

**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

**THOMAS HUGH MURRAY,
Solicitor, 100 Pendeen Road,
Glasgow**

1. A Complaint dated 10th June 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Thomas Hugh Murray, Solicitor, 100 Pendeen Road, Glasgow (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 this 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 6th October 2005 and notice thereof was duly served on the Respondent.

4. When the Complaint called on 6th October 2005 the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented. Due to lack of time the Tribunal adjourned the matter until 25th November 2005 at 10.00am and notice thereof was duly served on the Respondent.
5. When the Complaint called for hearing on 25th November 2005. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented. A letter had been received from the Respondent indicating that he did not intend to attend.
6. The Complainers led affidavit evidence from one witness and lodged various productions with the Tribunal.
7. The Tribunal found the following facts established
 - 7.1 The Respondent was born 13th December 1962. He was admitted as a solicitor on 29th July 1992. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 12th August 1992. He was employed with Messrs Digby Brown & Company, Solicitors, Royal Exchange, Dundee from 14th September 1992 to 4th February 1994. Thereafter he was employed with the firm Lawrence, Trinity Chambers, Glasgow from 7th February 1994 to 3rd October 1994. Thereafter he was employed with the firm Park, Suite 503/6, Baltic Chambers, Glasgow from 1st November 1994 to 3rd June

1995. From 17th July 1995 until 18th May 2001 he practised on his own as the firm Murray, 13 Upper Craigs, Stirling. It is understood that at present the Respondent is not employed by a firm of solicitors.

7.2 Mr A

Mr A resides at Property 1. He is an engineer. He was formerly employed by the Company 1. Whilst employed there, he was racially discriminated against. As a result of the discrimination which he suffered, he instructed the Respondent to act on his behalf in connection with an application to the Employment Tribunal alleging racial discrimination on the part of his then employers. In or about early March 1999 he consulted with the Respondent who accepted his instructions to act on his behalf. By letter dated 24th March 1999 addressed to Mr A the Respondent agreed to act on his behalf in connection with an application to the Employment Tribunal arising out of a complaint of racial discrimination against Mr A. The Respondent agreed to pursue the matter on behalf of Mr A for a restricted fee of £400 plus VAT totalling £470. This fee would cover all work up to the date immediately prior to the Employment Tribunal Hearing. An invoice was submitted with the letter dated 24th March 1999. That invoice was for the total sum of £470, which was paid by Mr A to the Respondent.

7.3 The Application was submitted to the Tribunal Office. A hearing in respect of the application was set down for late May 2000. In advance of that diet, a procedural hearing took place as a result of which the hearing for May 2000 was adjourned and a further hearing set down for September 2001. Separately by an order of the

Sheriff of Tayside, Central and Fife at Stirling, the Respondent was sequestrated. The effective date of his sequestration was 18th May 2001. M P Henderson of Grant Thornton. Chartered Accountants, 1/4 Atholl Crescent, Edinburgh, was appointed Permanent Trustee on the sequestrated estates of the Respondent. As a result of his sequestration, the Complainers suspended the practising certificate of the Respondent on 18th May 2001. From that date he was without a practising certificate.

- 7.4 The Respondent did not advise Mr A that he had been sequestrated nor did he advise that his practising certificate had been suspended by the Complainers. Mr A was unaware that the Respondent had been sequestrated. On 12th June 2001 Mr A received a letter from an organisation called Employment Matters Limited of 13 Uppercraigs, Stirling, Scotland. Mr A had never heard of this organisation nor had he made contact with the organisation prior to receiving this letter. The letter made reference to the dispute which he had with his former employers, Company 1. The letter informed Mr A that his case had been transferred to the firm of Employment Matters which was a company set up specifically for the purpose of dealing with issues arising out of a person's employment. The letter indicated that other than the change of name there was no significant difference to the way in which the matter would be dealt with as it would continue to be handled by Mr Murray on his behalf. The address of Employment Matters Limited was identical to the address of the Respondent. The facsimile number provided on the notepaper of Employment Matters Limited, although scored over, was identical to the facsimile number of the

