

IN THE MATTER OF MICHAEL JOHN CORNELIUS & ROGER PLEACE, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J. N. Barnecutt (in the chair)
Mr. R. Nicholas
Mr. P. Wyatt

Date of Hearing: 19th February 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72/74 Fore Street, Hertford, Hertfordshire SG14 1BY on the 31st July 2007 that Michael John Cornelius and Roger Pleace solicitors of Eckford Rands, Waterloo House, 21 Market Square, Northampton NN1 2DL 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 were that the Respondents had been guilty of conduct unbecoming a solicitor in each of the following particulars:-

- i. they have failed to keep accounting records properly written up contrary to Rule 32(1) Solicitors Accounts Rules 1998.
- ii. they have failed to carry out reconciliations between liabilities to clients and cash available to meet those liabilities at least every five weeks, contrary to Rule 32 (7) of the Solicitors Accounts Rules 1998.

- iii. they have made payments out of client account other than as permitted by Rule 22(5) Solicitors Accounts Rules 1998.
- iv. they have failed to remedy breaches of the Solicitors Accounts Rules 1998 promptly upon discovery contrary to Rule 7 of the aforesaid Rules.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Stephen John Battersby appeared as the Applicant and the Respondents were represented by George Marriott solicitor of Gorvins, 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL.

The evidence before the Tribunal

The evidence before the Tribunal included the admissions of the Respondents.

At the conclusion of the hearing the Tribunal made the following orders:-

The Tribunal Orders that the Respondent, Michael John Cornelius of Waterloo House, 21 Market Square, Northampton, NN1 2DL, solicitor, do pay a fine of £1,500.00, 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 £5,501.44.

The Tribunal Orders that the Respondent, Roger Pleace of Waterloo House, 21 Market Square, Northampton, NN1 2DL, solicitor, do pay a fine of £1,500.00, 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 £5,501.44.

The facts are set out in paragraphs 1 to 10 hereunder:-

1. Mr. Cornelius, born in 1936, was admitted as a solicitor in 1960. Mr. Pleace, born in 1939, was admitted as a solicitor in 1964. At the material times the Respondents were in partnership in the firm of Eckford Rands at Northampton.
2. The Respondents had had accounting difficulties going back to 1999. Since that time, each of their Accountant's Reports had been qualified because of their failure to prepare reconciliations when the same became due.
3. On the 2nd and 3rd November 2005 the Respondents received a visit from what was then the Practice Standards Unit (PSU) of The Law Society. An extract from the PSU report was before the Tribunal. The Respondents were thereby reminded that their accounting records were not up to date.
4. An Investigation Officer of The Law Society (the IO) began an investigation of the books of account and other documents of the Respondents' firm on 16th August 2006. The IO's Report dated 14th September 2006 was before the Tribunal.
5. The Respondents had told the IO that their books of account were not up to date. They had kept primary accounting documents, such as vouchers for receipts or payments and details of transfers and bills but had not posted these items in the cash books and ledgers. The most recent client account reconciliation had been carried out

on 30th November 2005. The Respondents explained to the IO that the problems had arisen because the firm's cashier had been unable to maintain her regular hours of work.

6. Breaches were not identified in the absence of five-weekly reconciliations and were not corrected promptly. Corrections had however been made promptly upon discovery.
7. Because of the deficiencies in the keeping of records the IO could not form a view as to whether or not the funds held in client account were sufficient to meet the Respondents' liabilities to clients.
8. The last reconciliation carried out on the 30th November 2005 revealed a cash shortage of £17,032.85 (on client account). Further cash shortages had existed on 28th February 2004 (£24,042.00), 31st August 2004 (£32,945.00), 31st January 2005 (£15,195.00) and 31st August 2005 (£17,278.00).
9. The IO identified four client matters in which overpayments ranging from £1600.00 to £30,725.40 had been made from client account. The largest shortage had been in existence for 71 days and the other three for between 242 and 277 days. These shortages had all arisen as a result of more monies being paid out of a client's account than were actually available.
10. The Law Society wrote to the Respondents on 13th October 2006 seeking an explanation for their conduct. They responded on the 30th October 2006 and made an offer to place the sum of £20,000.00 into a client suspense account to cover future shortages.

The Submissions of the Applicant

11. The Respondents had been practising together as solicitors for a long time. They had been aware from their qualified Accountant's Reports that all was not well with their firm's bookkeeping and accounting records.
12. The IO found that the most recent client account reconciliation that had been carried out had been some eight months before he began his visit. By virtue of Rule 32(7) of the Solicitors Accounts Rules 1998 such reconciliations should have taken place at least once every five weeks. There should have been at least seven such reconciliations since the last one had been carried out.
13. Not only had the Respondents been aware of the situation after qualified Accountant's Reports had been prepared, but a report was produced dealing with such matters by the PSU in November 2005. There had been long running breaches of the Solicitors Accounts Rules which had not been remedied promptly upon discovery. Further failures to remedy breaches had occurred when overpayments had been made from the firm's client account.
14. It was inevitable where overpayments were made on behalf of clients that monies belonging to other unrelated clients were being utilised.

