

**The Respondent's Appeal against the Tribunal's decision lodged with the High Court (Administrative Court) has been withdrawn.**

No. 10177-2009

IN THE MATTER OF NAZNEEN RAZA SULEMAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Ms A Banks (in the chair)  
Mr A H B Holmes  
Mrs V Murray-Chandra

Date of Hearing: 3rd February 2010

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was made on behalf of the Solicitors Regulation Authority (SRA) by Stephen John Battersby, Solicitor and Partner in the firm of Jameson & Hill of 72 – 74 Fore Street, Hertford, Herts, SG14 1BY on 7th January 2009 that Nazneen Raza Suleman of APT Solicitors, 128 Sutherland Road, Croydon, Surrey, CR0 3QJ might be required to answer the allegations contained in the Statement that accompanied the Application and that such Order might be made as the Tribunal thought right.

The allegations against Nazneen Raza Suleman (the Respondent) were that:-

1. She had dishonestly provided false and misleading information in claiming that an extension of time had been granted to her in Landlord and Tenant Act proceedings by the Landlord's solicitors in a telephone conversation on 27th March 2006, contrary to Solicitors Practice Rule 1 1990.
2. She had dishonestly produced or caused to be produced a copy of a letter allegedly faxed to her firm by the Landlord's solicitors on 27th March 2006 which had not been a genuine document, contrary to Rule 1 Solicitors Practice Rules 1990.

3. In or around July 2006, she had dishonestly used in Court proceedings an item of correspondence knowing the same not to be genuine, contrary to Rule 1 Solicitors Practice Rules 1990.
4. Allegation withdrawn.
5. Allegation withdrawn.

The application was heard in the Court Room, 3rd Floor, Gate House, 1, Farringdon Street, London, EC4M 7NS when Stephen John Battersby appeared as the Applicant. The Respondent, who was present, was represented by Alan Newman QC, instructed by Gani & Co.

The evidence before the Tribunal included oral evidence from the Respondent, Bhavna Desai, Ratilal Devchand Bhoja Shah and Abiola Boateng.

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

The Tribunal Orders that the Respondent Nazneen Raza Suleman of APT Solicitors, 128, Sutherland Road, Croydon, Surrey, CR0 3QJ, 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 £11,154.71, such costs not to be enforced without leave of the Tribunal.

**The facts are set out at paragraphs 1 - 9 hereunder:-**

1. The Respondent, born in 1971, was admitted as a Solicitor in 1999. At the times material to the allegations, she had first worked at Broadway Solicitors, 40 Tooting High Street, London SW17 0RG, where she had been a salaried Partner until 30th June 2006 when she had left and had founded APT Solicitors where she had practised on her own account at 128 Sutherland Road, Croydon, Surrey CR0 3QL.
2. In 2005 the Respondent had taken instructions from a Mr HP to act on his behalf in renewing a lease granted to his Company. The Landlords were represented by Shah & Burke, Solicitors. Negotiations had taken place between the parties with regard to the amount of rent to be paid and the frequency of rent reviews, among other issues. Shah & Burke Solicitors had granted the Respondent an extension of time from 31st January 2006 until Friday 31st March 2006 in the hope that an agreement could have been reached between the parties.
3. By Monday 27th March 2006, no agreement had been reached. The Respondent had claimed that on that date, during a telephone conversation with Mr Shah of Shah & Burke, Solicitors, Mr Shah had agreed to grant a further extension of “two to three months” to allow negotiations to continue. The Respondent had claimed to have made a hand-written note of that telephone conversation on the bottom of an earlier letter from Shah & Burke, Solicitors dated 15th March 2006 which had been on her file.

4. On 1st June 2006 the Respondent had issued proceedings in the Wandsworth County Court on behalf of her client to protect his interests. Shah & Burke, Solicitors had argued that she had had no right to issue those proceedings because she had been out of time. However, the Respondent had claimed that she had not been out of time because of the extension that had been granted.
5. The Court had had before it a fax purporting to have been sent by Shah & Burke, Solicitors to the Respondent on 27th March 2006 confirming that an extension had been granted. Shah & Burke, Solicitors had denied that they had sent any such letter and, at the Court's direction, a report had been commissioned from an expert, Dr Audrey Giles. The expert had concluded that the letter dated 27th March 2006 and marked "Second Letter" had been a forgery.
6. The matter had been reported to the SRA by insurers acting for Broadway Solicitors on 18th June 2007.
7. During the investigation carried out by the SRA, the Respondent had been adamant that the telephone conversation with Mr Shah on 27th March 2006 had taken place and that an extension of time had been granted. She had denied any complicity in the making of the disputed letter of 27th March 2006 and had inferred that it could have been prepared by Ms Desai, her former Principal at Broadway Solicitors.
8. In a statement dated, 25th July 2006, in the proceedings in Wandsworth County Court, Mr Shah had denied granting an extension of time to the Respondent either on the 27th March 2006 or at any other time. He had also insisted that the disputed letter of that date had not been sent by his firm.
9. On 9th June 2008, the Adjudicator had resolved to refer the matter to the Solicitors Disciplinary Tribunal.

### **The Submissions of the Applicant**

10. The Applicant sought the permission of the Tribunal to withdraw allegations 4 and 5. Permission was granted.
11. The Applicant took the Tribunal through the details of the three remaining allegations and the agreed facts. He explained that one of the facts to be determined by the Tribunal was whether or not a telephone conversation had taken place between the Respondent and Mr Shah on 27th March 2006. The Applicant referred to Mr Shah's statement, dated 25th July 2006, in which he had denied that any such conversation had taken place. The Applicant noted that there was a direct conflict between the Respondent and Mr Shah on this key issue.
12. The Applicant referred the Tribunal to a copy of a letter dated 15th March 2006 from Shah & Burke, Solicitors to the Respondent exhibited by her in her Statement to the Wandsworth County Court dated 25th July 2006. On that letter the Respondent had

claimed to have made a contemporaneous note, by hand, of the disputed telephone call with Mr Shah on 27th March 2006.

