

PROTECT - PERSONAL

Mr R G Thomas

Our ref: 41200

18 July 2008

Dear Mr Thomas

Re: Mr N D A Greenstone, formerly of Fladgate Fielder, 25 North Row, London W1K 6DJ

Further to our previous correspondence, I am writing to let you know that we have received the file on your case from the Law Society. As you may know, in January 2006 the Law Society split its regulatory and representative functions. Subsequent to this, in January 2007,

(a) The Solicitors Regulation Authority (SRA) became responsible for regulatory and disciplinary matters; setting and monitoring standards and investigating conduct complaints and

(b) The Law Society became responsible for representing solicitors.

The Legal Complaints Service (LCS), formerly known as the Consumer Complaints Service, remains responsible for dealing with consumer service complaints about solicitors. For ease of reference I have used the abbreviations SRA and (where appropriate) LCS throughout this report. I have considered what you have said about the way that the SRA dealt with your conduct complaint about the above-named solicitor, all the correspondence and related documents on the SRA's file have been reviewed, and I am writing now to let you know my conclusions.

Background and Solicitors Regulation Authority Investigation

On 13 October 2006 you wrote to the SRA asking them to investigate the conduct of Mr Greenstone in relation to the theft in 2002 of a sum in excess of £27million from a company called Izodia plc (Izodia) by persons associated with the Orb Group of companies. Mr Greenstone had signed a Royal Bank of Scotland International pro-forma headed "*Company Excerpt Minute Opening/Continuation of Account/s incorporating authority by Directors to overdraw the Account/s*". This pro-forma, referred to in the case as "the minute" then allowed one director, Mr Smith, to fraudulently transfer over £27million from Izodia to the Orb Group. Izodia pursued proceedings in the Royal Court of Jersey against the Bank alleging that it had transferred Izodia's funds to the Orb Group without proper authority because the formalities required to ratify the minute had not been completed. You provided the SRA with an internet sourced copy of the Court's judgement dated August 2006 and highlighted the Court's criticisms of Mr Greenstone which you said were that:-

- Mr Greenstone appeared to have certified as a true record the minutes of an Izodia company meeting said to have taken place on 1 August 2002 when in fact the meeting had not taken place
- That Mr Greenstone had purported to be Izodia's company secretary when he was not and
- That persons said to be directors of Izodia in the minutes certified by Mr Greenstone were not in fact directors of the company.

You drew the SRA's attention to comments made by the court at paragraph 13 of the judgement which noted, *"The minute was certified as being a true copy of a meeting of directors by Mr Nicholas Greenstone, on behalf of Walgate Services Limited, the company secretarial arm of Fladgate Fielder, Orb's English solicitors. Walgate was not the company secretary of Izodia on 1 August (2002), Mr Maberley was. How Mr Greenstone, an English solicitor, managed to certify as true a meeting which had never taken place on behalf of a company of which Walgate was not company secretary, is hard to understand. Unfortunately, he was not called as a witness so that these matters might be explored."*

You also highlighted paragraph 64 of the judgement where you said further reference was made to the false documentation certified by Mr Greenstone. The court said, *We have already found that there was no meeting of the board of directors on 1 August, that those who were described as directors in the mandate were not in fact directors at the time, that the person certifying the mandate as company secretary (Walgate by Mr Greenstone) was not in fact the secretary and that Izodia had not in fact authorised the opening of the account at that date. Indeed, although the Bank had, in the mistaken belief that the documents were genuine, opened an account for Izodia and given it an account number, no director or officer of Izodia had any knowledge of what had occurred."*

Mr Greenstone was not charged with any offences but I understand that there were a number of others charged arising from the theft after an investigation by the police and the Serious Fraud Office. You suggested that one of the main players had been Gerald Smith, a shadow director of the Orb Group, who was sentenced to eight years imprisonment for theft and false accounting.

The SRA discussed your complaint with you on the telephone on 6 November. You told them you did not see that it was necessary for you to be identified and that they could investigate the complaint based on the comments made by the Judge in the Royal Court of Jersey. The SRA appear to have agreed to that and wrote to you on 17 November advising that they would take up the matter but, as you had reported your concerns out of public duty rather than as a party with an actual interest in the case, they would not be keeping you informed of developments or of the outcome of the investigation. However, you responded on 21 November saying that you had been affected because you had lost money as a result of the fraud and that you wanted to be notified as to the outcome of the investigation.

The SRA spoke to Mr Greenstone on the telephone on 21 November. He said he was well aware of the judgement on the internet and that he had instructed advocates in

Jersey to take up the matter of the Judge's comments with the Judge himself. Later that day he forwarded to the SRA a bundle of documents showing that he had been in correspondence with the Court in order to try to get the Judge to change the wording of the comments about him in his judgement as reported on the internet prior to the case being published in official law reports. Mr Greenstone said that he had acted in good faith regarding Izodia and that the comments had been unfair and had caused damage to his reputation and career. The SRA waited to see whether or not the Judge would revise his comments but it was not until 13 March 2007 that Mr Greenstone was able to inform them the Judge was not prepared to make any changes. The Judge did point out, however, in a letter to Mr Greenstone dated 2 January 2007 that the court had not made any finding of misconduct against him.

