No. 10199-2009

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ABUID KARATE KAIHIVA, solicitor (First Respondent)

- and –

[RESPONDENT 2], solicitor (Second Respondent)

Upon the application of Stephen John Battersby
on behalf of the Solicitors Regulation Authority

Miss J Devonish (in the chair)
Mr R Hegarty
Mrs C Pickering

Date of Hearing: 4th May 2010

FINDINGS AND DECISION

Appearances

Mr Stephen John Battersby, solicitor and partner of Jameson and Hill, 72-74 Fore Street, Hertford SG14 1BY appeared for the Solicitors Regulation Authority ("SRA").

The Respondents did not attend and were not represented.

The application was dated 23rd February 2009 and a supplementary statement was dated 24th November 2009. There was also a second supplementary statement dated 25th March 2010.

Allegations

The allegations against both Respondents were that:

1. They failed to keep their records of account properly written up contrary to Rule 32 Solicitors Accounts Rules 1998 ("SAR").

2. They withdrew monies from client account other than as permitted by Rule 22 SAR.

3. They failed to remedy breaches of the SAR promptly upon discovery contrary to Rule 7 SAR.

The allegation against the First Respondent, Abuid Karate Kaihiva only was that:

4. He failed to ensure that his practice and the work carried out for clients was properly supervised, contrary to SPR 13 and Rule 5.03 Solicitors Code of Conduct 2007 ("SCC").

5. He failed to ensure that lender clients were notified of material particulars in conveyancing transactions contrary to Rule 1 of the Solicitors Practice Rules 1990 ("SPR").

6. He failed to take proper and adequate steps to guard against mortgage fraud, contrary to SPR Rule 1.

7. He failed to provide accounting documents to an officer of the SRA promptly upon request, contrary to Rule 34 of the SAR.

8. He entered into practising arrangements with other solicitors which were improper and misleading, contrary to Rule 1 SPR.

9. He failed to ensure that clients were given full and proper information about costs, Counsel's fees and disbursements prior to deductions being made from monies received on their behalf, contrary to Rule 15 SPR 1990.

10. He failed to comply with a request to apply for a Remuneration Certificate, contrary to note 2 of Principle 30.07 of the Guide to the Professional Conduct of Solicitors 1999 and Rule 20.03 SCC 2007.

11. [withdrawn]

The further allegations against both Respondents were that:

12. [withdrawn]

13. They failed to exercise appropriate supervision over all staff and ensure adequate supervision and direction of clients' matters contrary to Rule 5 SCC 2007.

14. They failed to ensure compliance with undertakings given by their firm, contrary to Rule 10.05 SCC 2007.

15. They failed to prevent monies held on behalf of one client from being used for the purposes of another client, contrary to Rule 30 SAR 1998.

16. They behaved in a way likely to diminish the trust which the public placed in them and the profession by failing to pay a premium due to the Assigned Risks Pool contrary to Rule 1.06 SCC 2007.

The First Respondent's application to adjourn

1. The Tribunal had before it a letter dated 30th April 2010 from the First Respondent requesting an adjournment on the grounds that it would enable him to instruct

solicitors to attend, defend and represent him. The First Respondent indicated that he had been unable to instruct solicitors due to his financial position, and that an adjournment of one month would enable him to do so.

2. The Applicant opposed the application. It was clear the First Respondent was aware of today's proceedings. Originally, the substantive hearing against the First and Second Respondents was due to take place on 7th January 2010 but due to the extreme weather conditions, that hearing was cancelled. Between the date of that hearing and today, the Applicant had issued a further supplementary statement dated 25th March 2010 which had been sent to both Respondents at their last known address. The Applicant submitted that the Second Respondent was aware of the allegations as he had called at the Applicant's office in late December 2009 to collect all the papers. The Applicant had made the Second Respondent aware of today's hearing but had not received any response from him. As a result of the intervention into the firm, both Respondents' practising certificates had been suspended.

3. The First Respondent had not suggested that he was too ill to attend the hearing and had not provided any medical evidence to confirm this. The Applicant referred the Tribunal to the cases of Jawid Ahmed Yusuf v The Royal Pharmaceutical Society [2009] EWHC 867 (Admin) and also to the case of R v Jones [2002] UKHL 5. Both cases dealt with circumstances in which the Court could proceed in the absence of the Respondent. In the case of Yusuf v The Royal Pharmaceutical Society it was found that Yusuf was too ill to attend, and the Applicant referred the Tribunal to the criteria to be used when making such decision. In this case, the First Respondent had not provided any medical evidence. The other case of R v Jones confirmed that the Court could proceed in a Respondent's absence where the Respondent had wilfully absented himself. The Applicant submitted that the First Respondent had wilfully absented himself as he knew of today's hearing and had not attended.