Respondent's firm. Mr A believed his affairs were still being dealt with by the Respondent in his capacity as a solicitor. Further on 30th July 2001 Mr A received another letter from Employment Matters Limited advising that the organisation had changed address. The address on the notepaper was the address of the Respondent's firm. On 12th August 2001 Mr A received another letter from Employment Matters Limited which requested that he sign a Mandate authorising transfer of his file from T H Murray to Employment Matters. A Mandate was enclosed with that letter. At this stage Mr A was unaware that the Respondent had ceased to practice as T H Murray, Solicitors or that he was sequestrated. Mr A believed the decision to operate as Employment Matters Limited was a business decision taken by the Respondent. Mr A believed that his affairs were still being dealt with by T H Murray, a practising solicitor. In or about March 2002 the employment dispute which Mr A was involved in was resolved.

7.5 The Respondent was sequestrated on 18th May 2001. As a consequence of his sequestration his practising certificate was suspended. The Respondent did not advise Mr A that his practising certificate had been suspended. The Respondent did not advise Mr A that he had been sequestrated. Mr A only became aware that the Respondent was sequestrated in or about July 2002. This information was passed to him by another source outwith the Respondent. Mr A would not have agreed to Employment Matters Limited representing him if he had been made aware that the Respondent had been sequestrated and as a result was no longer practising as a solicitor. If Mr A had been advised as to the change

of status of the Respondent then he would have sought alternative representation. When asked to sign a Mandate transferring his file to Employment Matters Limited, Mr A was abroad. He typed up a Mandate in his own style which reflected his understanding that his affairs continued to be dealt with by T H Murray, Solicitor and not the separate legal persona of Employment Matters Limited. Mr A wished his affairs to be dealt with by a practising solicitor. The Respondent misled Mr A by failing to advise him that he was sequestrated and no longer practising as a solicitor.

8. Having considered the foregoing circumstances and after hearing submissions from the Complainers, the Tribunal found the Respondent guilty of professional misconduct in respect of:
 - (a) His misrepresentation, deception and misleading of his client in relation to his status by failing to advise his client that he was sequestrated and that his practising certificate had been suspended.
 - (b) His breach of Article 7 of the Code of Conduct for solicitors holding practising certificates issued by the Law Society of Scotland, 2002.

9. Having noted a previous finding of professional misconduct against the Respondent, the Tribunal pronounced an Interlocutor in the following terms:

Edinburgh 25th November 2005. The Tribunal having considered the Complaint dated 10th June 2005 at the instance of the Council of the Law Society of Scotland against Thomas Hugh Murray, Solicitor, 100 Pendeen Road, Glasgow; Find the Respondent guilty of professional misconduct in respect of his misrepresentation, deception and misleading of his client in relation to his status by failing to advise his client that he was sequestrated and that his practising certificate had been suspended all contrary to Article 7 of the Code of Conduct for solicitors holding practising certificates issued by the Law Society of Scotland in 2002; Suspend the Respondent from practice for a period of five years; 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 solicitor and client indemnity basis in terms of Chapter Three of the last published Law Society's 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)

Kenneth R Robb

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 Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

The Respondent had sent a letter to the Tribunal dated 10th November in which he indicated that he would not be attending the Tribunal hearing on 25th November. No answers to the Complaint had been lodged by the Respondent and Mr Reid for the Law Society indicated that he understood that the Respondent was in Tuscany. Mr Reid advised the Tribunal that he had written to the Respondent on 25th July advising him that he intended to lead evidence by way of affidavit. At the same time he had sent the Respondent the list of productions. Mr Reid had written again on 30th September and sent him a copy of the affidavit of Mr A but he had heard nothing from the Respondent. In the circumstances the Tribunal agreed in terms of Rule 9 to allow the Complainers to proceed to lead evidence by way of affidavit.