In the light of the Judge's refusal to revise his comments and, following an internal review at the SRA, the case was outsourced in July to the firm of Gordons (solicitors) for them to carry out an independent investigation on behalf of the SRA. On 4 September Gordons wrote to Mr Greenstone's solicitors, Richards Porter Chamberlain, whom he had instructed to defend him against your complaint. Gordons said the allegation was that Mr Greenstone had acted contrary to Practice Rule 1 (of the Solicitors Practice Rules 1990) in that he had compromised or impaired "*the good repute of the solicitor or of the solicitor's profession, or of the solicitor's proper standard of work*". The SRA asked for evidence to explain how Mr Greenstone had considered that he was able to certify the as a true excerpt a minute of a meeting which had not taken place. He was also asked to explain the steps he took to satisfy himself that the meeting did take place the next day; what evidence he had as to Walgate's involvement, the appointment of the directors listed in the minute, and to explain the usual practice in similar company matters.

Richards Porter Chamberlain responded on behalf of Mr Greenstone on 1 October. They pointed out that the Judge's comments were not central to the decision in the case which was between Izodia and the Bank and did not directly involve Mr Greenstone. They said that had Mr Greenstone been given the opportunity to give evidence and he had done so, the Judge would not have made the comments he did. They reminded the SRA that the judgement also said that the Bank was liable for the losses (put at £27million) and was to repay Izodia because it had acted without authority in transferring the funds. The solicitors said that Mr Smith of the Orb Group had been the driving force behind the fraud and he had pleaded guilty to the theft.

On the specific points put to them by the SRA, Richards Porter Chamberlain said Mr Greenstone had signed the minute only after being given assurances by Mr Smith that it would be held until the actual board meeting had taken place and that the document was inchoate until it had been dated and details as to directors and the company secretary had been agreed and appointed. The solicitors said that Mr Greenstone had not certified that any meeting had taken place but added that the actual board meeting took place the next day when the document and the account opening were ratified. They said that it was not unusual in current legal practice to sign documents in advance of a completion meeting and their eventual execution.

At this point Gordons prepared a report on the case for Adjudication and passed the file back to the SRA. That report was sent out to Richards Porter Chamberlain on 7

February 2008 and they commented on it on 15 February. You were not sent a copy of either the report or the solicitors' comments on it.

On 27 February you were sent a copy of the Adjudicator's decision dated 21 February. He said that the minute signed by Mr Greenstone was inaccurate and undated and should not have been handed to others in circumstances over which he had no control. The Adjudicator said that fraud later committed by others was something that Mr Greenstone could not necessarily have anticipated although it was accepted that the minute created the mandate for the transfer of funds and, as such, was of critical importance. He added that, "*for Mr Greenstone to have handed an undated document and place himself in the hands of anyone who may have had a dishonest intent was an act which not only impairs a proper standard of work, but also brings Mr Greenstone's reputation into question and/or that of the profession generally.*" In the circumstances, the Adjudicator concluded that Mr Greenstone had acted contrary to Practice Rule 1(d) and (e) and that he should be reprimanded for his misconduct.

Referral to my Office

You remained dissatisfied with the SRA's handling of your complaint and you contacted my Office in March 2008 before completing an application form on 5 April. You said that the SRA's decision was perverse in a number of respects in that it had taken no account of the size of the fraud; that Mr Greenstone's honesty had been assumed; that some relevant matters such as conflict of interest were overlooked whilst other less important matters, such as the stress suffered by Mr Greenstone, were given consideration, and that the sanction should have involved a reference to the Solicitors Disciplinary Tribunal (SDT).

My Assessment

It might be helpful if I begin my assessment by reminding you that my primary role is to oversee the manner in which the various professional bodies deal with complaints about lawyers, with a view to ensuring that they follow proper procedures and that they reach decisions that fall within the bounds of reasonableness. It is only in exceptional circumstances that I consider it appropriate to investigate the original complaint about the lawyer. Such circumstances are not present in your case and therefore I have confined my review of the matter to a consideration of the SRA's handling of the complaint.

The SRA's investigation into Mr Greenstone's conduct was launched after you provided them with a copy of an internet sourced report on a case from the Royal Court of Jersey. Whilst at first glance the Judge's comments look damning and appear to raise serious questions about Mr Greenstone's conduct and to highlight serious consequences, it is important to note that Mr Greenstone was not involved in the court case which was between the Royal Bank of Scotland International and Izodia. Mr Greenstone was not a defendant or a witness in the case and the Judge made his comments without the benefit of having heard any evidence from Mr Greenstone or having given him the opportunity to comment prior to publication of the decision. You were concerned that Mr Greenstone's innocence was assumed throughout the case but you provided no other evidence of possible professional misconduct other than the

comments by the Judge. As I said earlier, Mr Greenstone was not charged with any offences in connection with the fraud despite a lengthy police and Serious Fraud Office investigation. In the circumstances, the SRA acted fairly in assuming Mr Greenstone's innocence in the absence of hard evidence of any possible fraud.