13. However, the Applicant explained that there were copies of the letter of 15th March 2006 in existence that did not bear the handwritten endorsement. Consequently, he submitted that the endorsement had been added by the Respondent some considerable time after the 27th March 2006 and was fraudulent.
14. The Applicant accepted that he had to prove the allegations to the higher standard; beyond all reasonable doubt. He also referred the Tribunal to the requirement to apply the tests clarified in the case of *Twinsectra v Yardley* [2002] UKHL 12.
15. If there was an issue where there was a direct conflict of evidence, the Applicant submitted that the Tribunal would need to determine which witness's evidence it preferred.
16. The Applicant submitted that the Respondent had had a motive for claiming that an agreement to extend time had been reached in that it would get her out of a difficulty. He referred to a letter dated 28th March 2006 from the Respondent to Shah & Burke, Solicitors in which he noted there had been no reference by the Respondent to an extension of time granted by Mr Shah on 27th March 2006.
17. The Applicant submitted that the Respondent had forgotten to obtain an extension of time for her client and that rather than report the matter to her Principal and the firm's insurers, she had created a false attendance note dated 27th March 2006. In addition, she had also created a false fax of an alleged second letter of 27th March 2006 from Shah & Burke, Solicitors to Broadway Solicitors that she had produced in proceedings in the Wandsworth County Court.
18. The Applicant submitted that if the Tribunal found that the alleged telephone conversation of 27th March 2006 had not taken place, it would have to find that the Respondent had been dishonest. He stressed that had that alleged conversation taken place Mr Shah would have recorded it on his file and confirmed it in writing. Moreover, any agreed extension would not have been expressed in vague terms of "two to three months"

#### **Oral Evidence called by the Applicant**

19. Ms Bhavna Desai, the sole principal of Broadway Solicitors, gave evidence. She referred to and relied upon her statement of 23rd October 2008.
20. Ms Desai explained that the Respondent had been a salaried partner in her firm, Broadway Solicitors, from March 2004 until she had left on 30th June 2006, having given six months notice. Ms Desai said that her own main area of practice was family law and that she had little knowledge of Landlord and Tenant Law.

21. Ms Desai explained that she had been aware of the file of Mr HP in so much as the client had 'phoned the office wanting things done urgently when the Respondent had not been there and so she had left a note on the file.
22. After the Respondent had left the firm, the client had asked for the papers. Initially, on or about 12th July 2006, she had given him all the original documents on the file together with a photocopy of the documents on the correspondence clip. Subsequently, he had asked for the original correspondence and on 25th July 2006 Ms Desai had handed over the original correspondence, keeping a photocopy of it all for herself.
23. Ms Desai told the Tribunal that the copy of the original letter of 15th March 2006 from Shah & Burke, Solicitors that she had kept on her file did not have any endorsement of a telephone attendance note on it. She said that the letter of 15th March 2006 with an endorsement was never in her possession.
24. Ms Desai said that the Second Letter of 27th March 2006 from Shah & Burke, Solicitors had never been on the correspondence clip either of originals or copies in her possession. While she was aware that the letter had been examined and found not to be genuine, she had never had anything to do with that letter.
25. Ms Desai confirmed that she knew Romana Ahmed who had made a statement. She said that Ms Ahmed had been a trainee at her firm but that they had fallen out at the end of her training contract.
26. Ms Desai explained that she also knew Abiola Boateng who had made a statement and would be giving evidence. Ms Boateng had been both a trainee and a salaried partner at her firm. However, they had had some difficulties when Ms Boateng had left to set up her own firm. This had been because she had refused to provide details of all the files Ms Boateng had worked on while at Broadway Solicitors. She said that Ms Boateng had been supervised not by her but by her then partner.
27. When asked to explain an attendance note dated 7th August 2006, Ms Desai said that the Respondent had phoned to say that she needed to collect papers from an unrelated file. The Respondent had had some difficulty parking and had asked that someone pop down with the papers. The trainee, Ms Ahmed, had gone down to give the Respondent the papers and the Respondent had given her an envelope to pass to Ms Desai. Ms Desai did not think that she looked at what was in the envelope but had posted it back to the Respondent. She had asked her trainee to do the attendance note which she had done.
28. Dealing with a note in her writing dated 27th July 2006, Ms Desai explained that she had been speaking on the 'phone to Mr Shah and noting down what he had been saying about the issues. This had been basically that if she didn't have the second letter it would be alright.
29. An attendance note of 20th March 2006 had recorded Ms Desai's telephone attendance on the client, Mr HP. The Respondent had been out of the office and Ms Desai had left a

note for her explaining that the client was not happy and needed an explanation as to why the Respondent had not applied for an extension as she had told him that she would.

30. In cross-examination, Ms Desai denied creating the second letter of 27th March 2006. She also denied back-dating letters and adding them to files to imply that work had been carried out. Ms Desai explained that Ms Boateng had a grudge against her following her refusal to provide details of all the Family matters she had worked on while at Broadway Solicitors. These had been needed to enable Ms Boateng to apply for a Legal Services Commission Family Law Franchise. Ms Desai's refusal had resulted in unpleasant e-mails and letters and they had not spoken since.
31. When asked why Romana Ahmed should also make a similar accusation, Ms Desai said that she had fallen out with her and had not offered her a job at the end of her training. Ms Desai also denied that she had sought to provide inadequate training.
32. Ms Desai did not agree that her firm had a particularly excessive turnover of staff. However, while she was not a difficult person to work with, she was an employer and did not treat her staff as friends. She also denied employing anyone who would have been in a position of conflict within her firm.
33. In relation to the incident on 7th August 2006, Ms Desai insisted that she had asked her trainee, who had been given the envelope by the Respondent, to write a statement about what had happened. In the event, Romana Ahmed had written a file note. The Respondent had given Ms Ahmed a document in an envelope to put on the file. Ms Desai said that she had been fairly sure that it had been the letter of 15th March 2006 with writing on the bottom. Ms Desai had been very angry and very worried which is why she had made Ms Ahmed write a file note.
34. Ms Desai agreed that the Respondent had left her firm on 30th June 2006 having given the appropriate six months notice and that subsequently she had probably only come back into the office once, on 6th July 2006, at Ms Desai's request, to help with some matters. She had given the Respondent a cheque in payment on that day. Ms Desai said that the Respondent had worked for a couple of hours in a room with a PC but no photo-copier.
35. Leading Counsel referred Ms Desai to the two copies of the Second Letter dated 27th March 2006 examined by the Forensic Expert, one with a facsimile TTI at the bottom of the page showing the date of 11th July 2006 that the Expert found to have been a photocopy. Leading Counsel put it to Ms Desai that she, rather than the Respondent, must have created, those documents because the Respondent could not have produced the faxed letter. Ms Desai denied that she had created the documents.
36. Ms Desai insisted that she could not have produced the letter of 15th March 2006 with the attendance note endorsed on it to the Forensic Expert because that version of the letter was never on the clip of original correspondence. The copy of the unendorsed letter before the Tribunal was a copy of the copy kept by Ms Desai after she had handed the originals to the client Mr HP.

