



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Disciplinary Tribunal

ANDREW THORNHILL

Called to the Bar by: Middle Temple, July 1969

Type of hearing: 5 Person Tribunal

Date of decision: 27 April 2018

In breach of:

Paragraphs 301(a)(i) and/or (iii), 307 (a) and/or (b) and paragraph 901.7 of the Code of Conduct of the Bar of England and Wales (8th Edition).

Details of offence:

Andrew Thornhill QC engaged in conduct which was discreditable to a barrister and/or likely to diminish the public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute in that:

1. On the 24 December 2008 he entered into a financial transaction [set out below] with a company controlled by and/or ultimately owned by Naomi and/or Barry Ackerman [Rally Investments Limited "Rally"] at a time when he was retained by both Naomi and/or Barry Ackerman on the one hand and Joseph Ackerman on the other hand to assist them in demerging their property and corporate interests; and/or
2. Accepted, by his signature to a Revised Way Forward Agreement on or around the 25th June 2009, an appointment to act as the expert in an expert determination of issues arising out of that demerger, acted as such expert and continued to act as such expert, when he had financial dealings and/or connections with companies controlled by and/or ultimately owned by Naomi and Barry Ackerman. Those financial dealings and/or connections are as follows:

The Bar Tribunals & Adjudication Service

9 Gray's Inn Square,
London
WC1R 5JD
T: 020 3432 7350
E: info@tbtas.org.uk

The Council of the Inns of Court. Limited by Guarantee
Company Number: 8804708
Charity Number: 1155640
Registered Office:
9 Gray's Inn Square, London WC1R 5JD

- a. Pursuant to a deed dated 24 December 2008, Mr Thornhill received £500,000 from Rally in consideration for him agreeing
 - i. To hold 25 % of his 10 % interest in shares in a Guernsey company called Ethos Energy (Worldwide) Limited (“Ethos”) (now in liquidation) on trust for Rally; and
 - ii. To pay Rally either (at Rally’s election)
 - a) The shortfall between £500,000 and the amount received by Rally by way of dividend from Ethos in Ethos’s financial years ending 2009, 2010 and 2011; or
 - b) £500,000 plus interest at 7.5 % per annum compounded annually in which case Rally would return its interest in Mr Thornhill’s Ethos shares to Mr Thornhill

With such liability being secured, by way of second charges, over a number of properties owned by Mr Thornhill;

- b. By 24 December 2009 Ethos had been acquired by a company called SRS (R&D) Limited (“SRS”) by a share for share exchange. Pursuant to a share purchase agreement between Mr Thornhill and SRS, SRS acquired Mr Thornhill’s 10 % interest in Ethos and allotted him shares so as to give him a 10 % interest in SRS. Pursuant to the 24 December 2008 Deed, Mr Thornhill held 25 % of that 10 % of SRS on trust for Rally.
- c. By a deed dated 24 December 2009 Edenholme Estates Limited (“Edenholme”), a company controlled and/or owned by Barry Ackerman, acquired a further 20 % holding in SRS for £1 million. Together therefore, Mr Thornhill and companies controlled and/or ultimately owned by Naomi or Barry Ackerman owned 30 % of SRS.
- d. Ethos did not pay any dividends in its financial years ending 2009, 2010 and 2011 and, on a date unknown, but presumed to be in 2012, Rally exercised its right under the 24 December 2008 Deed to require Mr Thornhill to pay it £500,000 plus interest at 7.5 % per annum compounded annually. Mr Thornhill paid accrued interest and £2,000 of the capital outstanding; but remained indebted to Rally in the capital sum of £498,000 plus accruing interest, and remains indebted to Rally’s assignee, Morgan Management Limited, another company controlled by and/or ultimately owned by Naomi and Barry Ackerman in the capital sum of £498,000 plus accruing interest.

The foregoing financial dealings and/or connections meant that Mr Thornhill's personal financial interests were aligned with Naomi and Barry Ackerman's financial interests, and/or lay in Naomi and Barry Ackerman not procuring Rally or its assignee to recover from him £498,000 plus accruing interest he owes it, as it has not.

