

FIRST INSTANCE DECISION

File number: CDT/46226-2006/Hardy CIU
Regis number: 69255

FLADGATE FIELDER of LONDON

Nicolas David Anthony Greenstone (Ad 1972)
Former Partner

I have considered the following allegations:

Nicolas David Anthony Greenstone certified that an excerpt from a Minute of a Meeting of Directors was true when he knew that such was not the case and further, he provided a signed but undated Minute to Dr G Smith, thereby compromising or impairing or being likely to compromise or impair his reputation and that of the solicitors' profession a solicitor's proper standard of work, thereby acting in breach of Rule 1(d) and (e) Solicitors' Practice Rules 1990.

FINDING

I find that Nicolas David Anthony Greenstone has acted in breach of Rule 1(d) and (e) Solicitors' Practice Rules 1990.

The standard of proof which I have adopted in making my finding is a flexible one which varies according to the circumstances of the allegation, the seriousness of the matter and the severity of any potential sanction. The more serious the allegation, the stronger the evidence in support has to be.

REASONS & COMMENTS

- 1 I have read and carefully considered a report prepared by Victoria Davey dated 6 February 2008, together with a bundle of copy documents and correspondence to which the matter relates and which is marked **AP1-AP74**. Additionally, I have read and taken carefully into account, representations made by Mr Greenstone's solicitors, Reynolds Porter Chamberlain, set out in their letter of 15 February 2008 which is before me at **AP75-AP79** inclusive.
- 2 The facts and circumstances are carefully recorded both in the report and in the accompanying documents. In summary, Mr Greenstone signed a Minute on behalf of Walgate Services Limited, the corporate secretarial branch of Fladgate Fielder Solicitors. At the time of the signature Walgate Services Limited had not yet been appointed Company Secretary and certain Directors, whose names were clearly recorded as such within the Minutes had not yet been appointed but by virtue of the minutes received authority to deal with corporate funds. I do not propose to unnecessarily repeat the detail of the matter, which is carefully set out both in the report and in the Judgment of the Royal Court of Jersey delivered by the Deputy Bailiff on 1 August 2006 in an action between Izodia Plc and Royal Bank of Scotland International Limited, a copy of which is before me at **AP1-AP56**.

- 3 Mr Greenstone is a solicitor of significant professional experience, having been in practice for more than 30 years. I am told by his present solicitors that he was Head of the Corporate Department of Fladgate Fielder and has practised with an unblemished professional record since his admission in 1972. I understand that he is no longer with Fladgate Fielder nor with any other practice at the present time.
- 4 For whatever reason Mr Greenstone chose, he has accepted that he signed a company minute that was inaccurate and that he handed it to those who were not yet appointed Directors without ensuring that the document was dated. One of the persons to whom he handed the document was a Dr Smith, who was well known within the City and who is described in the papers before me as someone with whom *"the City could do business"*.
- 5 The sum of £27.25 million was transferred on the authority of the *"Minutes"* which had been signed by Mr Greenstone on behalf of Walgate Services Limited, the money being taken from Izodia Plc's bank at Reading and being placed in an account opened in the name of the company with Royal Bank of Scotland International in Jersey.
- 6 The transfer took place on 2 August 2002, and on 5 August, some 3 days later, the whole of that sum was transferred in 3 separate tranches to accounts in the name of Lynch Talbot Limited, also held at Royal Bank of Scotland International. The money was transferred via the bank's electronic system on the authority of Diane Waterton, an employee of Lynch Talbot. On 10 September, just over £2.7 million was transferred back to Izodia's account and Izodia took action against the Royal Bank of Scotland International in the Royal Court of Jersey, resulting in the Judgment to which I have referred above.
- 7 The Mandate created by the Minutes which were signed by Mr Greenstone was referred to by the Judge as being *"of critical importance"* and the detail was recited clearly within the Judgment. Having considered the Minutes it is not difficult to understand how the authority for the transfer was interpreted. At the foot of page **AP6** (page 6 of the Trial transcript) the following paragraph appears:-
- "The minute was certified as being a true copy of a meeting of directors by Mr Nicolas Greenstone, on behalf of Walgate Services Limited, the company secretarial arm of Fladgate Fielder, Orb's English solicitors. Walgate as not the company secretary of Izodia on 1st August; Mr Maberly 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."*
- 8 Dr Smith and the two other proposed directors, Mr Peter Catto and Jar Vahey, were all investigated as a result of the fraud. Dr Smith pleaded guilty to the fraud and was sentenced to 8 years imprisonment and was barred from being a director of any company for 15 years. Mr Catto committed suicide after he was charged. The charges against Mr Vahey were left on the file as a result of his ill health.
- 9 Mr Greenstone has never denied that he signed the document to which reference is made. He says that he believed it would be held by those to whom it was handed until such time as other formalities were completed. However, he took no steps to ensure that such was the case, and despite his long history as an undeniable expert