37. Ms Desai agreed that the Respondent had probably been away from the office from 10th March 2006 to 21st March 2006. She explained that any post received for the Respondent during that period would have been date-stamped and placed in her tray, pending her return.
38. Ms Desai confirmed that her note dated 24th July 2006, written during a conversation with Mr Shah, was saying that if there was no copy of a second letter dated 27th March 2006 in the file then her firm was in the clear. She confirmed that her firm had professional indemnity insurance and that any payment out would have affected the future premiums of her firm. However, she did not think that the Respondent had had a financial interest in the matter.
39. In response to a question from the Tribunal, Ms Desai explained that she had not taken a copy of the material in the envelope on 7th August 2006 because she had not wanted anything to do with it. Although she had telephoned The Law Society for help, she had not realised for some time what was happening.
40. In clarification, Leading Counsel explained to the Tribunal that if an act of negligence had occurred it was on 31st March 2006 when the time for the filing of the notice under the Landlord & Tenant Act had expired. The Respondent had filed a Claim for protection of tenancy on behalf of her client on 7th June 2006, when she was still employed by Broadway Solicitors. Accordingly, the Respondent had no financial interest in making or avoiding an insurance claim.
41. In re-examination, Ms Desai confirmed that under cover of her letter of 5th December 2007 to the SRA, she had sent both a copy of the original letter from Shah & Burke, Solicitors dated 15th March 2006, without the endorsement and a copy of that letter with the endorsement. She explained that the copy without the endorsement was from the correspondence clip containing all the copies of the original clip and the copy letter with the endorsement would have come into her possession either from the insurers or perhaps from the SRA. She said that what had started as a small file had become very large as she had received numerous copies of documents and correspondence in the 16 month period before her letter of 5th December 2007 to the SRA.
42. Ms Desai confirmed that on 12th July 2006, at the end of her firm's retainer, she had handed to Mr HP all the original documents on his file, together with a copy of all the papers on the correspondence clip. On 25th July 2006, Ms Desai confirmed that she released the original papers on the correspondence clip to the client, keeping a photocopy of those papers for her file.
43. Ms Desai confirmed that a copy of a letter dated 11th July 2006 together with attachments faxed from Shah & Burke Solicitors to Broadway Solicitors on 11th July 2006 would have been among the papers handed over to Mr HP on 12th July 2006.

44. Ms Desai explained that while she now understood the relevant issues, at the time she had had no idea about Landlord & Tenant Law.
45. Ratilal Devchand Bhoja Shah gave evidence. He referred to and relied upon his statements made in proceedings in the Wandsworth County Court. He confirmed that at the material time he had been the senior partner in the firm of Messrs Shah & Burke Solicitors. He had been in practice for some 35 years. He explained that he had been acting for the Landlord and the Respondent for the Tenant. The Tenant's application in the County Court had been struck out because his application for a new tenancy had been made out of time.
46. Mr Shah said that there had been negotiations about the terms of a new tenancy during 2005 and 2006. One of the issues had been the period of the rent review; the Landlord wanting three years, the Tenant five years.
47. Sometime in December 2005 there had been a request for an extension of time which he had granted until 31st March 2006. Mr Shah referred to his letter of 31st January 2006 confirming the extension.
48. On 22nd March 2006 he had had a telephone conversation with the Respondent. She had told him that an agreement had been reached. Mr Shah explained that he had taken his client's instructions and had written to the Respondent on 27th March 2006, referring to their conversation on 22nd March and the terms of their agreement. He had subsequently received the Respondent's letter of 28th March 2006 which had referred to their telephone conversation of 22nd March 2006. That letter had not referred to any further extension. Neither had a subsequent letter of 3rd April 2006 from the Respondent.
49. Mr Shah insisted that he did not have a telephone conversation with the Respondent on 27th March 2006. He stressed that, had he granted an extension, he would have made a telephone attendance note and would have confirmed the extension in writing, as he had done previously. Moreover, if he had agreed an extension it would have been to a specific date.
50. He confirmed that the Second Letter dated 27th March 2006 had not been sent by his firm. It had contained his reference but the signature had not been his. Mr Shah said that he had not seen the Second Letter of 27th March 2006 until sometime in July 2006.
51. In cross-examination, Mr Shah confirmed that he had been the Senior Partner in his small, suburban firm until 30th November 2009. He agreed that it was his normal practice to respond as soon as he could but that it was not true that his firm had been short of secretaries and that he had never said that it had been.
52. Mr Shah denied that he had frequent telephone calls from the Respondent in relation to the matter. Until all the terms had been agreed by the clients there would have been no need to telephone for the draft lease. He stressed that his client Company had had two



directors, one of whom had been available at all times to give instructions and he would never have said that it would take two to three months to take instructions.

