

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

FINDINGS

in Complaint

by

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

against

**PETER MCDOWALL MURRAY,
Solicitor, AB & A Matthews LLP,
Bank of Scotland Buildings,
Newton Stewart (“the First
Respondent”)**

and

**ANDREW ALEXANDER
MURRAY, Solicitor, Hunter &
Murray Solicitors, 25 Lewis Street,
Stranraer (“the Second
Respondent”)**

1. A Complaint dated 7 February 2011 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as “the Complainers”) requesting that, Peter McDowall Murray, Solicitor, AB & A Matthews LLP, Bank of Scotland Buildings, Newton Stewart (hereinafter referred to as “the First Respondent”) and Andrew Alexander Murray, Solicitor, Hunter & Murray Solicitors, 25 Lewis Street, Stranraer (hereinafter referred to as “the Second 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 Respondents. Answers were lodged by both Respondents.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 16 May 2011 and notice thereof was duly served on both Respondents.
4. The hearing took place on 16 May 2011. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The First Respondent was represented by James McCann, Solicitor, Clydebank. The Second Respondent was represented by Mr William Macreath, Solicitor, Glasgow.
5. Mr McCann indicated that the First Respondent plead guilty to the Complaint. Mr Macreath indicated that the Second Respondent also plead guilty to the Complaint.
6. No evidence was led and the Tribunal found the following facts admitted or proved -
 - 6.1 The First Respondent was born on 19 January 1948. He was admitted as a Solicitor on 14 November 1972 and enrolled on 28 November in the same year. He became a Partner in the firm of AB & A Matthews LLP, Bank of Scotland Buildings, Newton Stewart on 1 June 1978. AB & A Matthews trade as Hunter & Murray, Solicitors, at 25 Lewis Street, Stranraer.
 - 6.2 The Second Respondent was born on 19 June 1940. He was admitted as a Solicitor on 6 September 1966 and enrolled on 5 October in the same year. He was a Partner in the firm of Hunter & Murray, 25 Lewis Street, Stranraer, from 1st December 1967 to 18 December 1995. He became a consultant in that firm and also a consultant in the firm of AB & A Matthews LLP on 19 December 1995 then an employee from 1 August 1996. He does not hold a current practising certificate.

MR AND MRS A

- 6.3 Mr and Mrs A reside at Property 1. Their address at Property 1 was purchased by them on 30 May 2008 as a new build property from Mr B, a Property Developer and his wife operating *inter alia* a business Company A, and who had erected two detached dwellinghouses at the location. The Second Respondent as an employee of Hunter & Murray, Solicitors, Stranraer acted for Mr and Mrs A in the purchase. The First Respondent, as a partner in the firm of AB & A Matthews LLP, Solicitors, Newton Stewart acted on behalf of Mr B and his wife. The First Respondent had acted as solicitor for Mr & Mrs B from 2002 in various transactions. The Second Respondent was the employee of the First Respondent throughout the course of the transaction for the conveyance of Plot B.
- 6.4 Mr B purchased the land at Property 1 in his own name in 2005 and granted a security in favour of Company B. He was granted Planning Permission for the erection of two dwellinghouses on the land on 8 December 2005. He applied for a Building Warrant and obtained a Certificate of Design (Building Structure) New Building for two timber framed dwellinghouses on 4 February 2006. He proceeded with the build and in March 2008 instructed the First Respondent to transfer a one half *pro indiviso* share of the property to his wife. This was done on 20 March 2008 and acknowledged by the Keeper on 9 April 2008. Mr B was a Property Developer in relation to this site. At about the same time he had other projects at Property 2, Property 3 and Property 4.
- 6.5 Mr and Mrs A saw Plot A advertised for sale and attended to view it. They were shown round Plot A by Mr B. They

preferred the situation of the incomplete house at Plot B and were allowed to view it. It contained no kitchen units or bathroom fittings, was uncarpeted and unoccupied. Mr B told them that he could have it finished and fit for occupation by 30 May 2008 when they were due to sell their current home. Mr & Mrs B did not reside in the property as their principal residence.

6.6 Mrs A instructed the Second Respondent to make an offer to purchase Plot B, which he did on 29 April 2008. He was aware that this was a new build property. He did not consider the prohibition on the same firm acting for both sides in a conveyancing transaction where one was a Property Developer. He knew or ought to have been alert to the fact that Mr B was a Property Developer. Mr B was well known in the Stranraer area and an established client of the Firm. All correspondence and the disposition in favour of Mr & Mrs A designed Mr & Mrs B as residing at property 5. The Second Respondent did not tell his clients that his employer the First Respondent acted for the sellers. He did not explain to them that the two Firms were trading names of the same business practice. He did not advise them of the potential conflict of interest and that if a dispute arose one or both sets of client would require to consult an independent solicitor. He did not write to them confirming that advice.

