

IN THE MATTER OF PAUL JOSEPH HOUSIAUX, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Miss. N Lucking
Mr M G Taylor CBE

Date of Hearing: 21st 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 Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack, Roscoe & Coleman Solicitors of 70 Marylebone Lane, London W1U 2PQ on 17th September 2007 that Paul Joseph Housiaux c/o his solicitors Arthur Boulton & Son of 24 Market Place, Burslem, Stoke on Trent ST6 4AX solicitor 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 allegation against the Respondent was that he had been guilty of conduct that was likely to compromise or impair his repute or that of the solicitors' profession in that, without her permission or knowledge, he signed his divorced wife's name to a document which he then submitted to an insurance company in order to redeem an insurance endowment policy in breach of Rule 1 of the Solicitors' Practice Rules 1990.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 21st February 2008 when Robert Simon Roscoe solicitor appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the admission of the Respondent.

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

The Tribunal ORDERS that the Respondent PAUL JOSEPH HOUSIAUX of c/o Arthur Boulton & Son Solicitors, 24 Market Place, Burslem, Stoke on Trent ST6 4AX solicitor, be REPRIMANDED and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.

The facts were set out in paragraphs 1 to 22 hereunder:-

1. The Respondent, born in 1944, was admitted as a solicitor in 1980 and his name remained on the Roll of Solicitors. The Respondent had retired from practice and did not have a current Practising Certificate
2. On 7th June 2005, the Respondent's former wife, Mrs MH, wrote to The Law Society to complain that the Respondent had forged her signature on an insurance company document relating to a policy on which she and the Respondent were joint trustees and of which she was a beneficiary.
3. Mrs MH informed The Law Society that the Respondent had been investigated by the Staffordshire Police and that the papers had been referred to the Crown Prosecution Service (CPS) to consider whether a criminal prosecution should be preferred. Although not explicitly set out in Mrs MH's letter, it was apparent from an enclosed copy letter from the Staffordshire Police that the CPS had declined to commence a criminal prosecution and that such decision was not challenged by the Staffordshire Police.
4. The conduct which led to the various complaints and enquiries arose in May 2004 when the Respondent received from the insurance company the form that he had requested to enable him to claim monies due under an endowment policy. The form, sent to him at his post-divorce address, included a space for the signature of Mrs MH. The Respondent wrote his ex-wife's name in handwriting in the appropriate place and printed her name adjacent to it and submitted the completed form to the insurance company and the monies were paid over to him.

The Respondent's case

5. The Respondent's solicitors subsequently wrote about the matter to The Law Society and, in doing so, disclosed both a transcript of the Respondent's police interview under caution and a copy of his solicitor's statement dealing with the financial settlement arrangements following the divorce.
6. In summary, it was contended that the settlement of the ancillary relief aspect of the divorce had been finalised when, in May 2004, the Respondent sought to recoup the money due to him from the policy. The Respondent's solicitors asserted that Mrs MH had neither a beneficial interest nor an interest as a trustee in the policy and, on behalf of the Respondent, submitted that Mrs MH's name should not have been on the document and the insurance company should have not required Mrs MH's signature. It was contended on behalf of the Respondent that the insurance company had

misunderstood the basis upon which the endowment policy had been commenced in 1986. It was understood that the insurance company had not retained their records in respect of this policy.