15. The Respondents' breach of Rule 22(5) of the Solicitors Accounts Rules 1998 had occurred and a contributory factor was the failure to keep proper accounting records.
16. The Applicant did not wish to suggest that the Respondents' conduct had been in any way dishonest. He recognised that the Respondents had cooperated fully with the IO and had since the IO's inspection taken steps to bring their records up to date.
17. It was accepted that the Respondents' offer to place the sum of £20,000 into a client suspense account to cover future shortages was well intentioned. That was not something which would have been permitted by the Solicitors Accounts Rules because of the fundamental principle that clients' monies and the solicitor's own monies should never be intermingled.

The Submissions of the Respondents

18. The Respondents' practice had been a going concern since the 1960s. Mr. Cornelius had been a partner since 1965 and Mr. Pleace, who first had been an assistant solicitor with the firm, had been a partner since 1972. The Respondents had been together for a very long time and got on well. Apart from a part-time probate clerk the Respondents were the only two fee earners in the firm. They had concentrated on conveyancing and light commercial work. They had secretaries, a cashier and a part-time probate clerk.
19. The Respondents both had an unblemished professional history over a period of nearly 50 years.
20. The Respondents had come to recognise that although they wished to continue to practice as solicitors they wanted the burden of partnership and responsibility for the firm to be taken from their shoulders. Another solicitor in the area had expressed interest in taking over their practice with the possibility of each of them becoming a consultant.
21. Although the Respondents admitted the allegations they invited the Tribunal to take into account the difficulties which had befallen them. Their computerised accounting system had been installed some time ago. The Respondents' firm was one of only two firms that was still using version 2 of the software. It had been confirmed only shortly before the hearing that the provider of the computing package was willing and able to provide ongoing support and assistance. The system could be upgraded. The Respondents' cashier, and her husband, had suffered ill health leading to her having considerable absences from the office.
22. Mr Pleace had been trained to undertake bookkeeping himself, with the assistance of the cashier, who although close to retirement age wished to continue to work.
23. The Tribunal was invited to give due weight to the fact that the Respondents' Reporting Accountants had written to confirm that the accounts had been brought fully up to date.

24. The Tribunal was also invited to give due weight to the written testimonials supporting the Respondents all of which spoke highly of their competence and integrity.
25. The Respondents had been loyal to their cashier who had had long absences from the office owing to her own and her husband's ill health.
26. The Respondents had resisted the purchase of expensive new accounting computer software as they had expected to retire in the not too distant future. The Respondents' firm had been one of only two firms which continued to use the software which they used. Had they been aware of the fact that it was possible to update it then they would have done so. The Respondents had mistakenly believed that their cashier who had worked for them for a long period of time could not be dismissed.
27. There had been no suggestion of dishonesty and no suggestion that anyone had suffered loss.
28. The Respondents' accountant had undertaken a great deal of work at not inconsiderable cost to them.
29. The gravamen of the matters alleged against the Respondents was that they had been guilty of muddle and delay in bringing their bookkeeping and accounts up to date and kept in accordance with the provisions of the Solicitors Accounts Rules.
30. It was sad that solicitors of the Respondents' long experience and reputation should be appearing before their professional disciplinary body. Although their bookkeeping had not met the high standards required they had maintained primary records. They had fully co-operated with The Law Society and throughout the course of the disciplinary proceedings.
31. The Respondents had put their own money into client account to meet apparent shortfalls. They had recovered overpayments and the clients concerned continued to instruct the firm. In one case the Respondents had repaid the whole of the fees which they had charged to the client.
32. The Respondents had always earned a modest living from their practice. They enjoyed their work and had come to recognise that the burden of running the firm had become too much for them. Having put all matters right the Respondents hoped that they might be able to continue to work putting to good use their experience, knowledge and skill, but not in the capacity as partners. Another local firm of solicitors had expressed an interest in taking over the Respondents' firm with the possibility of keeping them on on a consultancy basis.
33. The Respondents were ashamed and embarrassed to be appearing before the Tribunal and they expressed their regret and apologised.
34. In all the particular circumstances it was hoped that the Tribunal might consider that the imposition of a modest fine would be appropriate.

35. The Respondents recognised that they must be responsible for the Applicant's costs and had agreed the quantum of costs which he sought.

The Tribunal's Findings

36. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
37. It is an important requirement of practice as a solicitor that there is punctilious compliance with the Solicitors Accounts Rules and that solicitors exercise a proper stewardship over client funds. The Respondents had been aware of their shortcomings and failures to comply over a long period of time. Matters had not been corrected.
38. Had the Respondents not been able to assure the Tribunal that they had put their house in order, the Tribunal would have given serious consideration to imposing a sanction that would have interfered with their ability to practise.
39. The Tribunal had been assured that the Respondents had now put everything in order, were complying with the conditions on their practising certificates and intended not to continue to practise as principals as soon as proper arrangements could be made. Recognising their hitherto long and unblemished careers and the esteem in which they were held in the locality in which they practised, the Tribunal concluded that there was no need to make an order with a view to the protection of the public but rather an order that served to demonstrate that the Respondents' failures could not be tolerated, in order to protect the good reputation of the solicitors' profession. The Tribunal ordered the Respondents each to pay a fine of £1,500 and further ordered them to pay the costs of and incidental to the application and enquiry fixed in the agreed sum, the Respondents to be jointly and severally liable for such costs.

Dated this 17th day of March 2008
On behalf of the Tribunal

J N Barnecutt
Chairman