4. The Applicant confirmed that the First Respondent had previously been represented by a solicitor and that the first three bundles of documents which formed the main part of the case had been served on his solicitors. The remaining documents had been sent to the First Respondent's last known address, although the Applicant admitted that that address was not the same address as the one given by the First Respondent in his letter dated 30th April 2010.

5. The Applicant sought the Tribunal's leave to rely upon his second supplementary statement dated 25th March 2010 and his supplementary bundle, the purpose of which was to support the existing allegations. This had been sent to the Tribunal on 21st April 2010. The Applicant accepted that this had been served less than 30 days before the date fixed for today's hearing. He confirmed he would not object if the Tribunal did not allow him to rely upon this statement.

6. The Applicant also sought the Tribunal's leave to withdraw allegation 11 as it had subsequently become apparent that the circumstances surrounding this particular allegation were not clear.

The decision of the Tribunal on the First Respondent's application to adjourn

7. The First Respondent had made an application to adjourn in his letter of 30th April

2010, the basis of which appeared to be that he was in difficulty in defending the proceedings properly and effectively as he did not have any income since he closed down his firm in September, and although he had tried to raise funds, he had not been successful. Restrictions had been imposed by the SRA preventing him from practising as a solicitor and the First Respondent indicated that if an adjournment of one month was granted, he believed he would be able to instruct his solicitor to attend and defend the case. The First Respondent indicated that he could not afford to pay for child care as his partner was abroad and he could not afford the travel fare from Chelmsford to the hearing. The Tribunal considered carefully the letter from the First Respondent but was not satisfied that these were sufficient grounds to grant an adjournment. It appeared that the majority of the First Respondent's letter dealt with mitigation matters and he had not given an indication as to how he would raise the funds required to pay for legal representation he sought, so enabling him to attend before the Tribunal.

8. The Tribunal was mindful of the criteria set out in the case of R v Hayward, Jones and Purvis [2001] EWCA Crim 168 which had to be taken into account in considering whether an adjournment should be granted. The Tribunal had to consider, amongst other factors:

(1) Whether the Respondent had deliberately absented himself and as such waived his right to appear,

(2) The likely length of an adjournment,

(3) Whether the Respondent, although absent, was legally represented, or wished to be legally represented, or by his conduct had waived his right to representation,

(4) The seriousness of the offence which affected the Respondent, victims and the public,

(5) The general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it related and,

(6) Where there was more than one defendant, the prospects of a fair trial for the defendant who was present.

9. The Tribunal was of the view that the First Respondent was clearly aware of today's hearing and had chosen not to appear before the Tribunal and had not arranged legal representation on his behalf. The Tribunal had not been given any indication as to when the First Respondent would have sufficient funds to instruct a legal representative and indeed, it was clear from the First Respondent's letter that he had tried various avenues to raise funds but had been unsuccessful to date. The Tribunal’s Practice Note on Adjournments dated 4th October 2002 stated that lack of readiness and inability to secure representation would not generally justify an adjournment. These were serious allegations that needed to be dealt with and the First Respondent had known of today’s hearing for some time. It was not in the public interest to delay matters further and in all the circumstances, the Tribunal was satisfied that the matter

should proceed in The First Respondent's absence and his application for an adjournment was refused.

10. In relation to the Applicant's application to rely on his second supplementary statement dated 25th March 2010 and his supplementary bundle of documents, which had been sent to the Tribunal and to each of the Respondents on 21st April 2010, this was refused. The Tribunal was not satisfied that the Respondents had been properly served or had been given the opportunity to deal with those further allegations and documents. However, the Tribunal was prepared to allow the second supplementary statement dated 25th March 2010 and the supplementary bundle of documents to lie on the file to allow the Applicant an opportunity to decide whether to pursue those matters further.

11. The Applicant was granted leave to withdraw allegation 11 as requested.

12. The Tribunal confirmed that the case should proceed in the Second Respondent's absence particularly in view of the fact that he had notice of these proceedings, having collected documentation from the Applicant's office in person, indeed, he had provided a written response to all the allegations against him.

Factual Background

13. The First Respondent, Abuid Karate Kaihiva, born in 1959, was admitted as a solicitor on 15th September 2004. His name remained on the Roll of Solicitors and he was in practice in the firm of Kaihiva and Co ("K & Co"), First Floor, 6 Clements Road, Ilford, Essex, IG11 1BA.

14. The Second Respondent, *[Respondent 2]*, born in 1958, was admitted as a solicitor on 15th September 2006. His name remained on the Roll of Solicitors and he was in practice with the First Respondent at the same address.