53. Mr Shah agreed that in Landlord & Tenant cases great care must be taken because time limits are strict and that one should always make an attendance note. He confirmed that when he had sent the letter of 27th March 2006 he had believed that agreement on terms had been reached. Although he had his file with him, he agreed that he could not find telephone attendance notes for either 22nd March 2006 or 27th March 2006. Mr Shah stressed that if he had agreed to an extension he would have made an attendance note. However, he explained that he would not have agreed by telephone without first taking his client's instructions. In the particular case the lease had expired in 2005 and a further extension would probably not have been agreed.
54. Looking at his letter of 27th March 2006, Mr Shah did not agree that the word "recent" had referred to a telephone conversation that had taken place on that day. He agreed that it had referred to the telephone conversation of 22nd March 2006 of which he did not have an attendance note on his file. Mr Shah said that he could not remember if anything had been said about an extension of time during the telephone conversation of 22nd March 2006. However, in the absence of an agreement in writing, there could be no binding agreement.
55. Mr Shah agreed that his letter of 30th May 2006 to the Respondent at Broadway Solicitors had referred to the fact that Mr HP's application to the Court had been time-barred. However, he agreed that his clients had still been prepared to negotiate to renew the lease and stressed that such a situation was not unusual. No draft had been submitted until 11th July 2006.
56. Mr Shah said that he had considered that the Claim Form, issued on 7th June 2006, had been both misleading and out of time.
57. In re-examination, Mr Shah said that he had believed that the agreement for extension of time, referred to in the Claim Form, had been the one referred to in his letter of 31st January 2006, that was to the 31st March 2006.
58. Mr Shah explained that he had made his first statement in the county court proceedings on 25th July 2006, not long after the relevant events.

#### **Evidence called on behalf of the Respondent**

59. The Respondent gave evidence. She confirmed that both the contents of her letter of 29th October 2007 to the SRA and her statement, dated 25th July 2006, in the county court proceedings were true.
60. The Respondent gave the Tribunal details of her professional history. She said that Ms Desai had not been an easy person to deal with and consequently there had been a high turn-over of staff at the firm.

61. Turning to the copy of the letter of 15th March 2006 endorsed with her note, the Respondent explained that she had written her telephone attendance note on the relevant letter, as she usually did, and that all the terms had been agreed. On the 27th March 2006, the Respondent said that she had asked Mr Shah to give her reasonable time to deal with the lease. She had been expecting Mr Shah to send confirmation in writing and the lease. All the terms had been agreed so she had thought that “two to three months” was a reasonable time to organise the lease.
62. The Respondent said that she was aware now, but had not been aware at the time, that a verbal agreement for an extension of time was not valid unless confirmed in writing.
63. The Respondent noted that what she claimed was a copy of the original letter of 27th March 2006, with her endorsement, had a clearer date stamp on it than the copy of what was claimed by Ms Desai to be a copy of the original letter on the correspondence clip. She stressed that she had had the original of the letter of 15th March 2006 with a date stamp in front of her when she had been speaking to Mr Shah on 27th March 2006 and she had recorded her telephone attendance on it. She had been away from the office, in the USA, from 10th – 21st March 2006.
64. The Respondent said that she did not have an attendance note of her telephone conversation of 22nd March 2006 but she did have one of her telephone conversation of 27th March 2006, endorsed on the original copy of Shah & Burke’s letter of 15th March 2006. When she had received Shah & Burke’s letter of 27th March 2006, she had believed that the words “refer to our recent telephone conversation” had referred to their conversation on 27th March 2006. Moreover, she had believed that their agreement in that conversation had legal effect.
65. If the unendorsed copy of a letter dated 15th March 2006 had been a copy of an original, the Respondent could not understand why the date stamp, used by the firm, had been so faint.
66. The Respondent explained that when she received Shah & Burke’s letter of 30th May 2006 she had made an application in the first week of June 2006 in order to protect her client.
67. The Respondent stressed that although Shah & Burke’s letter of 27th March 2006 said that terms were agreed, she had realised that it would take months and not days to conclude the agreement which is why she had telephoned Mr Shah on 27th March 2006, both to get an extension of time and to chase him for the lease.
68. The Respondent explained that there had not been a good relationship between the Landlord and the Tenant and referred to correspondence with the Landlord’s previous solicitors in 2005.

69. The Respondent stressed that she had not forged the Second Letter dated 27th March 2006 from Shah & Burke, Solicitors. However, she accepted that it was a forgery. She referred to her letter to the SRA, dated 6th February 2008, in which she had explained how that Second Letter had come to her attention. It had not been on the file whilst she had been dealing with that file whilst at Broadway Solicitors otherwise she would have made reference to it. She had found it amongst the papers when the full set of the file had been given to her.
70. The Respondent explained that she had not been at Broadway's offices on 11th July 2006 and she had not produced the forged letters.
71. The Respondent said that she had taken on the client, Mr HP, because Broadway Solicitors had told her that they had the draft lease. Her retainer had been just to complete the lease which she had been told had been sent. She had started up APT Solicitors in just two rooms with a lap-top and an ink-jet printer.
72. On 7th August 2006 the Respondent said that she had dropped her daughter off at school and had been trying to give Ms Desai a letter of consent to transfer a file. She insisted that what she had delivered had not been a copy of the letter of 15th March 2006 endorsed with her attendance note. The only time that she had seen Ms Desai after leaving the firm had been on 6th July 2006 when she had gone to Broadway's offices to do some dictation on her old files. She insisted that she had never tried to give Ms Desai any documents. Neither had Ms Desai ever discussed the Second Letter dated 27th March 2006 with her.
73. The Respondent said that she had told Mr Shah about the Second Letter dated 27th March 2006, not knowing that it had been forged. She had also spoken to his partner, Mr J Patel, to confirm that she had the letter.
74. Dealing with her letter of 28th March 2006 to Shah & Burke, Solicitors, the Respondent said that she had been sending the usual general threat in her first paragraph and it was just a co-incidence that it had expired on the 31st March 2006, the same date as that of the first extension. When she had made previous threats, Shah & Burke, Solicitors had said that they did not want to waste the Court's time.
75. In cross-examination, the Respondent said that when she had referred to attaching "the same" in her statement of 25th July 2006, she had been referring to a copy of her telephone attendance note endorsed on the letter of 15th March 2006 and not to the Second Letter of 27th March 2006.
76. She insisted that she had found the Second Letter of 27th March 2006 in the file with the draft lease documents. The file had been in a mess and initially she had believed the letter to be genuine. It had not been in the file when she had been working at Broadway Solicitors because if it had she would have referred to it in correspondence.