6.7 The First Respondent did not take any steps to ensure that his employee had complied with the requirements of the Rules governing conflict of interest in a conveyancing transaction. He did not consider the prohibition on acting for both a Property Developer and purchaser of a developed property. He took no steps to ensure that Mr & Mrs A were fully informed of the situation. The transaction proceeded on the basis that it was the sale of a new build property part of a two property development. All correspondence and the disposition in favour

of Mr & Mrs A designed his clients as residing at property 5. He knew that his client was a Property Developer.

6.8 At the date of entry no completion certificate had been issued but the transaction settled and the purchasers moved into the property. Mr and Mrs A were under the impression that funds had been retained from the purchase price to be paid over when all requisite documentation had been received. They were unaware until May 2009 that the Firm also acted for the seller. The completion of the property was delayed due to concerns about the structural integrity of a load bearing garden wall. A Temporary Occupation Authorisation Certificate was issued by the Planning and Environmental Services department of Dumfries and Galloway Council on the 2 October 2008. By July 2009 the required works had not been attended to and Mr and Mrs A obtained independent legal advice. Litigation was instituted against the Developer at Stranraer Sheriff Court.

7. Having considered the foregoing circumstances, the Tribunal found the First Respondent guilty of Professional Misconduct in respect of:

7.1 his between 29 April 2008 and 30 May 2008 failing to adequately supervise his employee Andrew Alexander Murray and his permitting him to act on behalf of his clients Mr and Mrs A in their purchase of Plot B, Stranraer in circumstances where the Firm and in particular the First Respondent acted for the seller who was a Property Developer all in breach of Rule 5 of the Solicitors (Scotland) Practice Rules 1986.

8. Find the Second Respondent guilty of professional misconduct in respect of:

8.1 his between 29 April 2008 and 30 May 2008 acting on behalf of his clients Mr and Mrs A in their purchase of Plot B in

circumstances where the Firm also acted on behalf of the seller who was a Property Developer and there was a clear conflict of interest between the respective clients all in breach of Rules 3 and 5 of the Solicitors (Scotland) Practice Rules 1986.

9. Having heard from the solicitors for both Respondents in mitigation and having noted a previous finding of professional misconduct against the Second Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 16 May 2011. The Tribunal having considered the Complaint dated 7 February 2011 at the instance of the Council of the Law Society of Scotland against Peter McDowall Murray, Solicitor, AB & A Matthews LLP, Bank of Scotland Buildings, Newton Stewart (“the First Respondent”) and Andrew Alexander Murray, Solicitor, Hunter & Murray Solicitors, 25 Lewis Street, Stranraer (“the Second Respondent”); Find the First Respondent guilty of Professional Misconduct in respect of his between 29 April 2008 and 30 May 2008 failing to adequately supervise his employee, the Second Respondent and permitting him to act on behalf of clients in their purchase of a property in circumstances where the Firm and in particular the First Respondent acted for the seller who was a Property Developer all in breach of Rule 5 of the Solicitors (Scotland) Practice Rules 1986; Find the Second Respondent guilty of professional misconduct in respect of his between 29 April 2008 and 30 May 2008 acting on behalf of clients in their purchase of a property in circumstances where the Firm also acted on behalf of the seller who was a Property Developer and there was a clear conflict of interest between the respective clients, all in breach of Rules 3 and 5 of the Solicitors (Scotland) Practice Rules 1986; Censure the First Respondent and Fine him in the sum of £500 to be forfeit to Her Majesty; Censure the Second Respondent and Fine him in the sum of £500 to be forfeit to Her Majesty; Find each Respondent liable in respect of one half the expenses of the Complainers and of the Tribunal including expenses of the Clerk,

chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity will include the names of the Respondents.

(signed)

Malcolm McPherson
Vice Chairman

10. 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 Respondents by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

Both Respondents lodged Answers to the Complaint but it was clarified on the day of the Tribunal that both Respondents were pleading guilty to all the facts, averments of duty and averments of professional misconduct in the Complaint. Mr McCann confirmed that the basis of the plea was that Mr & Mrs B were Developers and the facts in the Complaint with regard to this were not challenged.