in the field of law concerned, he allowed his signature on an undated document to be handed to those who he said he could "trust" and in so doing knew very well that he had wrongly certified that a meeting of directors had taken place. He also knew that Walgate Services Limited had not yet been appointed Company Secretary and he also knew, or certainly would have had reason to believe, that Mr Catto, Dr Smith and Mr Vahey had not yet been formally appointed Directors to the Board.

- 10 In detailed representations on his behalf, Reynolds Porter Chamberlain have sought to argue that Rule 1 is concerned with the regulation of misconduct rather than what they refer to as "simple errors". They refer me to the case of *Re: A Solicitor [1972] 2 All ER811 (CA)* in which they highlight Lord Denning's commentary:-

"In my opinion negligence in a solicitor may amount to professional misconduct if it is inexcusable and is such as to be regarded as deplorable by his fellows in the profession."

Lord Denning went on to say that in that case:

"The negligence of the solicitor was reprehensible. He failed for three years 1967 to 1970 to see that the books were written up."

He concluded:

"This failure and delay was so reprehensible that the committee were entirely justified in finding him guilty of professional misconduct."

- 11 Reynolds Porter Chamberlain proceed to draw my attention to words used by the caseworker at paragraph 2.2 in her draft recommendations (page 8) where she considered analogies drawn between what happened in this case and other transactions. She said:

"I do not consider that similar comparisons can be drawn between releasing documents in advance of exchanges and completions to other solicitors where undertakings as recommended by the Law Society/Solicitors Regulation Authority are in place to cover standard practices and reduce risk. I consider handing a signed but undated document to a client on the basis of their word attracts too much risk to be considered standard practice and if it is to be considered a proper standard of work."

- 12 While I have read the careful argument advanced by Reynolds Porter Chamberlain, I find myself departing from it. I consider the caseworker's analogy to be reasonable in the circumstances. There is a substantial difference between a solicitor sending a draft transfer to a seller's solicitor in anticipation of a conveyancing completion and what happened in this case where a meeting was certified as having taken place on a day when it clearly did not. Quite apart from any other factor, 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. It is for that reason that I have departed from the recommendation of the caseworker and have chosen to make my finding pursuant to the terms of both Rule 1(d) and Rule 1(e) of Solicitors' Practice Rules 1990.

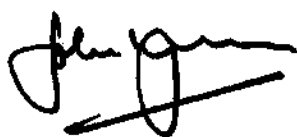
- 13 In making my finding as I do, I have taken no point concerning the size or extent of the fraud later committed by others and which I accept was something that Mr Greenstone could not necessarily have anticipated. That is not the issue, although it is a point made very strongly by Reynolds Porter Chamberlain. The issue is far simpler than that. The matter could have involved a few pennies and may have resulted in no fraud whatsoever. My decision is based on the fact that a solicitor signed a document in anticipation of a set of circumstances in which he was not in control, in the name of a company which had not at that stage been appointed Company Secretary to the corporation concerned, and he handed it to others who, behind his back and deceitfully, used that document to represent a set of circumstances which were quite untrue and which enabled them to instruct Royal Bank of Scotland International Limited to deal with funds. That is the essence of the issue and it is on that basis and on that basis alone that I have made my finding. The fact that Mr Greenstone was the former head of the corporate department of a large firm with an unblemished record and had been in practice for more than 30 years to some extent exacerbates rather than reduces his misconduct. While I can understand the considerable stress under which he has been placed, (and which is properly referred to by his solicitors), he has only his own misjudgement to blame and I consider the caseworker's conclusion and recommendation as to sanction to be wholly proportionate.

DECISION

I have therefore decided to reprimand Nicolas David Anthony Greenstone in respect of his professional misconduct, details of which appear above.

RIGHTS OF APPEAL

- Nicolas David Anthony Greenstone has the right to appeal both my finding and my sanction, such right to be exercised within 14 days of the date of the letter accompanying my decision.
- Mr G Thomas does not have the right to appeal my sanction.



John Lymbury
Adjudicator

Date: 21 February 2008