

IN THE MATTER OF JOHN CLIVE BARBER, GERALDINE HELEN CARTAIN, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J. N. Barnecutt (in the chair)
Mr. N. Pearson
Mrs. V. Murray-Chandra

Date of Hearing: 14th May 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Ian Ryan, partner and member of Finers Stephens Innocent LLP, 179 Great Portland Street, London W1W 5LS on 18th July 2008 that John Clive Barber and Geraldine Helen Cartain, solicitors, be required to answer the allegations contained in the statement which accompanied the application and that such Order be made as the Tribunal should think right.

The allegations against both Respondents were that:

1. They failed to keep the books of accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules).
2. They failed to carry out reconciliations as required by Rule 32 (7) of the 1998 Rules.
3. That they permitted client account to become overdrawn in breach of Rule 22 (8) of the 1998 Rules.
4. They deliberately and improperly utilised client funds for their own benefit.
5. They failed to deliver promptly or at all Accountant's Reports for the period ending 31st May 2006, as required by Section 34 of the Solicitors Act 1974 and the Rules made thereunder.

An additional allegation against the Second Respondent only was that:

6. She sent misleading letters to Counsel.

or in the alternative

7. She permitted misleading letters to be sent to Counsel.

By a supplementary statement dated 14th April 2009, a further allegation against the First Respondent only was that:

8. He failed to comply promptly or at all with the terms of an undertaking given to MT & Co Solicitors.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 14th May 2009 when Ian Ryan appeared as the Applicant and the Respondents did not appear and were not represented.

At the commencement of the hearing the Applicant gave the Tribunal details of the steps he had taken to ensure the Respondents were aware of today's hearing. The Respondents were both married and living together at their last known address. As Ordered by the Tribunal on 30th October 2008 the Applicant had sent the Rule 5 Statement and Civil Evidence Act Notices to the address given by first class post to the First Respondent. Regarding the Second Respondent, advertisements had been placed in The Law Society Gazette, The Times and The Stockport Times West. The Applicant confirmed the Second Respondent had spoken to him on the telephone, she had confirmed she did not accept the allegations, she did not intend to cooperate and she did not intend to attend today's hearing. The Applicant confirmed all Civil Evidence Act Notices had been served on the Second Respondent by hand and an affidavit of service was available for the Tribunal's consideration. The Tribunal had before it a letter dated 18th April 2009 received by the Tribunal on 27th April 2009 from the Second Respondent. In this letter she gave details of her financial circumstances and stated "I do not accept the charges made against me but I do accept that as a partner, I must accept responsibility for what was, or wasn't done in my firm." In relation to her financial circumstances the Second Respondent had simply said "I have lost everything as a result of my firm's collapse". It was clear from the letter that both Respondents were aware of the proceedings and had decided not to attend or involve themselves with the proceedings. The Tribunal were satisfied that service had taken place and Ordered that the matter proceed in the absence of the Respondents.

At the conclusion of the hearing the Tribunal made the following Orders:

The Tribunal Orders that the respondent, John Clive Barber, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The Tribunal Orders that the respondent, Geraldine Helen Cartain, solicitor, be Struck Off the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The facts are set out in paragraphs 1 - 20 hereunder

1. The First Respondent was born in 1952 and was admitted as a solicitor on 1st October 1977. His name remained on the Roll of Solicitors. His practising certificate was suspended on 10th October 2007 and according to Solicitors Regulation Authority (SRA) records he no longer practised as a solicitor.
2. The Second Respondent was born in 1952 and was admitted as a solicitor on 1st July 1981. Her name remained on the Roll of Solicitors. Her practising certificate was suspended on 10th October 2007 and according to SRA records she no longer practised as a solicitor.
3. The last known address for both Respondents was 48 Penrhyn Crescent, Hazel Grove, Stockwell, Cheshire SK7 5NE.
4. At all material times the Respondents carried on practice in partnership under the style of Barber and Cartain (the firm) at 229 Bury New Road, Whitefield, Manchester, Lancashire M45 8GW.
5. An Investigation Officer of the SRA carried out an inspection of the firm's books of account and produced a report dated 3rd October 2007 which was before the Tribunal.
7. On 10th October 2007 a decision was made by an adjudicator of the SRA to intervene into the firm. The intervention took place on 12th October 2007.