SUBMISSIONS FOR THE FIRST RESPONDENT

Mr McCann referred the Tribunal to the character references and his written plea of mitigation which he had lodged. Mr McCann explained that his client had been the Dean of the local Faculty on two occasions and that this was a single lapse in a long and reputable career. The First Respondent had also suffered from serious health problems and had found this matter most distressing. Mr McCann stated that this case had dragged on for some time and that the First Respondent had admitted his guilt from the outset. The First Respondent's mistake was not to insist on his view that Mr & Mrs A were Developers. The reason for this was that there was some information which suggested that they might have been living in the property. Mr McCann referred to Paterson and Ritchie paragraph 17.15.01 and submitted that it had never been absolutely forbidden to act on both sides in a conflict situation. Mr McCann submitted that the profession had invited solicitors into this minefield and that it was a question of judgment in connection with what the definition of Developer was. Mr McCann submitted that the First Respondent was normally extremely careful with regard to rules but that the conflict of interest rules were not always straight forward. Mr McCann emphasised that in this case although the Second Respondent was an assistant, he was more senior and experienced in the profession than the First Respondent. The Second Respondent as the assistant in the Stranraer branch office would have had daily assistance from a visiting partner or other assistant on a rota basis. The rota did normally include the First Respondent and the First Respondent accepted that the Second Respondent should have received clear guidance from the partnership as his employers.

SUBMISSIONS FOR THE SECOND RESPONDENT

Mr Macreath confirmed that the Second Respondent admitted professional misconduct and referred the Tribunal to Answer 1.2 in connection with the Second Respondent's personal circumstances. Mr Macreath explained that the Second Respondent had been a sole practitioner until 1995 and was then employed as a consultant when AB & A Matthews acquired Hunter & Murray. The Second Respondent no longer holds a practising certificate having determined not to renew it as at 31 October 2010. Mr Macreath stated that the Second Respondent was before the Tribunal in 1995 and was Fined £10,000 and had a Restriction put on his practising certificate which resulted in AB & A Matthews acquiring his firm. Mr Macreath explained that the Second Respondent had acted for the A family in the past and so they were established clients of Hunter & Murray. Hunter & Murray was the trade name of AB & A Matthews which was disclosed on the note paper. Everyone in Stranraer knew this. In this case Mr and Mrs A had to sell property and it was a condition of their offer that they managed to do this. Mr Macreath explained that the Second Respondent was now retired and was just tidying his desk. There is now always a partner at the Stranraer office. Mr Macreath explained that it was conceded that as soon as there was an inclination that Mr and Mrs B were Developers the Second Respondent should not have continued to act. Mr Macreath asked the Tribunal to be as lenient as possible.

In response to a question from the Tribunal, Mr Macreath stated that litigation was still outstanding in connection with the retaining wall at the rear of the property but there was no outstanding litigation against the Firm.

Ms Johnston lodged previous findings of misconduct against the Second Respondent.

DECISION

It was clear to the Tribunal that the Firm by acting for Developers and the purchasers were acting in a conflict of interest situation in breach of the Solicitors (Scotland) Practice Rules 1986. The potential conflict of interest was not disclosed to Mr and Mrs A. Solicitors must always act in the best interests of their clients and acting in a

conflict of interest situation is clearly not in the best interest of the clients. There is a duty upon a solicitor to fulfil his professional obligations and also to supervise his staff to ensure that they comply with the Law Society's rules. The Solicitors (Scotland) Practice Rules 1986 are there to ensure that clients are fully informed of any potential conflict of interest situation to enable them to make an informed decision. Acting contrary to these rules in a conflict of interest situation amounts to professional misconduct. The Tribunal however accept that this conflict situation occurred due to a mistake rather than being deliberate. It was a result of bad judgment. The Tribunal considered the respective culpability of the First and Second Respondents. The First Respondent had a responsibility for supervision and according has to take more overall responsibility for what occurred than the Second Respondent. However the First Respondent has an exemplary record within the profession over a period of 30 years whereas the Second Respondent has a previous finding of professional misconduct against him. This previous finding, although 15 years ago, was a very serious finding resulting in the Fine of £10,000 and a Restriction on his practising certificate for a period of 10 years. The Tribunal accordingly considered that the sentences for both Respondents should be the same. The Tribunal took account of the fact that there had been no demonstratable loss as a result of the conflict. In the circumstances the Tribunal imposed a Censure and Fine of £500 on each Respondent.

There were no submissions on publicity and expenses and accordingly the Tribunal made the usual order with regard to publicity and expenses apportioning half the expenses to each Respondent.

Vice Chairman