

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

FINDINGS

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY
OF SCOTLAND

against

CESIDIO MARTIN DI CIACCA
Solicitor, residing at
45 Blairston Avenue, Bothwell.

1. A Complaint dated January 1995 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") requesting that Cesidio Martin Di Ciacca, Solicitor, 45 Blairston Avenue, Bothwell (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 they might think right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. A letter dated 1st February 1995 was received from the Respondent in answer to the Complaint.
3. In terms of their Rules, the Tribunal appointed the Complaint to be heard on 29th March 1995 and Notice thereof was duly served upon the Respondent.

4. The Hearing took place on 29th March 1995. The Complainers were represented by Mr B.A. Murphy, Solicitor, Ayr and the Respondent by Professor J. Ross Harper, Solicitor, Glasgow. No evidence was led for either party.
5. The Tribunal found the following facts established:-
 - (1) The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was formerly in partnership and now carries on practice as a Consultant from his private address at 45 Blairston Avenue, Bothwell.
 - (2) On 15th April 1994 at Glasgow Sheriff Court, the Respondent was convicted on Summary Complaint of a fraud on the Inland Revenue. He was fined in the sum of £2,000. The Respondent appealed against the conviction but the appeal was abandoned on 4th October 1994.
6. The said conviction was a conviction of an act involving dishonesty within the meaning of Section 53(1)(b) of the Solicitors (Scotland) Act 1980.
7. Having heard the Fiscal for the Complainers and the solicitor for the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 29th March 1995. The Tribunal having considered a Complaint at the instance of the Council of the Law Society of Scotland against Cesidio Martin Di Ciacca, Solicitor, 45 Blairston Avenue, Bothwell, in respect that the Respondent was convicted in the Sheriff Court at Glasgow on 15th April 1994 of an act involving

dishonesty, namely fraud; Suspend the Respondent from practice for a period of two years; 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 Six of the Law Society's Table of Fees for general business together with a reasonable sum for posts and incidental outlays; and Direct that publicity to include the name of the Respondent be given to this decision.

(signed) JOHN W. LAUGHLAND

Chairman

8. A copy of the foregoing Interlocutor was duly sent to the Fiscal for the Complainers and to the Respondent on 24th May 1995
9. A copy of the Findings certified by the Clerk to the Tribunal as correct was duly sent to the Fiscal for the Complainers and to the Respondent by recorded delivery post on 24th May 1995

IN NAME OF THE TRIBUNAL

Chairman

NOTE

This Complaint comes before the Tribunal under the provisions of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 which requires the Tribunal to exercise its statutory powers where a solicitor has been convicted by any Court of an act involving dishonesty.

The Respondent accepted the judgement of the Court and that the particular Section applied to his conviction.

The solicitor for the Respondent explained that the circumstances of the conviction arose out of a personal transaction some eight years ago resulting in a loss of tax to the Inland Revenue of about £3,781. Reference was also made to a previous Finding of the Tribunal on 27th April 1988. On that occasion the Respondent had been found guilty of professional misconduct in respect of his actings in relation to the adjustment of the price of heritable subjects and he was censured and fined in the sum of £2,000. The solicitor for the Respondent pointed out that the circumstances of that Complaint arose out of an error of judgement on the part of the Respondent. The material event occurred at about the same time as the circumstances of the present Complaint and did not involve any question of dishonesty.

The Tribunal was informed that the Respondent is married with one child. Following on the conviction, he resigned from his firm and he has since been carrying on an advisory service to other legal firms and acting as a consultant to his wife's practice.

The solicitor for the Respondent emphasised that the circumstances giving rise to the conviction resulted from only one incident and he invited the Tribunal to dispose of the Complaint in such manner as would allow the Respondent to continue in practice; and particular reference

was made to a series of supporting letters from clients, solicitors and others outwith the legal profession.

In considering the disposal of this Complaint, the Tribunal is required to have regard to the interests of the profession of solicitors and also the interests of the public in relation to the profession. Any conviction of a solicitor of an act involving dishonesty is a very serious matter and this is demonstrated by the precise terms of Section 53 in that the conviction is in itself regarded as being unbecoming of a solicitor.

The Respondent's conduct which gave rise to his conviction was a grave error of judgement and it was significant that there was a degree of similarity in relation to both these circumstances and the events which gave rise to the previous Findings of this Tribunal in that both matters involve a lack of frankness and the withholding of material information.

Having considered the whole circumstances set out in mitigation together with the supporting letters, the Tribunal draws marginally short of excluding the Respondent from the profession. Nevertheless the circumstances of the present conviction require the Tribunal to take a very serious view of the Respondent's position and in the opinion of the Tribunal, the gravity of his conduct can only be recognised by excluding him from practice for a significant period; and it is with these considerations that the order has been made suspending the Respondent.

No circumstances were disclosed which might require the Tribunal to exercise the discretion contained in paragraph 14 to the Fourth Schedule of the Solicitors (Scotland) Act 1980 and accordingly publicity to include the name of the Respondent will be given to this decision.

Chairman