77. The Respondent agreed that, having spoken to her client, she had written to Shah & Burke, Solicitors on 24th July 2006, shortly after she had had sight of the file of original correspondence, referring to a copy of what she had believed to be their Second Letter of 27th March 2006, extending time. The Respondent agreed that on 24th July 2006 she had also sent a copy of that Second Letter to her client.
78. The Respondent agreed that she had not had a discussion with Ms Desai about the extension of time.
79. The Respondent insisted that the whole scale of the copy of the letter of 15th March 2006, without her endorsement, was different to the copy of the original letter, with her endorsement, and that she had endorsed the telephone attendance note and the time and not later.
80. The Respondent said that “our recent telephone conversation” in Shah & Burke’s genuine letter of 27th March 2006 had referred to the conversation on 27th March 2006 and not that of 22nd March 2006.
81. Dealing with her letter to Shah & Burke dated 28th March 2006, the Respondent explained that she dictates very fast and that the date of 22nd March 2006 in the first letter should have 27th March 2006, as she had dictated it. Her telephone call on 27th March 2006 to Mr Shah had been both to extend the time limit and to complete the terms of the lease. In addition, her client had given her further instructions that had superseded those at the time of the telephone conversation.
82. The Respondent explained that when writing her letter of 3rd April 2006 to Mr Shah, she had been relying on the extension granted, orally, on 27th March 2006. She had been new to Landlord & Tenant work.
83. She confirmed that when she had made her statement in the proceedings on 25th July 2006, she had believed that the Second Letter of 27th March 2006 had been a genuine letter. She had exhibited the forged letter. All the terms of the lease had been agreed and she had to apply to the Court because the other side was going back on its word. She had explained to Counsel, instructed in the County Court proceedings, that she did not have the original of the Second Letter of 27th March 2006.
84. The Respondent agreed that she had not mentioned the further extension, granted on 27th March 2006, in her application to the Court as filed on 7th June 2006.
85. She said that she would not have taken on the file of Mr HP again after she left Broadway, if had been aware of any problems.
86. While she agreed that Ms Desai had no motive or knowledge of Landlord & Tenant Law, the Respondent said that the contents of the Second Letter of 27th March 2006 had just been copied from her telephone attendance note of 27th March 2006.

87. In re-examination, the Respondent identified the copy of the annotated letter of 15th March 2006 that had been sent to the Expert as it had been marked LE03806 [12] at the top right. It had been the original and not a copy letter. The Respondent noted that on the copy of the alleged original, without the endorsement, the over-lined words THIS FIRM IS REGULATED BY THE LAW SOCIETY did not appear.
88. The Respondent explained that when she had referred to attaching “the same” in her statement of 25th July 2006, while she had meant the attendance note of 27th March 2006, she had attached both of the letters from Shah & Burke dated 27th March 2006. She had discovered the Second Letter loose in the documents delivered to her by her client and once she had become aware that there was a dispute about the letter, she had telephoned Mr J Patel, Mr Shah’s partner.

### **Request by the Tribunal**

89. On the second day of the hearing the Tribunal asked if it could be provided with the copy of the original letter, dated 15th March 2006, made by Ms Desai or with a better copy of that copy as the copy before the Tribunal had been badly copied and did not reproduce the full size of the letter and the bottom of the letter appeared to have been cut off before the “Regulated by etc”.
90. The Applicant explained that previous attempts by the SRA to obtain that copy had not been successful. Following a ‘phone call that morning to Ms Desai, the Applicant was able to inform the Tribunal that the copy retained by Ms Desai and produced some time in July 2006, did not show the words “REGULATED BY THE LAW SOCIETY” on the bottom of the page.

### **Further Evidence on behalf of the Respondent**

91. Leading Counsel referred to the statement of Romana Ahmed dated 1st November 2007 that was before the Tribunal. He explained that Ms Ahmed was unable to be present as she was in Pakistan. Mr Newman applied for her statement to be treated as part of the record. There was no objection by the Applicant. The Tribunal allowed the application and stated that the evidential value of the Statement would be assessed accordingly.
92. Abiola Boateng gave evidence and relied on her statement dated 30th October 2007. She gave the Tribunal details of her professional history, including that she had been a trainee at Broadway from 1999 to 2001 and thereafter a salaried partner until she left in 2005.
93. Although, as a trainee, she had been mostly supervised by the other equity partner, Ms Boateng said that, on more than one occasion, Ms Desai had told her to prepare a backdated letter which sometimes she had been told to send out and sometimes not. As a trainee, although she wondered why the letters had not been prepared at the time, she had just done as she had been told. Ms Boateng said that she had no grudge against Ms Desai.

94. In cross-examination, she agreed that there were some inaccuracies in her statement in that she had qualified in 2001 and that Ms Desai was the training principal in the firm although most of her supervision had been undertaken by the other equity partner, Ms Parveen, because she was more approachable. As a trainee, Ms Boateng said that she had had no files of her own but had worked on both Ms Desai's and Ms Parveen's files. She explained that, as a trainee, one did not always know what one should or should not do. She said that you were just told to do something and you did it.
95. Ms Boateng agreed that she had asked for details of files from Ms Desai when she had been applying for a Family Law franchise. Although Ms Desai had said that she had not got the manpower to provide full details of the files, she had provided a list which had been sufficient. There had been no issues of confidentiality involved.
96. Ms Boateng explained that she had been approached by the Respondent, with whom she was still in contact with on a professional level as the Respondent undertook conveyancing work. She had prepared a very rushed statement for The Law Society, in a couple of minutes. She had not known what the issues were at the time of her statement and still was not clear what the case was about.

