

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF FATIMA THOBANI, former solicitor (the Applicant)

Upon the application of Fatima Thobani

Mr E Richards (in the chair)
Mr M Fanning
Mrs V Murray-Chandra

Date of Hearing: 7th September 2010

**APPLICATION FOR RESTORATION TO
THE ROLL OF SOLICITORS**

1. An application was made by the Applicant, Fatima Thobani, that her name be restored to the Roll of Solicitors. The Applicant, who was present, was represented by Gregory Treverton-Jones QC. Iain Miller, on behalf of the Law Society/Solicitors' Regulation Authority (SRA), opposed the application.
2. Mr Treverton-Jones QC told the Tribunal that the application had been advertised in accordance with the Rules. He referred the Tribunal to the Applicant's affidavit signed on 26th May 2010 and its exhibits. Mr Treverton-Jones QC detailed the Applicant's personal and professional history. He explained that the conveyancing work that had resulted in the Applicant's appearance before the Tribunal in June 2001 had been undertaken by her in 1989. Mr Treverton-Jones QC stressed that there had been no course of conduct but that the Applicant had been found to have been dishonest in failing to provide sufficient information to her lender client.
3. Mr Treverton-Jones QC referred the Tribunal to the Findings of the previous Tribunal dated 3rd August 2001. The Applicant had undertaken conveyancing work for a property company, in which her husband had held 50% of the issued share capital, as well as acting for the purchaser, who had also held 50% of the issued share capital, and for the lender, Abbey National. Mr Treverton-Jones QC referred to the material

information that the Applicant had failed to disclose to her lender client and the submissions of the Law Society (the Applicant in those proceedings). He noted that the Law Society had not suggested that Ms Thobani had been dishonest in respect of the conflict of interest allegation but it had alleged dishonesty in connection with the Report on Title that she had made to her lender client in which she had failed to disclose relevant material.

4. Mr Treverton-Jones QC referred to the previous Tribunal's reasons for striking Ms Thobani off the Roll as follows:-

"...the Tribunal accept that the Respondent was not the most experienced solicitor when she undertook the conveyancing transaction involving Mr A, the Company and the Abbey National. They also accept that she clearly was subjected to commercial pressure and the additional pressure of acting for people that she knew well and in a transaction in which her husband clearly had no small interest. She did not acquit herself well. She was not open and frank in her dealings with Abbey National (to whom she owed a very high duty of care because of the solicitor client relationship existing between them) nor it appears was she frank with F.plc. The respondent assured the Tribunal that she had not been deliberately dishonest, but the Tribunal does find that the respondent was fully aware of all the circumstances and she had turned a blind eye to what was going on..."

He submitted that her dishonesty had been as a result of "Nelsonian blindness" rather than of deliberate deceit and that the Tribunal had applied the test, relevant at that time, in Royal Brunei Airlines v Tan [1995] 2 AC 378 rather than the current test in Twinsectra v Yardley & Others [2002] 2 AC 164. While, Mr Treverton-Jones QC acknowledged, that the Tribunal, in considering the application, was not acting as an appeal court, he submitted that it was entitled to take the current test for dishonesty into account when reaching its decision.

5. Referring to Ms Thobani's affidavit, Mr Treverton-Jones QC reminded the Tribunal that there had been no green card warnings at that time, that Ms Thobani had believed that Abbey National had been aware of all the relevant information and that, because of her inexperience, she had regarded the report on title as a procedural formality required for the release of funds. He confirmed that, of course, Ms Thobani had subsequently realised that as the lender's solicitor that had not been sufficient, but he stressed that it had been one transaction in which there had been no inappropriate financial gain or loss of monies from client account.
6. Mr Treverton-Jones QC referred the Tribunal to the Applicant's extremely supportive references and to Ms Thobani's subsequent continuing education and work; both legal and voluntary.

Witnesses

7. Ms Suzette Newman, a partner in the firm of Newman Law, referred to her reference dated 16th April 2009, detailed the work done by the Applicant in her firm over the last five years and expressed her full confidence in her.
8. Parkash S Aujla, a solicitor, Deputy District Judge and Immigration Judge, referred to his reference of 20th April 2009, detailed his personal acquaintance with the Applicant since 1973 and expressed his full confidence in her.
9. Mrs Taz Shirley, a medical practice manager, referred to her reference dated 16th April 2009 detailing her friendship with the Applicant since childhood and her knowledge of her character, family and circumstances.