7. The representations made on behalf of the Respondent included the following points:
- (a) That the Respondent was 63 years old and had retired from practice in December 2005 and had not since sought to practise.
 - (b) At the time the Respondent signed the insurance document all the financial issues in respect of the divorce had been resolved and proceedings had been completed, although the Respondent and Mrs MH had previously gone through an acrimonious divorce.
 - (c) At the conclusion of their investigation the Staffordshire police referred their conclusions to the Crown Prosecution Service who took the decision not to prosecute. The Staffordshire Police accepted that decision and opted to take no further action against the Respondent who, whilst accepting that he had signed his wife's name to the document, had denied all criminality.
 - (d) That the Respondent had originally taken out a life insurance policy in December 1969. For reasons which were not clear, but it was arguably the fault of the insurance company, at some subsequent period direct debit/standing order payments made in respect of that policy were taken by the insurance company but not credited to the Respondent's policy account and, in 1986, the insurance company opted to lapse the policy. Apparently unaware of the insurance company's decision to lapse his policy the Respondent continued to make monthly payments and the insurance company continued to receive payment. In 1991 the Respondent discovered that the policy had been formally lapsed in 1986. He contacted the company and, after negotiation, the insurance company changed the life cover policy to an endowment policy.
 - (e) That according to the Respondent, Mrs MH had held an interest in the original policy to the extent that if the Respondent had died before the age of 85 and Mrs MH had survived him, she would have been entitled to the sum insured. In the event that the Respondent lived until 85, the benefit to the policy would have accrued to him. That was the extent of Mrs MH's interest, according to the Respondent.
 - (f) Further, according to the Respondent, following the decision to change the policy to an endowment policy, he became the only beneficiary and, he contended, were he to have died before the maturity date of the policy the surrender value would have accrued to his estate. Accordingly, Mrs MH had neither beneficial interest, nor interest as a trustee, in the endowment policy.
 - (g) The Respondent accepted that, having received the claim form he went to Mrs MH's address seeking her signature but found that she was away (apparently visiting her daughters in Hampshire). The Respondent told the police that he was intending to travel abroad within the space of two or three days, and

because of this he acted in a manner that he described as “impetuously”, (according to his admissions in his police interview).

- (h) The Respondent then wrote his ex-wife’s name in handwriting in the appropriate place and printed her name adjacent to it. It was not suggested, either by Mrs MH, the police, or the CPS, that the Respondent had attempted to copy or replicate Mrs MH’s actual signature. He submitted the completed form to the insurance company. The monies were paid over to the Respondent and nothing further happened until Mrs MH came into possession of a copy of the document.
- (i) In his police interview and subsequently to The Law Society, the Respondent asserted the following:-
 - (i) that Mrs MH had no rights under the policy, that her name should not have been on the document, that she had been named as a trustee by mistake, and that she had no legal or equitable interest in the policy;
 - (ii) that he accepted that he had signed Mrs MH’s name, that he should not have done, that he had acted impetuously, and
 - (iii) that he had thought it appropriate to clarify the position by appending to the document which he returned to the insurance company a post-it note affixed to the form, explaining the circumstances of the signature and how it came to be that he had signed on behalf of Mrs MH;
 - (iv) he denied dishonesty.

Additional issue

- 8. In interview the police also asked the Respondent if the valuation of the policy, relevant to the arrangements for the financial settlement between the parties in respect of ancillary relief, had been fixed at an exceptionally low and unrealistic figure. The Respondent’s solicitor provided a satisfactory explanation of this point and disclosed notes from Mrs MH’s matrimonial solicitor that confirmed his assertion.

The Submissions of the Applicant

- 9. The Respondent had admitted the allegation. Neither the Respondent nor his solicitors were attending for the reasons set out in the written submissions made on behalf of the Respondent. The Respondent’s solicitor, Mr Sherratt of Arthur Boulton & Son, had been a prompt and helpful correspondent.
- 10. The issue of the Respondent’s conduct was not a straight forward matter and the Applicant wished to make clear to the Tribunal the basis on which he put the allegation. The Applicant was also mindful of his duty in the absence of the Respondent to bring to the Tribunal’s attention matters which were favourable to the Respondent.

11. Mrs MH had said that the Respondent had “forged” her signature. The Tribunal was referred to the copy of the maturity claim form and Mrs MH’s name as signed by the Respondent and invited to compare it with Mrs MH’s standard signature. In the light of the difference between them the Applicant did not suggest that the Respondent had attempted to copy Mrs MH’s signature. The Applicant submitted however that the Respondent had signed the name with the intent that the recipient would receive the document on the basis that both trustees had signed.
12. All the original documentation including the post it note written by the Respondent had been lost by the insurance company.
13. The Applicant had had access to The Law Society and police files. The Applicant had taken the view that “forged” would be the wrong word to use in the allegation. Forgery was a criminal offence and a criminal offence had not been made out. The Staffordshire Police had felt that it was inappropriate to bring charges. Mrs MH had complained about that and required the CPS further to consider the decision made by the police not to issue proceedings. The Applicant had also had access to that correspondence. The Tribunal was referred to the undated letter from the Staffordshire Police to Mrs MH informing her that the CPS had concluded that a prosecution should not be pursued.
14. The Applicant had considered also the ancillary documentation. Had only the Respondent put forward the matters contained in his submissions the Applicant might have had a less formed view about the merits of the matter. Having however read the police interview notes, the representations of the Respondent's solicitor and having seen at the instigation of the Respondent's solicitor the documents which showed that the Respondent's understanding of the policy was correct, the Applicant accepted the Respondent's solicitor's explanation as an accurate summary of what had occurred.
15. The issue of the post-it note had been covered by the Respondent's solicitor through various documents and the Tribunal was referred to the police interview notes from 14th January 2005, long before any involvement on the part of the Solicitors Regulation Authority which stated:-

