

**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

**CARL ALEXANDER CRONE,
Solicitor, Queens Court House, 39
Sandgate, Ayr**

1. A Complaint dated 1 May 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Carl Alexander Crone, Solicitor, Queens Court House, 39 Sandgate, Ayr (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 14 June 2007 and notice thereof was duly served on the Respondent.
4. When the case called on 14 June 2007, the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Dunfermline. The Respondent was present and represented by his Solicitor, George Moore, Solicitor, Glasgow.

5. The Respondent pled guilty to the facts, averments of duty and averments of professional misconduct in the Complaint. 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 for Scotland. He was born on 11 February 1960. He was admitted as a Solicitor on 24 August 1984 and enrolled on 13 September that year. The Respondent worked for the firms of Ferguson & Foster, MacFie & Alexander from 1982 until 1992 and joined the McKinstry Company in Ayr on 1 February, 1993. He became a Partner in the McKinstry Company on 1 January 1994. He resigned as a Partner on 31 December 2006 and remains with the firm as a Qualified Assistant.

6.2 **Ms B**

The Respondent acted as a Solicitor for Mr. and Mrs. A and their daughter Ms B for approximately 5 years. In the summer of 2005, he was instructed to sell their respective houses at Property 1 and Property 2 and was advised that Mr. and Mrs. A were returning to their homeland in Italy. The Respondent had been partially educated in Italy and had lived there. As a result, he speaks Italian and for that reason had a particularly close relationship with the family for whom he had carried out a number of transactions over the years.

In about August, 2005, Mr. A instructed the Respondent by telephone to obtain bridging finance in the sum of £115,000 to assist him and his wife in the purchase of a new property in Italy. The Respondent did not immediately act on his instruction. On or around 19 October 2005, Mr. A contacted the Respondent by telephone seeking the immediate transfer of the funds by telegraphic transfer. At that time, missives had

already been concluded for the sale of Ms B's property, Property 2, for a price of £318,000 with entry at 2 December, 2005. Instructions were being given by a Mr C under a Power of Attorney granted by Ms B. Neither that property nor Property 1 was burdened by a heritable security. The Title Deeds to both properties were held by the Respondent.

The Respondent completed a bridging loan application on 20 October, 2005 to the Royal Bank of Scotland. The application stated that the customer was Ms B naming the McKinstry Company as the Solicitors and proceeded on the basis that she was selling Property 2 and purchasing Property 3. The application bore to require the bridging loan for £115,000 to cover the purchase of Property 3. The truth was that the loan was required to allow Ms B to lend the sum of £115,000 to her parents Mr. and Mrs. A for the purchase of a property in Italy. The loan was approved by the Royal Bank of Scotland on the basis of the facts as represented. The Bank would however have been favourably inclined to provide bridging facilities in the true circumstances had they been so advised. The funds obtained were transferred to Italy and were not used to purchase Property 3. The bridging loan was repaid by the McKinstry Company on behalf of Ms B in December 2005 from the sale proceeds.

7. Having considered the foregoing and submissions on behalf of the Complainers and the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his submitting a bridging loan application which misled the Royal Bank of Scotland as to the purpose of the bridging finance thereby obtaining loan funds from the Bank on the basis that they were required to purchase a property in Scotland when the truth was that they were required to purchase a property in Italy.

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

Edinburgh 14 June, 2007. The Tribunal having considered the Complaint dated 1 May, 2007 at the instance of the Council of the Law Society of Scotland against Carl Alexander Crone, Solicitor, Queens Court House, 39 Sandgate, Ayr; Find the Respondent guilty of Professional Misconduct in respect of his misleading the Royal Bank of Scotland as to the purpose of bridging finance thereby obtaining loan funds from the Bank on the basis that they were required to purchase a property in Scotland when the truth was that they were required to purchase a property in Italy; Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal as the same may be taxed by the Auditor of the Court of Session on a solicitor and client indemnity basis in terms of Chapter 3 of the last published Law Society Table of Fees for General Business with a unit rate of £11.85; and direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alistair Cockburn

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

Chairman

NOTE

It was explained that the terms of the Complaint had been adjusted between the Respondent and the Complainers and the Respondent pled guilty to the Complaint in its entirety.