Submissions on behalf of the Applicant

10. Mr Treverton-Jones QC submitted that the case before the Tribunal was exceptional and that in such circumstances it would be appropriate for it to exercise its discretion and restore the Applicant to the Roll. Leading Counsel referred the Tribunal to the cases of Jidefo v Law Society [2007] EW Misc 3 (EWLS) and Masur v Law Society [2009] EWCA Civ 944.

Submissions on behalf of The Law Society

11. Mr Miller submitted that there was only an extremely narrow category of cases in which an application to restore to the Roll would be successful before the Tribunal and that the present case was not one of those cases. He referred to the cases Nos 5 and 11 of 1990 before the Master of the Rolls and submitted that following Bolton v Law Society [1994] 2 All ER 486, applicants, seeking restoration to the Roll, were faced with a more onerous burden. In cases of proven dishonesty, Mr Miller submitted, there would have to have been some exceptional circumstance, perhaps relating to health, at the time of the dishonesty, to justify a subsequent restoration after a passage of some years and after every effort at re-establishment and redemption.
12. Mr Miller submitted that even if there was such a thing as “serious and non-serious dishonesty” which he did not accept, it was not appropriate for the present Tribunal, without the benefit of all the evidence in the original hearing, to seek to rely on that proven dishonesty being in some lesser category. Although it might appear hard and harsh, on its facts Mr Miller submitted that it was not an appropriate case for restoration.
13. In response to a question from the Tribunal, Mr Miller submitted that all dishonesty on the part of a solicitor was “serious” as referred to in Bolton v Law Society [1994] 2 All ER 486.

Further submissions on behalf of the Applicant

14. Mr Treverton-Jones QC submitted that, as a matter of law, there were plainly grades of dishonesty in that it could be committed both intentionally and recklessly. He referred to situations involving theft, lying and criminal offences and submitted that the Applicant's dishonesty had been towards the bottom of the scale.

The Decision of the Tribunal

15. Having very carefully considered all the evidence, including the very impressive character witnesses and the helpful submissions on behalf of both the Applicant and the Law Society, the Tribunal, albeit with much sympathy for the Applicant, refused her application for restoration to the Roll. The Tribunal was not satisfied that the Applicant had established that the facts surrounding her dishonesty had been exceptional such as to justify a successful application for re-admission to the Roll.
16. The Tribunal noted that Ms Thobani had submitted her report on title indicating to her lender client that it would obtain a first charge over the property and that all general and special conditions had been complied with when that had not in fact been the case. The Tribunal considered certificates of title to be fundamental and key documents in the relationship between solicitors and lender clients. Any untruths on such documents could and often did lead to the improper securing of mortgage funds. The Tribunal had been informed of a loss of some £71,000.00 to the Compensation Fund.
17. The Tribunal accepted all the evidence of the Applicant's efforts since the order in August 2001 striking her off the Roll. However, it particularly noted the following from the former Master of the Rolls in Bolton v Law Society [1994] 2 All ER 486.

“On applying for restoration.....the former solicitor may be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.”

In the absence of some exceptional circumstances, the Tribunal considered that the need to maintain the confidence of clients and the general public in the honesty of the Profession as a whole prevailed.

Application for Costs

18. Mr Miller informed the Tribunal that the amount of costs had been agreed at £1,473.00 and he sought a fixed order. Mr Treverton-Jones agreed quantum but invited the Tribunal to make no order for costs.
19. In the circumstances of an application successfully opposed, the Tribunal considered that the Law Society should be awarded its costs and it so ordered.

The Order of the Tribunal

20. The Tribunal Ordered that the application of Fatima Thobani of Flat 1, 32 Finchley Road, London, NW8 6ES, for restoration to the Roll of Solicitors be Refused and it further Ordered that she do pay the costs of the response of the Law Society to this application fixed in the sum of £1,473.00.

Dated this 12th day of October 2010

On behalf of the Tribunal

E Richards
Chairman