costs

14. On the subject of costs the Applicant requested fixed costs and gave details to the Tribunal of the amount that he sought. He had sent a note of such costs to the Respondent but the Respondent had not mentioned the question of costs in his email and had not made any other contact.

Sanction and reasons

15. In order to fulfil its duty to protect the public and ensure that the good reputation of the solicitors' profession was maintained, having found the allegations to have been substantiated including an allegation of dishonesty, the Tribunal considered that it was both appropriate and proportionate to impose an Order pursuant to s.43 of the Solicitors Act 1974 upon the Respondent. That Order was however not to be seen as a penalty but rather an Order which sought to control the employment of the Respondent within the solicitors' profession.
16. The Tribunal in considering the question of costs considered that the costs sought by the Applicant were modest and considered that it was right that the Respondent should bear those costs.
17. The Tribunal Orders that as from 7th September 2010 except in accordance with Law Society permission:
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor, John Coles of 29 North Street, Pembroke Dock, Dyfed, SA72 6QT;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said John Coles;
 - (iii) no recognised body shall employ or remunerate the said John Coles;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said John Coles in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said John Coles to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said John Coles to have an interest in the body.

And the Tribunal further Orders that the said John Coles do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,127.20.

DATED this 22nd day of October 2010
on behalf of the Tribunal

Mrs J Martineau
Chairman