



**In the matter of
Case No. 02106 NFOPP v Mr J R Gesner & Mr J R Walley, Lesters
Disciplinary Tribunal Hearing held on
Wednesday 21 July 2010**

Case of

Mr J R Gesner MNAEA & Mr J R Walley MNAEA of Lesters, 23 St Martin's Street, Wallingford, Oxfordshire, OX10 0AL

At

NFoPP, Arbon House, 6 Tournament Court, Edgehill Drive, Warwick, CV34 6LG

Alleged breaches as set out by the Disciplinary Caseworker

The formal breaches are:

Rule 1(3) Money may be drawn from Clients' Account(s) only:

- (a) for payment, on proper authorisation, to the person entitled to receive it; or
- (b) in discharge of a sum owed to the member by the person otherwise entitled to receive it; or
- (c) for payment into another client account kept by the member; or
- (d) to correct an inadvertent overpayment into the account; or
- (e) to withdraw interest which has accrued on the account; and
- (f) if there are sufficient funds available to the credit of the client to fully cover the payments;

always provided that in the operation of Statutory Clients' Accounts, the provisions of the Estate Agents Act and of the Estate Agents (Accounts) Regulations 1981 or any other Regulations made in pursuance of that Act have precedence over these Rules.

Rule 1(4) Every member shall maintain proper internal accounts showing the up-to-date position in relation to sums falling within Rules 1(1) and 1(2), and the heading under Rule 1(3) for all withdrawals. There shall be maintained on the Clients' Account(s) at all times balances to satisfy the indebtedness shown in the internal accounts.

Rule 6 Duty to abide by the aims and rules of the Association.

Rule 9 Duty to protect and promote clients' interests.

Mr Gesner and Mr Walley pleaded guilty to the breaches.

Penalty

Rule 1(3) - A monetary penalty in the sum of £750

Rule 1(4) - A monetary penalty in the sum of £250

Rule 6 - A monetary penalty in the sum of £500

Rule 9 - A monetary penalty in the sum of £750

The Chairman of the Tribunal advised that the penalties announced were imposed on each Respondent.

Determination on Publication and Costs

Publication

The Tribunal orders publication in accordance with the Disciplinary Procedure Regulations.

The Chairman of the Tribunal expressed his thanks to the Respondents for attending the hearing.

Statement by Tribunal

The Tribunal has viewed this case as being a very serious one. For a period in excess of 18 months, by your own admission, you partly financed your business by unauthorised borrowing from your client account.

The panel considered whether your expulsion was appropriate.

It is acknowledged that the monies have been repaid in full.

The penalties as reported were felt to be proportionate in this matter.

Nothing in this decision should be taken as an encouragement to use client's money as working capital in difficult market conditions. Client's money is held on trust. It is fundamental to the integrity of the profession and the aims of this Association that members dealing with client's money are not affected by the temptation to serve their own personal interest.