

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

F I N D I N G S

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND
26 Drumsheugh Gardens, Edinburgh**

against

**NICANDRO MATTEO, Solicitor,
71 South Bridge, Airdrie**

1. A Complaint dated 6th April 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Nicandro Matteo, Solicitor, 71 South Bridge, Airdrie (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 28th June 2005 and notice thereof was duly served on the Respondent.

4. The hearing took place on 28th June 2005. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented by his solicitor, Mr McKinstry, Solicitor, Ayr.
5. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct were admitted. No evidence was led.
6. The Tribunal found the following facts established

6.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born on 14th November 1957. He was admitted as a solicitor on 4th December 1984 and enrolled on 3rd January 1985. From 1st July 1987 until 2nd February 2001 he was a partner of Trainor Alston, Solicitors, Coatbridge. He became a partner of MFY Partnership, which has its principal office at 71 South Bridge, Airdrie on 5th February 2001.

6.2 The Law Society of Scotland
By letter dated 9th February 2004 Firm 1 wrote to the Complainers intimating a complaint against the Respondent. The essence of their complaint was that the Respondent had instructed them to act on behalf of his father and his uncle in connection with a complex dispute between them and another branch of the Respondent's family in connection with a family company. At the end of 2000, Firm1 were due significant fees and they were looking to the

Respondent to settle these on the basis that he had instructed them. Eventually Firm1 required to raise court proceedings for recovery of these fees. In February 2004 the Respondent was defending these proceedings. The sum then owing to them was £8,101.21. Firm1 were seeking to invoke the aid of the Complainers by reason of the Respondent's denial of liability for their fees and his thwarting of their right to payment. By letter dated 17th February 2004 the Complainers wrote to the Respondent enclosing a copy of the aforementioned letter from Firm1 and inviting his response within 14 days. The Respondent did not reply to this letter. By letter dated 4th March 2004 the Complainers wrote to the Respondent again enclosing a copy of a letter dated 18th February 2004 which they had received from Firm1 and pointing out that they had not received a reply from the Respondent to their earlier letter. By letter dated 5th April 2004 the Complainers wrote to the Respondent intimating a complaint of alleged professional misconduct and requesting him, in terms of Section 33 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 to provide them with, *inter alia*, his written response to the issues of alleged professional misconduct identified in a list attached to this letter within 21 days from the date thereof. The Respondent failed to reply to this letter too. By letter dated 28th April 2004 the Complainers gave notice to the Respondent in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 requiring the Respondent to provide this response and an explanation for the delay in replying to their letter dated 5th April 2004 and also telling him that he may require to give at least six weeks' notice to the

Complainers of his intention to make application for a Practising Certificate for the year commencing 1st November 2004. By letter dated 28th April 2004 the Complainers gave notice to the Respondent in terms of Section 42C of the Solicitors (Scotland) Act 1980 calling upon him to produce the documents referred to therein within a period of 21 days from that date. The Respondent failed to reply to the aforementioned notices in terms of Sections 15(2)(i)(i) and 42C aforesaid. By letter dated 1st June 2004 the Complainers gave notice to the Respondent in terms of Section 15(2)(i)(i) aforesaid requiring him to give six weeks' notice to them of his intention to make application to take out a Practising Certificate for the year commencing 1st November 2004. By letter dated 5th July 2004 Firm1 wrote to the Complainers advising that terms of settlement had been agreed between them and the Respondent in the ongoing litigation and that the case had been sisted for settlement. The Respondent did not reply to the aforementioned notice dated 1st June 2004. By letter dated 16th August 2004 the Complainers wrote to the Respondent enclosing a copy of the Reporter's Report and Opinion and inviting any written representations from him thereon by 16th September 2004. By letter dated 14th September 2004 an agent acting on behalf of the Respondent wrote to the Complainers making these representations on his behalf. This was the first occasion that the Complainers had received any response from or on behalf of the Respondent to all of the aforementioned correspondence which they had sent to him. He subsequently paid Firm1 the agreed settlement sum.

7. Having considered the foregoing circumstances and having heard submissions from the Complainers and on behalf of the Respondent the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 His failure to respond to the reasonable requests of the Complainers for information and to statutory notices in consequence of which the Complainers were unable to respond in any meaningful way to Firm1 who had invoked their aid.

8. Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 28th June 2005. The Tribunal having considered the Complaint dated 6th April 2005 at the instance of the Council of the Law Society of Scotland against Nicandro Matteo, Solicitor, 71 South Bridge, Airdrie; Find the Respondent guilty of Professional Misconduct in respect of his failure to respond to the reasonable requests of the Law Society for information, and failure to respond to statutory notices; Censure the Respondent: Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on a agent and client indemnity basis in terms of Chapter Three of the Law Society's Table of Fees for general business; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Kenneth Robb
Vice Chairman

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint. No evidence was accordingly led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir emphasised that the Respondent had co-operated from the outset and entered into a Joint Minute which was appreciated. Mr Muir stated that he had nothing to add to the Complaint but moved the Tribunal to award expenses to the Complainers.

SUBMISSIONS FOR THE RESPONDENT

Mr McKinstry stated that the Respondent had accepted from the outset that his conduct was unacceptable and amounted to professional misconduct. Mr McKinstry emphasised that the Respondent had previously had an unblemished career and had been a solicitor for 24 years. Mr McKinstry submitted that this was not a situation where clients or the public or fellow professionals suffered any loss. There was also no breach of trust. Mr McKinstry explained that the original wrong related to a matter where the Respondent had consulted a firm of solicitors on behalf of his own family and a question had arisen in connection with liability for professional fees. As the Respondent had instructed the matter he had to accept liability and he personally settled the account after a compromised negotiated settlement. Mr McKinstry stated that he had a letter from the solicitors concerned confirming that the issue which had led to the Complaint had since been resolved. Mr McKinstry also stated that a partner in the firm of Firm1 had confirmed that if the account had been settled earlier matters would not have reached the Law Society. Mr McKinstry explained the Respondent's circumstances at the time of his failure to reply. There had been difficulties in the partnership and a partner had resigned unannounced with no prior intimation. The Respondent had been suffering from lack of sleep at this time and suddenly had to deal with management issues in the practice which were new to him. It was against this background that the correspondence from the Law Society had come in and the Respondent put this into the background for understandable reasons. Mr McKinstry

stated that the Respondent wished to apologise to the Tribunal and the Law Society for his conduct. Mr McKinstry then referred the Tribunal to the various detailed references lodged from eminent members of the legal profession which vouched for the Respondent's honesty and integrity and indicated that these matters were completely out of character for the Respondent. Mr McKinstry asked the Tribunal to deal with the matter leniently due to the extenuating circumstances. In response to a question from the Tribunal Mr McKinstry confirmed that the court action was raised prior to the Complaint made to the Law Society being intimated to him.

DECISION

The Tribunal has made it clear on countless occasions that failure to respond to the Law Society seriously inconveniences the Law Society in the performance of their statutory duty, is prejudicial to the reputation of the legal profession and clearly amounts to professional misconduct. The Tribunal however took into account the circumstances in this case and was satisfied that this was an isolated incident. The failure to respond related to one matter and it was clear from the eminent references provided that this conduct was out of character for the Respondent. The Tribunal also noted that no member of the public had been affected by the Respondent's conduct. The Tribunal also took account of the fact that the Respondent had co-operated with the Law Society from an early stage and entered into a Joint Minute. In the circumstances the Tribunal was satisfied that a Censure together with the usual order for expenses and publicity would be sufficient penalty in this case.

Vice Chairman