#### **Submissions on behalf of the Respondent**

97. Leading Counsel stressed that, because of the potentially serious consequences for the Respondent, there was a heavy burden on the Applicant, on behalf of the SRA, to prove the allegations against the Respondent beyond all reasonable doubt.
98. Mr Newman QC invited the Tribunal to look in detail at the three remaining allegations. The first related to what had been said in a brief telephone conversation, between the Respondent and Mr Shah, some four years ago. Leading Counsel handed in a typed print-out of the handwritten note endorsed on the letter of 15th March 2006 by the Respondent. He reminded the Tribunal of the Respondent's evidence about her letter of 28th March 2006; that she dictates fast and the 22nd should have read 27th.
99. Leading Counsel referred to Shah & Burke's undisputed letter of 27th March 2006 which, he submitted, was consistent with the telephone conversation that the Respondent said had taken place that day. Moreover, Mr Shah had not made a telephone attendance note for either the conversation of the 22nd March 2006 or for that of 27th March 2006, both relevant conversations relating to agreed terms. However, the Respondent had made an attendance note of that brief conversation on 27th March 2006 that had taken place some four years ago.
100. Mr Newman QC submitted that Mr Shah had been a confrontational witness in that he had appeared to be extremely suspicious of everything put to him. At one point Mr Shah had even denied a question before it had been fully put to him.
101. Leading Counsel submitted that the first paragraph of the Respondent's letter of 28th March 2006 had been consistent with Shah & Burke's letter of 27th March 2006. The

letter of 27th March 2006 had reflected the fact that all the terms had been agreed. However, it had been obvious that the lease could not have been completed within a few days and therefore there would have been talk about an extension. Mr Shah did not remember that there had been talk of an agreed extension but the Respondent did. Leading Counsel submitted that there had been a different interpretation and emphasis by both parties and further that, in the absence of any attendance note, it was unrealistic to expect that Mr Shah would remember the details of the conversation.

102. Mr Newman QC referred to the Respondent's evidence that at the time of the conversation she had believed that a verbal extension had been granted and she had made a note of it. He submitted that the only reason why she would have ignored the time limit was because she had believed that an extension of time had in fact been granted by Mr Shah.
103. Leading Counsel submitted that Mr Shah was a totally honest and self-assured witness who was wrong. While the situation would have been totally different had Mr Shah made an attendance note, as it was, at the very least, allegation one, he submitted, had not been proved beyond all reasonable doubt.
104. Leading Counsel invited the Tribunal to attach no importance to the copy of Shah & Burke's letter of 15th March 2006, without the Respondent's endorsement of her telephone attendance, because it had an almost invisible date stamp which was strange for a supposed copy of an original and it did not show the words at the bottom "THIS FIRM IS REGULATED BY THE LAW SOCIETY" which had been clearly present and written over by the Respondent in the endorsed original. Mr Newman QC noted that the Expert, Dr Giles, had received the unendorsed copy of the letter of 15th March 2006 from Broadway Solicitors. He submitted that the only safe course for the Tribunal to take was not to rely on the copy of the unendorsed letter and therefore to draw no adverse inferences from it. Leading Counsel noted that Ms Desai had been invited, on a number of occasions, to produce her file with the original copy of the original document that she had made, but she had failed to do so.
105. In all the circumstances Leading Counsel invited the Tribunal to find allegation one not proved.
106. Turning to allegations two and three, Leading Counsel submitted that there was a complete over-lap between those allegations in that both amounted to production. He referred the Tribunal to the Respondent's statement of 25th July 2006 in which she had stated to the Court that she was producing everything that she possessed in connection with the matter and its history.
107. Mr Newman QC referred to the two versions, before the Tribunal, of the forged Second Letter of 27th March 2006. He submitted that one was the original forgery and the other a purported fax of the forged letter transmitted on 11th July 2006. Further, he noted that Ms Desai had been a difficult employer with frequent staff turn-over and moreover with a practice of making up false documents and inserting them in files. He submitted that

neither of the former trainee solicitors, whose evidence was before the Tribunal, had any axe to grind and that no malice on their part had been proved. Leading Counsel noted that the Expert had been unable to conclude who had prepared the two versions of the forged document or on what machine.

108. Turning to the attendance note of 7th August 2006 dealing with the Respondent's collection of papers and alleged delivery of papers, Leading Counsel submitted that Ms Desai had been seeking to mislead the Tribunal when she said that her Trainee had written the attendance note. He submitted that the note had clearly, by its use of the words "my", "I" and "me", been prepared by Ms Desai and had reflected her own knowledge.
109. Turning to the forged Second Letter with the fax footer of 11th July 2006, Leading Counsel noted that the last day that the Respondent had been in Broadways' offices was 6th July 2006. The first batch of correspondence on the file collected by Mr HP, on or about 12th July 2006, had been copies. The first time the Respondent had seen the forged Second Letter had been on or about 24th July 2006 when she had sent a copy of that Second Letter to Shah & Burke. Leading Counsel submitted that if the Respondent had created such a letter she would have been crazy to write her letter of 24th July 2006 enclosing a copy of a letter that she knew Shah & Burke would immediately recognise as a forgery.
110. However, Leading Counsel submitted that Ms Desai was a serial forger, who had lied to the Tribunal about the preparation of the attendance note of 7th August 2006. Moreover, the insurance claim for the missed deadline would be a claim by her firm with all its consequences. There was uncertainty about both the fact of and the content of the conversation between the Respondent and Mr Shah. The Respondent had retained the file, not because she wanted to keep the client, but because Ms Desai had begged her to do so.
111. Leading Counsel submitted that in relation to all the allegations leading to the devastating proceedings against the Respondent, who in 2006 had been a relatively inexperienced solicitor, the Applicant, on behalf of the SRA, had failed to prove any of those allegations beyond all reasonable doubt.

#### **Clarification by the Applicant**

112. In reply, for the purposes of clarification only, the Applicant explained that the second allegation related to the creation or preparation of a document and the third allegation to the use of that document in court proceedings.