15. The First Respondent set up the firm of Kaihiva and Co in 2005 and was the Principal Solicitor. The Second Respondent joined the firm as a partner on 1st January 2008. Throughout the relevant period the First Respondent was the only equity partner in the firm, the Second Respondent being a salaried partner. In May 2007 an Investigation Officer ("IO") of the SRA commenced an investigation of the books of account and other documents of Kaihiva and Co at the Ilford Office. At that time there was a second office of the firm at 24a Station Road, Cuffley, Hertfordshire, EN6 1BA, this being the former practice address of Michaels and Co, Solicitors. The First Respondent entered into an agreement on 7th February 2007 with the partners of Michaels and Co who were MO and AH.

<u>Allegation 8 against the First Respondent only</u>

16. At the time that the First Respondent entered into the agreement with the partners of Michaels and Co they were under investigation by the SRA and as a result they appeared before the Solicitors Disciplinary Tribunal on 17th April 2008. One partner, MO, was struck off and another partner, AH, was made subject to an indefinite suspension.

17. During the investigation at Michaels and Co the SRA considered intervening into the practice. However, as Michaels and Co became part of Kaihiva and Co as a result of the agreement dated 7th February 2007, the intervention did not take place and the practice of Michaels and Co continued to be run in the same way from the same premises. The agreement of 7th February 2007 provided:

- MO and AH were to sell the practice to the First Respondent for £1.
- MO and AH were to pay the First Respondent £30,000.
- MO and AH were to practise as self-employed Consultants.
- The duration of the agreement was to be seven years.
- MO and AH were able to make executive and administrative decisions in respect of the Cuffley Office.
- MO and AH were to be liable for the costs of running the Cuffley Office.
- MO and AH were to account to the First Respondent for only 10% of the profits from the Cuffley Office and were allowed to retain the remainder for division between themselves as determined by them.

18. The agreement remained in operation for four months until 8th June 2007 when practising certificate conditions imposed by the SRA in respect of MO and AH made it impossible for it to continue.

Allegations 1, 2 and 3 against both Respondents

19. On 29th May 2007 the IO was provided with the most recent client account reconciliation which was dated 30th April 2006 - over a year earlier. This indicated a cash shortage at that stage of £2,234.08. The First Respondent was given time to rectify the situation and provided a copy of a reconciliation statement as at 31st January 2007 which showed a cash shortage of £64. It contained mispostings and the office section of the client ledger had not been written up at all. Further information was provided to the IO on 14th March 2008 but there was still no evidence that the office section of the client ledger had been written up. It was claimed that there had been a breakdown of the firm's accounts computer in about May 2007 and that the firm's accounting records had, as a result been lost. This required them to be rewritten from May 2005, the date when the practice was set up.

20. There had been shortfalls on the firm's client account at various stages indicating that monies had been withdrawn in circumstances other than as permitted. On 14th March 2003 the First Respondent sent the IO a copy of the latest available reconciliation as at 31st December 2007 which revealed a shortage at that date of £37,419.50 made up of three separate amounts, the largest being £31,699.30. The First Respondent disputed that £1,723.46 was a genuine shortage. A further £3,996.75 was rectified on 3rd March 2008 but the remaining £31,699.30 was still outstanding as at 22nd May 2008 and had been for almost a year. The First Respondent was seeking a loan to remedy the situation.

Allegation 7 against the First Respondent only

21. The First Respondent did not present the firm's books of accounts to the IO at the beginning of the inspection and despite being given further time to do so, the information provided was far from complete and at a meeting on 10th August 2007, the First Respondent agreed that he still needed to complete the writing up of the books to 30th April 2007.

Allegations 5 and 6 against the First Respondent only

22. Four conveyancing transactions had been carried out by an unadmitted fee earner working at the Ilford office under the supervision of the First Respondent where the firm had acted for purchaser and lender. All relevant information was not provided to the lender clients and suitable precautions were not taken to guard against the risk of money laundering. The Tribunal were provided with details of each of these transactions, which included gifted deposits and cashbacks, a deposit that was paid in six separate amounts at five different branches of the same bank, some on the same day, and a discount on the purchase price. The lenders were not informed of any of these factors.

Allegation 4 against the First Respondent only

23. For the period between February and July 2007, the First Respondent was under a duty to supervise both the Ilford office and the office at Cuffley. The two locations were 22 miles apart and the journey between them would take about 45 minutes. It would have been difficult for the First Respondent to supervise both offices properly.

Allegations 9 and 10

24. In the early part of 2006 Michaels and Co were instructed to deal with an employment dispute for two clients, Mrs SK and Mrs NW who had been made redundant by their employers. In April 2006 each client signed a Contingency Fee Agreement which included a provision that if they won the case they would pay a third of the money recovered, inclusive of VAT to Michaels and Co for costs. They would also pay disbursements. This included all fees payable to Counsel. If they lost the case they would not pay Michaels and Co anything.

