

MARTIN DOUGLAS FAIRBAIRN

Rule 2 of the Solicitors' Practice Rules Principle 1.02 of the Hong Kong Solicitors' Guide to Professional Conduct (Vol 1) (1st Edition)

Hearing date: 24 May 2000

Tribunal Decision: 28 June 2000

On 28 June 2000, the Solicitors Disciplinary Tribunal found that the following complaint against the Respondent was proved:

Breaches of r 2 of the Solicitors' Practice Rules and Principle 1.02 of the Hong Kong Solicitors' Guide to Professional Conduct (Vol 1) (1st Edition), in that the Respondent engaged in conduct unbefitting a solicitor, thereby compromising his own integrity, his own reputation and that of the profession, and failed to conduct himself appropriately as an officer of the Court.

The particulars of the complaint are as follows:

(i) On 10 March 1998, the Solicitors' Disciplinary Tribunal constituted under the UK Solicitors Act 1974 ('the English Tribunal') found that the Respondent had, in the course of acting for the promoters of investment schemes, committed the following acts of misconduct:

- conduct unbefitting a solicitor in that he failed to comply with professional undertakings;
- failure to comply with the English Solicitors Accounts Rules 1991, in that he drew money from the client account other than as permitted by r 7 and contrary to r 8 of the said Rules;
- conduct unbefitting a solicitor, in that he disposed of funds in breach of the obligations which he had assumed to the providers of those funds, as to the circumstances in which the funds could be released;
- conduct unbefitting a solicitor in that he failed to take any adequate or reasonable steps to ensure that the performance of his instructions did not mislead third parties;
- failure to comply with the English Solicitors Accounts Rules 1991 in that he failed notwithstanding r 11(1) of the said Rules to keep his accounts at all times properly written up so as to show accurately his dealings with clients' money received, held or paid by him;
- conduct unbefitting a solicitor in that he caused accounting records to be kept in a manner which was misleading;
- conduct unbefitting a solicitor in that he produced to an Investigation Accountant of the Law Society of England and Wales documents purporting to record the movement of funds which were inaccurate and misleading.

(ii) The English Tribunal considered that the Respondent had deliberately involved himself in fraudulent schemes and accordingly ordered him to be struck off the Roll of Solicitors on 1 May 1998.

(iii) The acts would, if committed in Hong Kong, amount to breaches of the equivalent rules in the Solicitors' Practice Rules.

The Tribunal ordered that:

1. The Respondent be struck off the Roll of Solicitors;
2. All costs of and occasioned by these proceedings be borne by the Respondent, including the costs of the

Law Society, the Tribunal Clerk and the Prosecutor, such costs to be taxed on a full indemnity basis if not agreed.

*Mr Jeffrey H Lane of Messrs Wilkinson & Grist for the Applicant.
The Respondent was absent and unrepresented.*

Tribunal Members

Mr Cheung Wing In (Chairman)

Mr Davis Hui Chi Kwan

Mr Chan Wing Kee, JP