This personal interest conflicted with, or there was a risk that it would conflict with,

- (i) His duty to assist in the demerger process fairly and impartially;
- (ii) His duty to determine, as expert, the disputes between Joseph Ackerman on the one hand and Naomi and Barry Ackerman on the other, fairly and impartially;
- (iii) Joseph Ackerman's interests, which were served by having the demerger process and/or the disputes between him on the one hand and Naomi and Barry Ackerman on the other hand dealt with by a barrister and/or determined by an expert who did not have a financial connection with Naomi and Barry Ackerman.

Accordingly, Mr Thornhill

- (a) Should not have entered into the 24 December 2008 transaction with Rally or should have ceased to act in the demerger process on or shortly after 24 December 2008;
- (b) Should not have accepted the appointment to act as expert in June 2009;
- (c) Had a continuing responsibility to cease to act as expert pursuant to that appointment.

Andrew Thornhill QC acted in circumstances which could lead to an inference that his independence may be compromised, in that he became financially connected to Naomi and/or Barry Ackerman on 24 December 2008 whilst acting in connection with a demerger of property and corporate interests between Joseph Ackerman on the one hand and Naomi and Barry Ackerman on the other hand and/or he was so financially connected when he accepted an appointment to act as expert in an expert determination of issues between Joseph Ackerman on the one hand and Naomi and Barry Ackerman on the other hand in June 2009:

1. On the 24 December 2008 he entered into a financial transaction [set out below] with a company controlled by and/or ultimately owned by Naomi and/or Barry Ackerman [Rally Investments Limited "Rally"] at a time when he was retained by both Naomi and/or Barry Ackerman on the one hand and

Joseph Ackerman on the other hand to assist them in demerging their property and corporate interests; and/or

2. Accepted, by his signature to a Revised Way Forward Agreement on or around the 25th June 2009, an appointment to act as the expert in an expert determination of issues arising out of that demerger, acted as such expert and continued to act as such expert, when he had financial dealings and/or connections with companies controlled by and/or ultimately owned by Naomi and Barry Ackerman. Those financial dealings and/or connections are as follows:
 - a. Pursuant to a deed dated 24 December 2008, Mr Thornhill received £500,000 from Rally in consideration for him agreeing
 - i. To hold 25 % of his 10 % interest in shares in a Guernsey company called Ethos Energy (Worldwide) Limited (“Ethos”) (now in liquidation) on trust for Rally; and
 - ii. To pay Rally either (at Rally’s election)
 - a) The shortfall between £500,000 and the amount received by Rally by way of dividend from Ethos in Ethos’s financial years ending 2009, 2010 and 2011; or
 - b) £500,000 plus interest at 7.5 % per annum compounded annually in which case Rally would return its interest in Mr Thornhill’s Ethos shares to Mr Thornhill

With such liability being secured, by way of second charges, over a number of properties owned by Mr Thornhill;

- b. By 24 December 2009 Ethos had been acquired by a company called SRS (R&D) Limited (“SRS”) by a share for share exchange. Pursuant to a share purchase agreement between Mr Thornhill and SRS, SRS acquired Mr Thornhill’s 10 % interest in Ethos and allotted him shares so as to give him a 10 % interest in SRS. Pursuant to the 24 December 2008 Deed, Mr Thornhill held 25 % of that 10 % of SRS on trust for Rally.
 - c. By a deed dated 24 December 2009 Edenholme Estates Limited (“Edenholme”), a company controlled and/or owned by Barry Ackerman, acquired a further 20 % holding in SRS for £1 million. Together therefore, Mr Thornhill and companies controlled and/or ultimately owned by Naomi or Barry Ackerman owned 30 % of SRS.

- d. Ethos did not pay any dividends in its financial years ending 2009, 2010 and 2011 and, on a date unknown, but presumed to be in 2012, Rally exercised its right under the 24 December 2008 Deed to require Mr Thornhill to pay it £500,000 plus interest at 7.5 % per annum compounded annually. Mr Thornhill paid accrued interest and £2,000 of the capital outstanding; but remained indebted to Rally in the capital sum of £498,000 plus accruing interest, and remains indebted to Rally's assignee, Morgan Management Limited, another company controlled by and/or ultimately owned by Naomi and Barry Ackerman in the capital sum of £498,000 plus accruing interest.

Such financial dealings and/or connections meant that Mr Thornhill had acted in circumstances which could lead to an inference that his independence may be compromised.

Sanction: Reprimanded. Fined £10,000.

Status: Final.