"Question: So you wrote everything that's on that form.

Answer by
the Respondent: I did and I put a post-it with it at the time explaining that she had no rights under the policy, and when I posted that I expected that if that was an issue with them they would come back to me".
16. Although as stated at paragraph 12 above the documentation had been lost, having carefully considered all the documentation the Applicant had taken the view that on the balance of probabilities it was more likely than not that there had been a post-it as described by the Respondent.

17. The Respondent had accepted that he had acted in haste and inappropriately but he had attempted to balance what he had done by the explanatory post-it note.
18. The Respondent's explanations for what had occurred had been consistent.
19. The Applicant was also satisfied that Mrs MH had no beneficial interest in the policy and that it had been disclosed to her solicitors during the course of ancillary proceedings in which both parties had legal representation.
20. It was understandable that Mrs MH had been angry that the Respondent had signed her name but there had been no loss to her and no attempt to create loss.
21. The Respondent had dealt with the matter inappropriately. The Respondent should, as a solicitor, have appreciated that the correct courses open to him were:-
 - (a) to inform the insurance company that the form was incorrect, or;
 - (b) to have written to the insurance company and asked them to re-issue the document, or;
 - (c) to have returned it to them without Mrs MH's signature, or;
 - (d) to have arranged for Mrs MH to sign in the appropriate place.

A solicitor should know that he did not write someone else's signature whatever the reasons.

22. The Applicant sought his costs in the sum of £5,000 which represented a slight reduction on the figure which had been agreed on behalf of the Respondent by his solicitor.

The Submissions on behalf of the Respondent

23. The Tribunal had before it written submissions in mitigation on behalf of the Respondent together with an amending document in relation to those submissions, testimonials in support of the Respondent and a psychiatric report by Dr. T S Ananthanarayanan, Consultant Psychiatrist.
24. Schedule 1 of the submissions set out the background to the allegation in relation to the insurance policy and the error by the insurance company in identifying Mrs MH as a beneficiary on the maturity claim form. The Respondent was a sole beneficiary and Mrs MH had no interest in the policy nor was she a trustee of it.
25. The date on which the Respondent signed the form was also his last working day prior to his retirement and he had worked until late in the evening. He returned to his home to find the claim form which had been delivered by post earlier that day. He was due to depart in the early hours of the following day for a long distance walking holiday. He attempted to visit Mrs MH at the nearby matrimonial home to ask why her name appeared on the policy but she was absent from home.

