

IN THE MATTER OF PAULINE LESLEY BUTLER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs J. Martineau (in the chair)
Mr. D. Green
Lady Bonham Carter

Date of Hearing: 14th July 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (“SRA”) by Suzanne Elizabeth Jackson, a solicitor employed by the Solicitors Regulation Authority of 8 Dormer Place, Leamington Spa, Warwickshire CV32 5AE on 4th December 2008 that Pauline Lesley Butler, solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that:-

1. She failed to maintain proper accounting systems and records to show accurately the position with regard to the money held for each client contrary to Rule 32 of the Solicitors Accounts Rules 1998 (The Rules) in that she posted false bills to the ledgers so that the ledgers when inspected did not show the true position.
2. She withdrew money from client account in breach of Rule 22 (1) of the Rules and misappropriated it for her own purpose.

3. She failed to remedy the breaches promptly on discovery contrary to Rule 7 of the Rules.

Allegations 1 and 2 were made on the basis that the Respondent had been dishonest.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 14th July 2009 when Suzanne Jackson appeared as the Applicant and the Respondent did not appear and was not represented.

The Tribunal had before it an email from solicitors acting on behalf of the Respondent dated 26th May 2009 which had been sent to the Applicant and which confirmed the Respondent was not making a formal admission on dishonesty. As the Respondent had been represented by solicitors who were aware of today's hearing, the Tribunal Ordered the matter should proceed in the Respondent's absence. The Tribunal had before it a bundle of documents submitted on behalf of the Respondent for consideration.

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

The Tribunal Orders that the respondent, Pauline Lesley Butler, 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 fixed in the sum of £22,515.97.

The facts are set out in paragraphs 1 – 9 hereunder:

1. The Respondent was born in 1957 and was admitted as a solicitor on 15th January 1982. She was suspended from practice on 19th August 2008.
2. At all material times the Respondent practised on her own account under the style of Pauline L Butler from offices at 14 Lowther Street, Carlisle, Cumbria CA3 8DA. On 15th August 2008 the Respondent's practice was intervened.
3. The SRA commenced an inspection of the Respondent's books of account and other documents on 25th June 2008. A copy of the SRA's report dated 8th August 2008 was before the Tribunal.
4. The books of account were not in compliance with the Solicitors Accounts Rules and it was ascertained that there was a minimum cash shortage of £170,620.64 on client account at 31st May 2008. Shortages were also identified on matters arising prior to investigation.
5. The Respondent, whose firm was experiencing severe financial difficulty, had a scheme in place whereby she would improperly subsidise office bank account with client monies. The Respondent had made numerous false entries in the books over the years. False bills would be raised on ledgers for client matters where funds were available but no physical bills were prepared and the funds improperly transferred from client bank account to office bank account. These amounts would be re-credited at the end of the matter using monies from other clients' files by billing the other clients in the same amount and thus moved clients' funds between ledgers.

6. During the investigation the Respondent agreed that the scheme involved a vast amount of unnecessary entries into the books of account. She stated that she did not know the cumulative total of the amount she had improperly transferred as there had been too many false entries over a long period and agreed that the books of account could not be relied upon as a true reflection of her liabilities to clients.
7. The Tribunal were provided with details of a number of client matters where there had been an improper transfer of client funds to office account. The Respondent confirmed during the investigation that none of the bills and credit notes drawn to the Tribunal's attention were actually printed and that all those bills referred to were raised improperly and were raised purely as an accounting entry and that she had authorised the transfer of these funds.
8. The Tribunal were also provided with details of client matters where shortages had arisen prior to investigation. The Respondent agreed during the investigation that she did not have any justification to raise the bills referred to the Tribunal, and transfer the funds, and that it was done simply to prop up her office account.
9. The shortage had not been replaced and the Respondent stated during the investigation that she would not have enough funds to honour all liabilities to clients.

