

IN THE MATTER OF WENDY JOY LEIGHTON AND MICHELE KENNEDY, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J. N. Barnecutt (in the chair)
Mr. E. Richards
Mrs N. Chavda

Date of Hearing: 3rd January 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Solicitors Regulation Authority by Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack, Roscoe & Coleman of 70 Marylebone Lane, London W1U 2PQ on 30th July 2007 that Wendy Joy Leighton and Michele Kennedy both solicitors and both of 402 Ringwood Road, Ferndown, Dorset BH22 9AU, 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 either or both of the following particulars, namely:-

- (a) That their conduct was likely to compromise or impair their good repute as a solicitor or of the solicitors' profession in breach of Rule 1(d) of the Solicitors' Practice Rules 1990.
- (b) That they failed to deal promptly and substantively with correspondence from The Law Society.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 3rd January 2008 when Robert Simon Roscoe appeared as the Applicant. Ms Leighton was represented by Mr MacLeod of Counsel and Ms Kennedy was represented by Mr Crowther of Counsel.

The evidence before the Tribunal included a bundle of documents handed up on behalf of Ms Leighton, two chronologies handed up on behalf of Ms Leighton and the oral evidence of both Respondents. Ms Leighton admitted allegation (a) but denied allegation (b). Ms Kennedy denied both allegations.

At the conclusion of the hearing the Tribunal made no Order in respect of Ms Kennedy and made the following Order in respect of Ms Leighton:-

The Tribunal Orders that the Respondent, WENDY JOY LEIGHTON of 402 Ringwood Road, Ferndown, Dorset, BH22 9AU, solicitor, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties.

The agreed facts are set out in paragraphs 1 - 15 hereunder:-

1. Ms Leighton, born in 1961, was admitted as a solicitor in 1990. Ms Kennedy, born in 1964, was admitted as a solicitor in 1993. The names of both Respondents were on the Roll of Solicitors.
2. The Respondents practised in partnership as Leighton's solicitors ("the firm") at 402 Ringwood Road, Ferndown, Dorset BH22 9AU. Ms Kennedy was a salaried partner.
3. In February 2006, the firm instructed Dorset Land Surveying on behalf of a client to provide professional services in connection with a boundary dispute. In February and July 2006 Dorset Land Surveying delivered invoices to the firm in respect of the professional services provided.
4. The firm did not pay Dorset Land Surveying's fees and they issued recovery proceedings against the firm in the Poole County Court.
5. Ms Leighton who had taken over the client file when the solicitor having conduct of the matter left the firm, filed an acknowledgement of service with the Poole County Court on 10th November 2006 in which she indicated that all of the proceedings would be defended. Ms Leighton told the Tribunal that she expected to be put in funds by the client.
6. A defence was not filed nor was there a reply to the claim form. On 28th December 2006, the Court awarded judgement against the firm in default.
7. The firm did not comply with the Order. Ms Leighton explained that she had overlooked the matter. The Order had not been delivered to the firm.
8. In April 2007 Dorset Land Surveying obtained an Order from the Poole County Court that Ms Leighton attend Court to provide information about her means. In May 2007 Mr V of Dorset Land Surveying effected personal service of such Order on Ms Leighton at her office. Ms Leighton had been taken aback by this. She realised at once that it was her professional responsibility to pay Dorset Land Company's fees, costs and interest. She wrote a cheque for the full amount and handed it to Mr V to

settle the matter. She had expected the client to provide funds. He had not done so and had left the jurisdiction.

9. Ms Kennedy dealt only with conveyancing. She had had no knowledge of this litigation matter and had been unaware that Dorset Land Surveying had been instructed or why. She had become aware of the matter when Mr V attempted to serve the Order of the Court in person at the firm.

The Evidence Relating to Allegation (b)

10. The Solicitors Regulation Authority wrote separate letters about the complaint to each Respondent on 2nd March 2007, 19th March 2007, 3rd May 2007 and 4th June 2007. Neither Respondent acknowledged or responded to those letters.
11. The Respondents explained that they had received none of those letters. At the time when the letters were addressed to them they had experienced difficulties with the delivery and despatch of mail. They had over time become aware of items of mail that had not reached them. It was not possible to know precisely what mail had failed to arrive. They had been notified by Royal Mail in May 2007 that items of mail addressed to the firm had been found in a wastepaper recycling bin. Ms Leighton had told Royal Mail that a significant amount of post had not arrived. Royal Mail had instigated an investigation.
12. The firm's post was always opened by Ms Leighton, save when she was not available when Ms Kennedy opened the post. Neither of them had seen the letters addressed to them by the SRA.
13. It had been the Respondents' practice to send all mail by delivering it to a local Post Office. The Police were investigating an incident where a cheque addressed to a building society to redeem a mortgage had been intercepted and altered to make it payable to a Mr S M.
14. There had been interference with the firm's incoming and outgoing mail.
15. It was the Respondents' evidence that they had not responded to the SRA's letters because they had been unaware of them. The Respondents had first heard of the complaint by Mr V and the institution of disciplinary proceedings when the Applicant had telephoned Ms Leighton. The SRA had sought to communicate only by post. There had been no contact with the Respondents by email, fax or telephone.