For Mr Greenstone's part, he did not dispute that he signed the minute but added that it was a standard Bank pro-forma to be used by the company secretary and directors to set up a business bank account. He said that in signing the minute he had not certified that any board meeting had taken place but that he had signed the form in anticipation of such a meeting taking place where the form and the authority it gave would be ratified by the directors of Izodia. In the event, that meeting took place the day after on 2 August 2002, but by that time Mr Smith had already set about arranging the theft of £27million. Mr Greenstone told the SRA that it was not unusual to sign forms which would then be held until an agreed date and purpose for use. He asserted that Mr Smith was the fraudster and that he could not have foreseen the theft committed by his business associate and other directors.

The SRA accepted the position that Mr Greenstone could not have anticipated the fraud but they held that the signing of the minute brought the solicitor, the solicitor's profession, and the proper standard of work into disrepute. In my view, that was a reasonable position. There was no evidence of any intent by Mr Greenstone to commit any fraud and one expects that had there been any such evidence, the Serious Fraud Office and the police would have charged him. Mr Smith admitted the theft and neither he nor the other directors appear to have sought to implicate Mr Greenstone. In my view, the evidence before the SRA suggested that despite his 30 plus years in the profession as a corporate lawyer, Mr Greenstone was guilty of an extremely naïve error of judgement and an act of foolishness in trusting his associate Mr Smith with a signed document to do with whatever he wanted to do. I appreciate your comment that Mr Smith had served time in prison in the early 1990's for dishonesty offences and should not have been trusted by Mr Greenstone. However, since that time Mr Smith had been involved in serious business ventures and it appears that he had become a trusted business associate of many people.

In the light of the SRA's finding against Mr Greenstone they went on to reprimand him. Clearly you thought that that was not a sufficiently severe sanction and in April you referred the matter yourself to the Solicitors Disciplinary Tribunal (SDT). You said a fraud involving the theft by a solicitor of only £470 had been referred to the SDT in the past and that the SRA had not been consistent. However, the key point in the case you mentioned is that there was fraud by the solicitor but in this case there is no such evidence. At the time of writing I do not know the outcome of your reference to the SDT other than that they had asked the SRA for information about their decision before deciding whether or not to take any action. In my view, the reprimand for Mr Greenstone was appropriate in the circumstances of this case.

In relation to other allegations you made to this Office about the SRA, I do not accept that their decision on the substance of your complaint was perverse or that important matters were disregarded. Also, the fact that Walgate (the company secretarial arm of Fladgate Fielder) acted as company secretary to Izodia and to the Orb Group does not in itself give rise to a conflict of interest. Whilst the SRA did not send you a copy of the

caseworker's report prepared for the Adjudicator, I do not consider that that would have been essential in this case. The investigation was based on the comments of the Judge in the Royal Court of Jersey and was not based on any specific matters peculiar to your case which you had put forward. For example, this was not a case where the complainant could provide additional correspondence or contradictory evidence of what had happened at a meeting attended by both parties.

In the course of dealing with your case I note that the SRA revealed your identity to Mr Greenstone despite agreeing with you that it would not be necessary. The SRA agreed to investigate the solicitors' conduct based on the internet court report and they agreed with you that it would not be necessary for your details and your covering letter to be sent to Mr Greenstone. It appears however, that when the case was outsourced to Gordons to carry out the investigation, the agreement was breached and your name was given to Mr Greenstone. There were also delays in the SRA's handling of the case and they accepted that it had taken four months for the caseworker to prepare the report for adjudication. The SRA paid you compensation of £200 for the shortfalls in their service. However, you pointed out that there was a long delay (between October 2006 and July 2007) before the case was outsourced to Gordons and the investigation got off the ground. The file suggests that much of that delay was due to the fact that the SRA were waiting to find out from Mr Greenstone whether or not the Judge was prepared to review his comments in the light of representations from the solicitor. Mr Greenstone told the SRA in March that the Judge was not prepared to revise his comments. However, you had not been advised about any of this and had to write to the SRA on 18 May 2007 to ask for an update since their last letter in November 2006. There was then further delay between March and 25 July when the case was outsourced to Gordons. In the circumstances, I recommend, in accordance with Section 23(2)(d) of the Courts and Legal Services Act 1990, that the Legal Complaints Service pay you a further £350 as compensation for their delays.

I am required by Section 23(1) of the Courts and Legal Services Act 1990 to report my conclusions to the parties involved. I am therefore sending a copy of this letter to Mr Greenstone and to the SRA.

Section 23 of the 1990 Act also requires the SRA to inform the Ombudsman within three months from the date of this letter of the actions they have taken or propose to take to comply with my recommendation. Please let me know if you do not hear directly from the SRA within that time.

Yours sincerely



Zahida Manzoor CBE
Legal Services Ombudsman for England and Wales