The submissions of the Applicant

10. The Applicant referred the Tribunal to a bundle of documents received from the Respondent which enclosed a number of documents including a personal summary from the Respondent, a number of references, a medical report and other supporting documents. In the personal summary provided by the Respondent, it was clear that the Respondent had medical difficulties and there were financial problems with her practice. There were other personal difficulties and the practice appeared to have been intervened as a result of the debts of the business. The two medical reports provided dated 24th March 2009 and 14th April 2009 confirmed the Respondent had been suffering from depression for many years.
11. The Applicant submitted the Respondent had made a number of admissions during the course of the SRA investigation and, those admissions confirmed that her actions had not been those of an honest solicitor. The Respondent had put a convoluted scheme in place enabling her to use client monies and, when she had been questioned by the SRA officers, she had accepted that she had been improperly transferring money from client account for at least eight years. She was asked by the SRA officers if her actions were those of an honest solicitor and she had replied "no".
12. The Tribunal were provided with a schedule of claims that had been made on the Compensation Fund which came to £900,000. The Compensation Fund had paid out approximately £600,000 to date, but there may still be more claims to be made.
13. The Applicant referred the Tribunal to the test of dishonesty laid down in the case of Twinsectra Ltd – v – Yardley & Others [2002] UKHL 12. Given that the Respondent had made admissions to the SRA officer during the course of the investigation that she had created false entries, that her accounts could not be relied upon and that this

had been going on for many years, the Applicant submitted that the test of dishonesty was satisfied.

14. The Respondent's actions fell well short of the trustworthiness and probity expected of a solicitor and indeed, the Respondent had gone to great lengths to cover up her actions. She had not safeguarded client money as expected of a solicitor, she had acted consciously and with impropriety for a number of years.

The Tribunal's findings

15. The Tribunal had considered carefully the submissions of the Applicant together with all the documents including the Respondent's bundle of documents.
16. The Tribunal found all the allegations to have been substantiated and in particular, were satisfied that the Respondent had behaved dishonestly in relation to allegations 1 and 2.
17. In considering the question of dishonesty, the Tribunal noted the admissions made by the Respondent during the course of the SRA investigation and in particular the fact that she had accepted her actions were not those of an honest solicitor, that she accepted there had been more false entries in her books than genuine ones and that she had been improperly transferring money from client account for at least eight years.
18. The Tribunal also noted from the Respondent's own bundle that she had attended her general practitioner on 30th July 2008 and it had been recorded in her medical records "Reason for depression come to light. Been using client's funds and moving it in and out of office accounts as needed in past." It was quite clear to the Tribunal that the Respondent knew what she was doing and indeed, she had used the elaborate scheme as a mechanism for moving money around to assist with the finances of her firm. The Tribunal were satisfied that an ordinary, honest and reasonable member of the public would regard the Respondent's actions as dishonest and, further, based on her own admissions, the Respondent herself knew that by those standards her conduct was dishonest. Accordingly, the Tribunal were satisfied that the objective and subjective tests of dishonesty referred to in the case of Twinsectra - v - Yardley had been satisfied.

Costs

19. The Applicant provided the Tribunal with a schedule of her costs which amounted to £22,515.97 in total. These had been served on the Respondent's solicitors and had not been challenged and although the Applicant was aware the Respondent had been declared bankrupt, an Order for costs was still requested.

The Tribunal's decision

20. The Tribunal had considered the mitigation, references and other documents submitted by the Respondent. It was clear to the Tribunal that the Respondent had had significant personal, financial and medical problems and whilst the Tribunal sympathised with her difficulties, these could not be used as an excuse for the

improper and dishonest utilisation of client funds in any circumstances. The Solicitors Accounts Rules were there to protect client monies, which were sacrosanct, and the Respondent had breached these rules for many years, ultimately causing clients to suffer as a result of her misappropriating their funds.

21. The Tribunal were also mindful of the amount of money that had been claimed on the Compensation Fund and of the possibility that there may be further claims resulting from the Respondent's actions in the future.
22. This was clearly a case where the Respondent had brought the reputation of the profession into disrepute and had acted irresponsibly and dishonestly for a long time. She could not be trusted and it was right that the public needed to be protected from her. She should not be allowed to continue practising as a solicitor or remain on the Roll of Solicitors.
23. In relation to the question of costs, the Tribunal noted from the Respondent's bundle that she was currently in employment in an administrative position. There had been no challenge made or submissions received from the Respondent relating to the Applicant's costs and accordingly, the Tribunal Ordered the Respondent should pay those costs in full in the sum of £22,515.97.
24. The Tribunal Ordered that the respondent, Pauline Lesley Butler, 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 fixed in the sum of £22,515.97.

Dated this 12th day of January 2010
On behalf of the Tribunal

Mrs J. Martineau
Chairman