The Findings of the Tribunal

16. The Tribunal found allegation (a) to have been substantiated against Ms Leighton, indeed it was not contested.
17. The Tribunal found allegations (a) and (b) against Ms Kennedy and allegation (b) against Ms Leighton not to have been substantiated.
18. The Tribunal accepted that Ms Kennedy had no knowledge of and played no part in the conduct of the file in respect of which Dorset Land Surveying had been instructed. She was not culpable for the fact that that firm's fees remained outstanding. She had

been entirely unaware of the matter until Mr V had visited the Respondents' office to serve a Court document.

19. With regard to allegation (b) against both of the Respondents, relating to their failure to respond to correspondence addressed to them by the Solicitors Regulation Authority, on its face the assertion that the Respondents received none of the letters addressed to them was unlikely. The Respondents had both given oral evidence and the Tribunal considered both of them to be straightforward witnesses of truth. Additionally the Respondents had produced evidence of investigations taking place into the non delivery of incoming mail and the interception of the firm's outgoing mail to corroborate the Respondents' evidence that they had encountered problems with the receipt and sending of post.
20. The Tribunal accepted the Respondents' evidence that in the main Ms Leighton opened post but Ms Kennedy opened some post in her absence and that letters addressed to one of them would be opened by the other if it bore a Solicitors Regulation Authority postal frank and neither of them had seen any letters from SRA.
21. The Tribunal accepted that the letters addressed to the Respondents individually had not reached either of their hands. The Tribunal accepted the Respondents evidence that they first became aware of the proposal to institute disciplinary proceedings when they received a telephone call from the Applicant. The Tribunal accepted that the Respondents had not received the letters and were not in a position to make any response or acknowledge receipt. The SRA had not sought to communicate with the Respondents in any other way. The Tribunal considered that an allegation that the Respondents had not responded to letters when they had not received them could not lie against them.

Ms Leighton's Mitigation

22. Ms Leighton had practised for seventeen years as a solicitor and had an unblemished record. She profoundly regretted what had happened with regard to the instructions to Dorset Land Surveying and offered her apology. She had allowed her own personal high standards to slip on this one occasion.
23. Ms Leighton accepted that she had not dealt with the matter as appropriately or proactively as she should have done.
24. Ms Leighton had taken over the reins in the case after an assistant solicitor had left the firm on maternity leave. She had found that the client had not put the firm in funds. Ms Leighton had allowed herself to be lulled into a sense of inactivity after she had filed an acknowledgement of service. She had thereafter overlooked the matter and had always expected funds to be received from the client imminently. Unfortunately that had not occurred. Ms Leighton had put her own clients' cases, her workload and the management of the practice ahead of dealing with the Dorset Land Surveying matter which had not been regarded by her as a matter of great difficulty, moment or urgency.
25. Mr V had taken a short, sharp litigious route. Ms Leighton accepted that that was not an excuse and it should not have been necessary for him to have brought proceedings. Ms Leighton was most unlikely to find herself in the same position again in the future.

She had learnt a hard lesson in appearing before her professional disciplinary body. She found it deeply embarrassing and upsetting.

26. The firm no longer undertook contentious work. It was perhaps ironic that it was in a case which had not been referred to other solicitors at the time when the firm decided to discontinue acting in litigation matters that the case in question had been retained because of the close proximity of the hearing date. The amount owing to Dorset Land Surveying had been modest although the Respondent accepted that neither of these factors diminished her fault.
27. Whatever the outcome of the Tribunal hearing, Ms Leighton recognised that her previous excellent reputation would be dented by the fact that she had appeared before the Tribunal and an Order had been made in respect of her.
28. In all of the circumstances the Tribunal was urged that the imposition of a reprimand would be sufficient to meet the gravamen of the allegation found substantiated against Ms Leighton. The Tribunal was asked to bear in mind the fact that Dorset Land Surveying had been paid all that was due to it including Court costs and interest and it had suffered no financial detriment. It was hoped that the Tribunal would consider the imposition of a formal reprimand to be proportionate.

The Tribunal's Decision and its Reasons

29. The Tribunal found neither of the allegations against Ms Kennedy to have been substantiated and it followed that no Order was made in respect of her.
30. With regard to the facts underlying allegation (a) which had been admitted by Ms Leighton and found to have been substantiated against her there could be no doubt that her behaviour did compromise or impair her own good reputation or that of the solicitors' profession. Experts instructed by a firm of solicitors are entitled to expect that their fees be met reasonably promptly. The Tribunal recognised that Ms Leighton's failure was not at the highest end of the scale. The situation had however been exacerbated when the expert had been forced to take legal proceedings to obtain payment of his fees and obtained a judgement in default.
31. The Tribunal considered that the imposition of a financial penalty of £2000.00 was both appropriate and proportionate. The Tribunal considered it right that Ms Leighton pay the costs of and incidental to the application and enquiry. The Applicant had notified the costs which he sought, to the Tribunal, but no agreement had been reached between the parties. In the circumstances the Tribunal ordered Ms Leighton to pay the Applicant's costs to be subject to a detailed assessment if not agreed between the parties.

Dated this 8th day of April 2008

On behalf of the Tribunal

J N Barnecutt
Chairman