Allegation 1, 2 and 3

8. The Investigation Officer identified that the books of account were not in compliance with the 1998 Rules in a number of respects:
 - (i) The most recent client account bank reconciliation was dated May 2006 (the inspection commenced on 15th August 2007), and did not include a list of client liabilities at that date.
 - (ii) Six transfers from client to office bank account totalling £21,000 did not have any corresponding postings in the client cash book.
 - (iii) Eleven client ledgers were overdrawn in the total sum of £3,075.96.
9. In view of the state of the firm's books of account, the Investigation Officer was unable to compute the firm's total liabilities to clients at the inspection date, which in itself was a serious matter.

Allegation 4

10. The Investigation Officer also identified that on a number of matters the Respondents had failed to account to clients for monies due to those clients, or had taken costs in excess of the amount properly due to the firm.
11. The First Respondent acted for the estate of Ms S (deceased) and one of the beneficiaries was Mr P. The Tribunal was provided with a witness statement from Mr P dated 21st

June 2008. The First Respondent acted in the sale of the property of the deceased which was the estates main asset. It was not clear exactly how much the property was sold for, however none of the beneficiaries received any money from the proceeds of sale.

12. The Tribunal were referred to another case of Ms B where the Second Respondent had acted in a housing disrepair claim against Birmingham City Council. The case had been settled with agreed damages for the client in the sum of £1,000 and the firm's costs to be paid in the sum of £2,500. The client ledger cards showed that £2,500 had been received into client account and transferred to office account the following day for costs. The sum of £1,000 was also received into client account but this amount was also transferred to client account stating "costs". Ms B did not receive her damages. This was also the case relevant to allegations 6 and 7 where the Second Respondent had written to Counsel advising Counsel that the case had failed and as the matter was dealt with on a conditional fee agreement there was no fee to be paid.
13. Another case of Ms S had very similar circumstances to the case of Ms B where the case had been successfully concluded but the client had not received any damages and Counsel had been informed the case had failed.
14. Lastly, the Tribunal were referred to the case of Mr M where the firm's bill of costs detailed costs of £18,038.32. However the client ledger card showed a total of £44,831.28 had been transferred from client to office and there was a discrepancy of over £26,000 between the amount of costs recorded and the amount of funds transferred.

Allegation 5

15. The Tribunal were provided with details of the Respondent's failure to deliver Accountant's Reports. To date the Accountant's Reports had still not been delivered.

Allegations 6 and 7

16. The Second Respondent either deliberately sent misleading letters to Counsel, or in the alternative that she failed to exercise proper supervision over two files thereby permitting another member of her staff to send the misleading letters to Counsel.

Dishonesty

17. The First Respondent behaved dishonestly in respect of allegation 4 by failing to account to beneficiaries for the proceeds of the sale of a property that formed part of the deceased's estate. The Second Respondent behaved dishonestly in respect of allegation 4 by failing to account to two clients for damages, and to another client by taking costs in excess of those due to the firm. In respect of allegation 6 the Second Respondent behaved dishonestly by deliberately sending misleading letters to Counsel.
18. The Respondents were written to by The Law Society for an explanation on 13th September 2007 but no reply has been received from either Respondent.

Allegation 8

19. The First Respondent acted for the vendors of a property and MT & Co Solicitors acted for the purchasers. The First Respondent gave an undertaking (by confirming that he

would comply with The Law Society's Code of Completion by Post) to forward all relevant titles deeds, documents etc to the purchaser's solicitors after completion.

20. Completion took place on 23rd July and the First Respondent had still not complied with the undertaking by 24th August 2007 when the purchaser's solicitors complained to The Law Society. The First Respondent was written to by the SRA for an explanation on 5th October 2007. He failed to reply. The present position with respect to the undertaking was unknown.