#### **The Decision of the Tribunal**

113. The Tribunal noted that the case was factually complex and involved conflicting evidence. The Tribunal had considered all of the evidence before it, both oral and written, together with the submissions of the Applicant and those on behalf of the Respondent and



was satisfied, to the higher standard of proof, beyond all reasonable doubt, that the three allegations against the Respondent had been proved. Moreover, that in acting as she had the Respondent had been dishonest.

114. The first allegation involved a finding of fact by the Tribunal as whether or not a telephone conversation took place on 27th March 2006 between the Respondent and Mr Shah. The Tribunal considered that Mr Shah was a good, credible and reliable witness. His evidence was that he had not spoken on the telephone on 27th March 2006 to the Respondent and that he had not agreed to any further extension of time for the negotiations relating to a new lease. Moreover, if he had agreed to an extension, it would have been to a specific date and not in the vague terms of two to three months and, as he had done for the extension to 31st March 2006, he would have confirmed it in writing.
115. The Respondent's evidence was that there had been a telephone conversation and that she had recorded it on Shah & Burke's letter of 15th March 2006. An extension of some two to three months had been agreed. Moreover, her letter of 28th March 2006 had been written after that conversation of 27th March 2006 and the date of the 22nd in that letter should have been the 27th. The reference to the issue of proceedings at the end of the week had been just the usual seven day warning and not a reference to 31st March 2006 as the end of the agreed period of extension.
116. The Tribunal preferred and accepted Mr Shah's evidence.
117. Mr Newman QC had referred to Mr Shah's failure to make a telephone attendance note following his conversation with the Respondent on the 22nd March 2006. The Tribunal was satisfied that Mr Shah's letter of 27th March 2006 had recorded that telephone attendance. The Tribunal accepted that there had been no note of a telephone conversation on 27th March 2006 but was satisfied that that was because there had been no telephone conversation on that day between Mr Shah and the Respondent. In addition, Mr Shah was an experienced, conveyancing solicitor aware of the requirements of the Landlord & Tenant Act and the Tribunal accepted that had he agreed to an extension it would have been to a specific date and confirmed in writing. As to difficulties in recalling events some four years afterwards, the Tribunal noted that Mr Shah had made three statements in the court proceedings relating to the lease. His statements of 25th July 2006, 9th August 2006 and 31st August 2006 were consistent with his evidence before the Tribunal. Moreover, the Tribunal did not accept that Mr Shah was a confrontational witness.
118. While noting the Respondent's relative inexperience in 2006, the Tribunal did not accept her evidence that she had written the letter of 28th March 2006, one day after the purported telephone conversation, and had failed to mention the fact of the extension. The first paragraph of that letter in particular was not consistent with such an extension. The Tribunal was satisfied that the threat to submit the application to the Court by the end of the week was not a usual seven day warning but a reference to making the application with the time limit that expired on 31st March 2006.

119. Ms Desai gave evidence that on or about 25th July 2006 she had photocopied the original correspondence on the file and had handed the original correspondence to Mr HP, keeping the photocopies on her firm's file. She explained that the copy of the original letter of 15th March 2006 that she had made, had not contained an endorsement by the Respondent. The copy before the Tribunal was an imperfect copy in that the whole page had not been copied. In the light of its concerns about the quality of the photocopying and in the absence of a proper full copy of the original letter, the Tribunal did not rely on that evidence.
120. The Tribunal found that there had been no telephone conversation, between the Respondent and Mr Shah, agreeing an extension of time on 27th March 2006 and that in claiming that such extension had been granted the Respondent had produced false and misleading information, including a false telephone attendance note. In producing such a note the Tribunal was satisfied that the Respondent's conduct was dishonest by the standards of reasonable and honest people and that she herself had realised that by those standards her conduct had been dishonest.
121. The second allegation involved a finding by the Tribunal as to whether or not the Respondent had created or prepared a copy of a letter dated 27th March 2006 referred to as the "Second Letter" or had caused the production of that letter. The Tribunal also referred to that letter as the Second Letter.
122. The third allegation was linked to the second in that it involved a finding by the Tribunal as to whether or not the Respondent had used the Second Letter in the Court proceedings knowing that it was a forgery.
123. There was no dispute between the parties as to the fact that the letter was a forgery. The Tribunal was greatly assisted by the Report of the Forensic Examiner dated 4th December 2006. The Examiner had considered the two copies of the Second Letter dated 27th March 2006, one with a fax footer of 11th July 2006 and one without any footer. The Examiner had found that neither of the two copies of the Second Letter had been an original received facsimile transmission. Both were photocopies. She had concluded in her Report that there was strong support for the view that the copy of the Second Letter, without the fax footer, was not a copy of a genuine letter but was a composite document contrived to appear so. The Examiner had found conclusive evidence that the copy of the Second Letter, with the fax footer of 11th July 2006, had not been produced as a result of a further independent transmission of either the original, or of a photocopy of the Second Letter from Shah & Burke. She had concluded that the copy of the Second Letter, with the fax footer, had been a direct copy of the Second Letter, without the fax footer, to which had been added a copy of a Transmitting Terminal Identifier.
124. The evidence of Ms Desai was that she had never seen the Second Letter and that she had had no copy of it on the clip of photocopied correspondence that she had retained.