EVIDENCE FOR THE COMPLAINERS

Mr Reid lodged the affidavit of Mr A and also referred the Tribunal to the various productions lodged. Mr A was a German national who instructed the Respondent to raise an action of alleged discrimination on his behalf and take the matter to the Employment Tribunal. The Respondent had issued Mr A with a fee note which he had paid. The Respondent submitted the application on behalf of Mr A and a hearing was set for May 2000 which was adjourned. On the 18th May 2001 the Respondent had become bankrupt and Mr Reid referred the Tribunal to the letter from the Respondent's trustee in sequestration confirming this. As a result of this bankruptcy the Respondent practising certificate was suspended as from 18th May 2001. Mr Reid further referred the Tribunal to production 2 being a letter from the Respondent to Mr A which stated that Mr A case was being transferred to the firm of Employment Matters and indicated that apart from the change of name there was no significant difference in the way in which the matter would be dealt with, matters would continue to be handled by the Respondent on Mr A's behalf. Mr Reid further referred the Tribunal to production 4 being the request by the Respondent to have Mr A sign a mandate authorising the transfer of the files to Employment Matters. Mr A did not sign it as he was abroad. He typed up his own mandate addressed to Employment Matters Ltd referring to the Respondent as a solicitor at the address of Employment Matters Ltd. This was clear evidence that Mr A still thought that the Respondent was

acting on his behalf as a solicitor. Mr A's affidavit made it clear that Mr A considered himself to have been misled by the Respondent and that Mr A would not have continued to instruct the Respondent if he had known he was no longer a qualified solicitor. In response to a question from the Tribunal, Mr Reid advised that the Employment Tribunal matter had eventually been successfully concluded by another firm of solicitors.

DECISION

The Tribunal was satisfied beyond reasonable doubt on the basis of the affidavit evidence and productions lodged that the Respondent had deceived and misled his client by failing to advise his client that he was no longer a solicitor. Mr A had instructed the Respondent to act on his behalf as a solicitor and after he became suspended the Respondent wrote to Mr A telling him that he was transferring to Employment Matters Ltd and in this letter indicated that there would be no significant difference in the way the matter was dealt with. The Respondent however at this time knew full well that there was a significant difference as he was no longer a practising solicitor and he had an obligation to advise his client of this. It is clear from the affidavit evidence of Mr A that if he had known this he would not have continued to instruct the Respondent and would have instructed another firm of solicitors to act on his behalf. The Respondent deliberately misled his client which is contrary to Article 7 of the Code of Conduct for solicitors holding practising certificates issued in 2002 which states that solicitors must act honestly at all times and in such a way as to put their personal integrity beyond question. The Respondent's conduct in misleading his client regrettably breached this. Being a solicitor provides a client with the protection of regulation by the Law Society and cover under the professional indemnity insurance policy. The Respondent's failure to advise Mr A that he was no longer a solicitor and accordingly no longer covered by these protections denied Mr A the opportunity to make an informed decision as to whether or not to continue instructing the Respondent. The Respondent holding himself out as being a practising solicitor when this was not the case is damaging to reputation of the legal profession. The Tribunal noted a previous finding of professional misconduct against the Respondent only eight months previously where the Respondent had been found guilty of deceiving another client. The Tribunal also noted that the Respondent had not seen fit

to lodge answers to the Complaint or attend the Tribunal to explain his actions. The Respondent had sent a letter referring mainly to his financial difficulties and his view of the previous Tribunal findings against him which merely made mention of Mr A faxing a mandate in his own wording across from Germany. The letter did not provide any explanation or mitigation. Given the previous finding of misconduct against the Respondent and his failure to provide the Tribunal with any explanation, the Tribunal considered that the Respondent should be suspended from practice for a period of five years. The Tribunal made the usual order with regard to publicity.