The submissions of the Applicant

21. The Applicant submitted that the conduct in this case, with or without dishonesty was at the top end of the scale and was gross misconduct of the most serious kind. At the very least there had been a gross lack of supervision.
22. Regarding allegation 4, a considerable amount of money had been transferred, £26,344.43 from client to office, without any bills or justification. The Applicant submitted that even if the Tribunal did not consider this to be dishonest behaviour, this was very serious conduct at the top end of the scale.
23. Regarding allegation 6, the Applicant submitted that if the Tribunal did not consider there was sufficient evidence leading to dishonesty, this, again was a very serious matter where Counsel had been informed the case had failed and that Counsel's fees would not be paid as the matter was dealt with on a conditional fee agreement, but in fact, from the file it was clear that the case had been settled and the Second Respondent had received costs. The Applicant submitted this was dishonest, or in the alternative, misleading.
24. The Applicant submitted this was clearly a firm with no systems and indeed, there had been no cooperation with the Solicitors Regulation Authority or with the proceedings brought before the Tribunal. The Second Respondent had admitted to the Investigation Officer in April 2007 that, despite telling her practice manager to get the books up to date, the Second Respondent had not satisfied herself that this had been done. Furthermore, the Respondents were unable to explain which clients certain funds related to and could not supply confirmation of the balance.
25. The Respondents had thought to enter into an individual voluntary arrangement and the Second Respondent had advised the Investigation Officer that clients had been written to with a stamped addressed envelope advising them of the situation. The Applicant referred the Tribunal to a witness statement from a client, Mr P in which he stated he had not received any such letter. Mr P was one of the beneficiaries referred to in allegation 4 whose aunt had passed away and the First Respondent had been instructed to deal with the grant of probate and the sale of her property. The statement indicated Mr P did not receive a copy of the sale contract and had no idea when the property was actually sold. He had not received any money from his late aunt's estate and neither had the other beneficiary.
26. The Applicant submitted this was very serious misconduct and referred the Tribunal to the test to be applied when considering dishonesty, which was laid down in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Tribunal had to consider whether the Respondents' conduct would be viewed as dishonest by an ordinary, honest and reasonable member of the public. Secondly, the Tribunal had to consider whether the

Respondent's themselves would take the view or not care that ordinary, honest and reasonable members of the public would regard their conduct as dishonest. The Applicant submitted the Respondents had behaved grossly regarding client funds and indeed, it had not been possible to identify funds relating to Mr P and other beneficiaries of that estate. The Applicant submitted one could not imagine a worse dereliction of duty than failure to account to beneficiaries from the proceeds of sale of a property within the deceased's estate. There had been no cooperation from the Respondents in this case.

27. The Applicant requested an Order for the Respondents to pay his costs, to be subject to detailed assessment if not agreed.

The findings of the Tribunal

28. The Tribunal had considered carefully the documentation and submissions of the Applicant. In the absence of any evidence or submissions put forward by the Respondents, the Tribunal was satisfied from the documentation available to it that all the allegations were substantiated.
29. In this matter neither Respondent had chosen to attend before the Tribunal and the Tribunal were satisfied both Respondents had been served. The matters before the Tribunal were very serious allegations and in particular, the failure to account to beneficiaries in the probate matter caused the Tribunal real concern. It was clear that there had been the sale of a property which formed part of the deceased's estate yet none of the proceeds had been sent to the beneficiaries. The Respondents had been provided with ample opportunity to appear before the Tribunal today and whilst the allegations relating to accounts breaches were relatively minor, any allegation of misappropriation of client funds was extremely serious and unacceptable.
30. This was a case where there had been a gross and dishonest dereliction of duty at the top end of the scale.
31. Whilst it was not clear how much the property for which Mr P and others were beneficiaries had been sold for, it was quite clear that the beneficiaries had not received their funds and this behaviour was appalling. The Respondents had clearly utilised the proceeds of sale improperly.
32. In relation to allegations 6 and 7, the Second Respondent appeared to have deducted her fees twice, thereby depriving Counsel of Counsel's fees. At the very least, this was a gross failure of supervision and it was noted the Second Respondent had responsibility for this matter and indeed, the client had never received her own compensation.
33. The Tribunal had been referred to another case where there had been a discrepancy of £26,344.43 between the amount of costs recorded in correspondence and the amount of funds transferred. The total amount transferred to office account was over £44,000 yet the firm's bill of costs only detailed costs of £18,038.32.
34. On allegation 4 alone, the Tribunal were satisfied that the test laid down in Twinsectra Ltd v Yardley was established. It was clear to the Tribunal that an ordinary, honest and reasonable member of the public would regard the Respondents' conduct as dishonest

and further, the Respondents themselves must have been aware that by those standards their conduct was dishonest.

35. The Tribunal were satisfied that dishonesty had been established in the absence of the Respondents who had chosen not to engage with the proceedings. Clients had clearly suffered a great deal as a result of the Respondents' conduct and the Respondents had brought the name of the profession into disrepute. It was right that they should no longer be allowed to continue to practise and indeed, the public needed to be protected from them.
36. In the circumstances, the Tribunal considered the appropriate sanction for both Respondents was to strike them off. In relation to costs, the Tribunal Ordered that the Respondents do pay the Applicant's costs to be subject to detailed assessment if not agreed to include the costs of the investigation accountant of The Law Society.
37. The Tribunal Ordered that the respondent, John Clive, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.
38. The Tribunal Ordered that the respondent, Geraldine Helen Cartain, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

Dated this 1st day of August 2009
On behalf of the Tribunal

Mr J N Barnecutt
Chairman