SUBMISSIONS FOR THE COMPLAINERS

Miss Johnston indicated that she had nothing to add to the Complaint. She stated that this was a one-off incident which had been fully explained by the Respondent. Miss Johnston also advised the Tribunal that the Respondent had had no previous referrals to the Law Society or previous Findings of Misconduct against him.

SUBMISSIONS FOR THE RESPONDENT

Mr. Moore explained that the Respondent had resigned as a Partner on 31 December 2006 because of the matters contained in the Complaint and the Respondent remained as an Assistant with the same firm. Mr. Moore pointed out that the Respondent had been in practice for twenty-two and a half years. Mr. Moore explained that the Respondent had acted for an Italian family for some years and he had a very close relationship with his client because he spoke Italian. Both the parents and the daughter were selling properties in Scotland and the parents had bought a property in Italy and the daughter was using sale funds from her property in Scotland to help in the purchase of the property in Italy. In August 2005, Mr. A asked the Respondent if he could organise bridging facilities in case there was a delay in the sale of the Scottish property. The Respondent stated that he would do this but at the time he thought that there could be a problem. The Respondent however thought that bridging facilities would probably not be necessary. On 19 October 2005, the Respondent was telephoned by Mr. A who told him that he needed the funds by the Monday. The Respondent knew that he had forgotten about this and was embarrassed which led to him organising the bridging loan. Missives had been concluded for the daughter's house and the Respondent indicated to the bank that the daughter was to buy a property in Glasgow when the funds were actually to help fund the purchase of

the property in Italy. Mr. Moore referred the Tribunal to the letter from the Bank which set out their position. The Bank indicated that if the correct position had been disclosed to them, they would have looked on the application favourably. Mr. Moore confirmed that the bridging loan had been repaid to the Bank. Mr. Moore explained that the Respondent's position was that he took a shortcut and he knew that he should not have done so. If the Respondent had done matters properly it would have led to a delay and his client would have been let down. Mr. Moore pointed out that the Respondent did not gain financially in any way from having done this. Mr. Moore also explained that the Respondent had been under considerable pressure of work and was a poor delegator. The Respondent was working very long hours and was suffering from work related stress at the time. Mr. Moore explained that the Respondent had resigned as a Partner by mutual agreement with Mr. McKinstry. He was now working under supervision and his resignation as a Partner affected his status and self-esteem and also considerably reduced his earnings. Mr. Moore advised the Tribunal that the firm had now changed their policy and two signatures were required to obtain bridging funds. Mr. Moore explained that the firm had lost business as the Royal Bank of Scotland was no longer a client. Mr. Moore referred the Tribunal to references from highly regarded people which he submitted gave an indication of the Respondent's highly regarded local reputation. Mr. Moore also pointed out that the Respondent had co-operated with the Law Society from the start and had taken steps to address the problem. In response to a question from the Tribunal, Mr. Moore confirmed that matters came to light as a part of a routine inspection by the Law Society.

DECISION

The Tribunal considered that the Respondent's conduct clearly amounted to professional misconduct. The Respondent misled a lending institution which is contrary to the central and absolute qualities of a Solicitor being honesty, integrity and truthfulness. The Tribunal however considered that in the Respondent's case this was a one-off stupid error of judgement which was done to avoid inconvenience to a client. The Tribunal also considered that the Respondent's actions did not result in any material risk and noted that the bridging funds had been repaid to the Bank. The Tribunal was particularly impressed by the fact that the Respondent had voluntarily

taken steps to change his situation. The Respondent has ceased to be a Partner and is now only an Assistant in the firm. This involves him in continuing loss of status and financial loss. It was clear to the Tribunal that the Respondent was genuinely contrite. It was also clear from the references lodged that the Respondent is held in high regard. The Tribunal considers it unlikely that anything similar will happen again in future. The Tribunal also noted that the Respondent had co-operated fully with the Law Society from the start. In the circumstances the Tribunal imposed only a Censure. The Tribunal made the usual order with regard to expenses and publicity.

Chairman