26. Initially the Respondent had assumed that Mrs MH had wrongly interfered in his entitlement to the policy monies. This was in the context, as set out in schedule 2 to the submissions, of an extremely acrimonious divorce.
27. Knowing that he would be out of contact for three weeks and as the policy proceeds represented his only available capital at that time because of difficulties in selling the former matrimonial home the Respondent unwisely wrote in Mrs MH's name. Immediately recognising his error he put a post it note on the document confirming that he had signed on her behalf and that she had no entitlement under the policy. He felt that to do otherwise would delay the payment of the proceeds and he had a number of pressing debts. On the following morning he posted the form together with enclosures as he left to commence his long distance "retirement walk".
28. Mrs MH subsequently gained access to his home and to his private papers and finding the correspondence between the Respondent and the insurance company made the complaint which gave rise to the proceedings.
29. For the avoidance of doubt Mrs MH had absolutely no entitlement to the policy proceeds and the insurance company had acted in error.
30. The Respondent had frankly accepted both in the police enquires and in the disciplinary proceedings that it had been inappropriate for him to sign Mrs MH's name and the Tribunal was asked to give him credit for that frank admission.
31. He should have struck out his wife's name, signed the form himself and returned it to the insurance company. He was however under substantial pressure. He was retiring literally that day. He had worked long in to the evening to bring matters to a conclusion and was about to go on holiday. At the time he was substantially financially disadvantaged having kindly agreed that all spare capital should be made available to Mrs MH in the context of the divorce settlement. He had shown generosity of spirit in relation to the matrimonial breakdown which was not reciprocated by Mrs MH. The Respondent's judgment had been clouded at the end of a long day but he had immediately rectified the situation.
32. In making the submission on behalf of the Respondent the Respondent's solicitor was able to confirm, having been instructed in the divorce proceedings, that the value of the endowment policy had been fully disclosed in divorce proceedings and the Tribunal was referred to Mr Sherratt's witness statement of 4th February 2005 in that regard which was contained in the Applicant's bundle of documents. Mrs MH was not in any way compromised by what had occurred. The Tribunal was asked to accept the facts as put forward by the Respondent and give him credit for his honesty, his co-operation with all parties, the tortuous background with Mrs MH and the vindictive nature of her personality.
33. The Tribunal was also asked to take into account wider mitigation set out in schedule 3 of the submissions.

34. The Respondent's practising history as a sole practitioner was set out in the schedule together with his earlier history as a Police Officer. The Tribunal was asked to note that the Respondent had acted for the disadvantaged in society and was an excellent example of a selfless solicitor. It was tragic the Respondent now found himself being reviewed by his peers for his own failings and that his professional life should end in this way, particularly post retirement.
35. The Tribunal was given details of the Respondent's current financial position. The divorce had very substantially diminished the financial resources available to him in retirement.
36. The Tribunal was referred to his emotional disabilities of a medical nature as set out in schedule 5 and the report of the Consultant Psychiatrist. The Respondent's medical condition was what had led him to decide to retire from practice and he had barely made it to the end of that process. Sadly it was only when he faced the reality of his divorce that he began to accept his symptoms for what they were.
37. The consultant psychiatrist had indicated to the Respondent that it would be harmful to his health to attend the Tribunal and had indicated that he needed treatment for his medical condition.

The Findings of the Tribunal

38. The Respondent had admitted the allegation and the Tribunal had found it to have been substantiated. This was a difficult case and the Tribunal was grateful for the considerate and sensitive way in which the Applicant had presented it. It was right that the case had been brought before the Tribunal.
39. No dishonesty had been alleged against the Respondent and there was no allegation of forgery. Nevertheless this was a serious allegation of inappropriate conduct. After considering carefully the submissions of both parties and the supporting documentation it appeared that the Respondent had attempted to balance that inappropriate conduct by the explanation set out on the post it note which had unfortunately been lost by the insurance company.
40. As submitted by the Applicant at paragraph 21 above there were a number of options which the Respondent as a solicitor could and should have realised were the correct way to deal with this matter. There was however in this particular case extensive mitigation. The Tribunal were satisfied that there had been no dishonest intent on the part of the Respondent, and that the course of conduct he adopted in haste and under pressure, whilst ill advised and inappropriate, was not designed to achieve an unfair advantage for himself. The Respondent had retired from practice on the day of the offence in question and that retirement had been precipitated by serious ill health as set out in the psychiatric report. It was against that background and the background of an acrimonious divorce that the misconduct had occurred. The Tribunal took into account the references in support of the Respondent which set out his commitment to his clients when in practice and also his commitment to voluntary work. In the light of the exceptional mitigating factors the Tribunal considered that the appropriate penalty was a Reprimand together with payment of the Applicant's agreed costs.

41. The Tribunal therefore Ordered that the Respondent Paul Joseph Housiaux, c/o Arthur Boulton & Son Solicitor, 24 Market Place, Burslem, Stoke on Trent ST7 4AX solicitor, be Reprimanded and it further Ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £5,000.00.

Dated this 26th day of March 2008
On behalf of the Tribunal

A G Ground
Chairman