125. Ms Desai had said that on 7th August 2006 the Respondent had delivered papers to her trainee to be put on the firm's file relating to Mr HP. In her statement of 23rd October 2008, Ms Desai had said that she could not say for certain what was in the envelope delivered by the Respondent to the firm and that she had not been certain whether she had opened it or not. However, she went on to say that she had suspected that it had been a copy of the endorsed letter of 15th March 2006. In her oral evidence, Ms Desai had said that she had been fairly sure that the envelope had contained a copy of the endorsed letter of 15th March 2006. In addition, she had asked her trainee, Ms Ahmed, to make a statement for the file about the matter.
126. The Respondent had agreed that she had delivered some documents on 7th August 2006 but had denied that those documents had been related to her client Mr HP.
127. Mr Newman QC had put it to Ms Desai that, given the style of the attendance note of 7th August 2006, she, rather than her trainee, had written it. Ms Desai had denied that she had written the note. Leading Counsel had submitted that Ms Desai's evidence on the matter affected the credibility of all her evidence.
128. The Tribunal noted that it had never been disputed that a document had been handed over on 7th August 2006 to the trainee, Ms Ahmed. The Tribunal considered that it was unfortunate that Ms Ahmed had not been able to give live evidence to enable the issue relating to the authorship of the attendance note to be tested. The Tribunal was able to give appropriate weight to that part of Ms Desai's evidence, in that the Tribunal was not satisfied that it had been proved beyond all reasonable doubt that the Respondent had tried to deliver a copy of the endorsed attendance note for inclusion on the firm's file on 7th August 2006. However, the Tribunal was unable to conclude from the evidence before it that Ms Desai had been the author of the attendance note.
129. In assessing the evidence of Ms Desai, the Tribunal had taken note of the live evidence of Ms Boateng and of the written evidence of Ms Ahmed as to the backdating of correspondence. Ms Desai had denied any backdating and the Tribunal accepted her evidence. Ms Ahmed had not been available to give live evidence and in those circumstances the Tribunal had attached little weight to her evidence. The Tribunal considered that Ms Boateng's statement had been inaccurate in a number of respects and moreover that the witness clearly had issues with Ms Desai. Leading Counsel submitted that Ms Desai had been a serial forger. The Tribunal did not accept that submission.
130. The evidence of the Respondent was that she could not have created the Second Letter because she had had no opportunity to do, particularly in the light of the TTI date of 11th July 2006 on the fax footer. Moreover, that she had no motive to create such a letter, while Ms Desai had a motive as the Principal of the firm with an insurance risk.
131. The Tribunal accepted the evidence of Ms Desai that she knew very little about Landlord & Tenant law and that she had been unaware of any problems with Mr HP's matter until contacted by Shah & Burke in late July 2006 when they had enquired about the Second Letter.

132. The Tribunal noted that copies of all the correspondence on the file had been passed to the client by Ms Desai on or about 12th July 2006 and the original correspondence on 25th July 2006. The Respondent had exhibited a copy of the Second Letter with her statement dated 25th July 2006 in the court proceedings. The Tribunal particularly noted paragraph 12 of her statement in which the Respondent had referred to attaching confirmation of her telephone conversation. In the context of the whole paragraph, the Tribunal was satisfied that the Respondent had been referring to the Second Letter. Although noting that the Landlord's solicitors had denied that the letter was their letter, the Respondent maintained, in her statement, that it was their letter.
133. The Tribunal did not accept the Respondent's evidence in relation to the Second Letter. There was no dispute between the parties as to the fact that that the letter had been forged. The Respondent had had conduct of the file until she left the firm on 30th June 2009. Had a Second Letter, dated 27th March 2007, arrived from Shah & Burke, the Respondent would have been fully aware of it. Indeed, when she received Shah & Burke's letter of 30th May 2006 referring to her failure to apply to the Court within time, had the Second Letter existed then, the Tribunal found it inconceivable that she would not have referred to it.
134. The Tribunal did not accept that the Respondent had had no opportunity to create the Second Letter or to cause it to be created. From on or about 12th July 2006, when Broadway Solicitors had released copies of all the correspondence to the client, until 23rd July 2006, when a copy of the Second Letter had been sent by the Respondent to Shah & Burke, the Respondent had had access to the material necessary to create the Second Letter. Copies of the correspondence released on or about 12th July 2006 would have included Shah & Burke's letters of the 6th July 2006 (including a second letter marked as a second letter in the same place as the forged Second Letter) and 11th July 2006, the latter also sent by fax.
135. The Tribunal was satisfied beyond all reasonable doubt that the Respondent had both created the Second Letter or had caused it to be created and had produced it in Court proceedings when she had known that it was not genuine. In acting in that way, the Tribunal had been satisfied that the Respondent's conduct had been dishonest by the standards of reasonable and honest people and that she herself had realised that by those standards her conduct had been dishonest.

#### **Mitigation on behalf of the Respondent**

136. Mr Newman QC made an application for an adjournment to enable the Respondent to produce testimonials. The Applicant took a neutral stand on the application.
137. The Tribunal refused the application for an adjournment. The Tribunal noted that, given the allegations of dishonesty, it had been open to the Respondent to submit testimonials as part of the evidence. Even if she had decided not to do so, she should have been aware that had she wished to make use of the same in mitigation, testimonials would need to be

available on the day of the hearing. Moreover, the Tribunal had made findings of dishonesty and it was in the public interest to deal with sanction without delay.

138. Mr Newman QC submitted that what had taken place some four years ago had been a one-off matter at a time when the Respondent had been young and relatively inexperienced. The Respondent had made no financial gain whatsoever. Ms Desai had not been a good role model.
139. Mr Newman QC gave the Tribunal details of the Respondent's financial circumstances; a single parent with two small children who would lose everything if unable to continue her practice as a solicitor. He asked the Tribunal to consider the Respondent's poor financial circumstances when considering costs.
140. The Applicant handed in a schedule of costs and asked for a fixed order to be made.

#### **The Decision of the Tribunal as to Penalty and Costs**

141. The Tribunal considered that, given its findings of dishonesty in relation to each of the three allegations, it was necessary, both for the protection of the public and for the maintenance of the reputation of the Profession, to order that the Respondent be struck off the Roll of Solicitors with immediate effect and it so ordered. The Tribunal fixed costs in the sum of £11,154.71 and ordered that they be paid by the Respondent. However, because of her financial circumstances, the Tribunal ordered that its order for payment was not to be enforced without its leave.

#### **The Respondent's application for a stay of the Orders**

142. Mr Newman made an application for a stay of the orders. However, the Tribunal refused the application because of its findings of dishonesty.

Dated this 25<sup>th</sup> day of February 2010  
On behalf of the Tribunal

Miss A Banks  
Chairman