25. The only other information provided to the clients about costs was in a letter sent to each of them on 2nd August 2006 which stated:

> "As explained in our recent meeting Counsel's fees in this matter are a disbursement and payable irrespective of whether the case is won or lost and I note that you are prepared to proceed on this basis."

26. Employment Tribunal proceedings were concluded on 30th April 2007 (after Kaihiva and Co took over Michaels and Co) by way of a Consent Order which provided that Mrs MW received £25,000 from her former employers and Mrs SK £20,000.

27. The clients believed from this that Counsel's fees would be paid out of the one third portion of the monies recovered by the firm, which by that time was Kaihiva and Co. However Counsel's fees were not incorporated in the one third deduction and were charged separately. Each of the clients therefore received considerably less than she had expected.

28. Mrs MW and Mrs SK instructed solicitors M&P to deal with their concerns about improper deductions from their compensation and Kaihiva and Co were requested on 30th May 2007 to provide a Remuneration Certificate. Kaihiva and Co failed to do so, despite further reminders, and matters were reported to the Legal Complaints Service who investigated. On 17th June 2008 an Adjudicator made a decision in respect of each client limiting the costs of K & Co (including all disbursements, Counsel's fees and VAT) to £8,333.33 in the case of Mrs MW and £6,666.66 in the case of Mrs SK. In addition, each client was awarded £750 compensation for the distress suffered.

Allegations 13, 14 and 15

29. A further investigation of Kaihiva and Co by an IO of the SRA took place on 16th December 2008. At the relevant time the two partners in the practice were the First and Second Respondents. The IO compared a list of liabilities to clients as at 30th November 2008 with funds available to meet those liabilities and found a shortage of £13,552.86. This was caused by ten debit balances on individual client ledger accounts caused by seven overpayments (the largest of which was £10,000) from client bank account and four over transfers. The shortage was replaced by 29th January 2009.

30. In 2002 Mr HJ, an unadmitted caseworker at the firm, became the owner of a residential property at C Lane, London, SE21. He got into financial difficulties and the B&W Building Society obtained a possession order against the property which they planned to enforce in late 2008. In an attempt to avoid repossession Mr HJ arranged to sell the property to Mr BM and obtained a bridging loan from E Limited to delay the repossession to allow the sale to take place. The monies loaned, £605,000, were transferred by E Limited into the Respondents' client account on 30th October 2008. In connection with the loan from E Limited, three separate undertakings as to repayment were made on the firm's notepaper on 24th and 27th October and 11th November 2008. The loan was never repaid.

31. The Respondents stated that they had realised that Mr HJ himself should not have acted in the transaction involving C Lane because of a conflict of interest, and they arranged for it to be dealt with by Miss SC, another fee earner at the firm, who took it over on or about 3rd November 2008. The £605,000 which was received into the client account of Kaihiva and Co on the 30th October 2008 remained there until 7th November 2008 when the completion of the sale of C Lane took place. In fact it was sold not to Mr BM as initially contemplated but to Mrs JW and the bulk of the funds were used to discharge an existing mortgage with BWI. Mrs JW effected the purchase with the benefit of two bridging loans.

32. E Limited became increasingly concerned about the failure of the firm to comply with the undertaking and sent a number of faxes to the firm over two months, one of which was addressed to the Senior Partner. The Respondents claimed that they were unaware of this correspondence and that it was being concealed by Mr HJ.

33. The Respondents failed to monitor the situation carefully from November 2008 and allowed a large amount of money to be withdrawn from the client account on 7th November 2008 for purposes other than those for which it had been lodged. They failed to take effective action until 26th February 2009 after the existence of the s.43 Order against Mr HJ had been drawn to their attention by the IO and they dismissed Mr HJ.

Allegation 16

34. For the insurance indemnity year 2008/2009 the insurance of the firm fell to be covered by the Assigned Risks Pool with a premium of £46,343.51. The period of cover was from 1st October 2008 to 30th September 2009 and a proposal form was sent to the firm on 30th September 2008. The premium was not paid.

35 The Tribunal reviewed all the documents submitted by the Applicant which included:

(i) Rule 5 Statement dated 23rd February 2009 together with all attached documents.

(ii) Supplementary statement dated 24th November 2009 together with all attached documents.

(iii) Schedule of Costs.

Costs

36. The Tribunal reviewed all the documents submitted by the Respondents which included:

(i) Letter dated 30th April 2010 from the First Respondent;

(ii) The Response and Mitigating Statement of the Second Respondent together with all enclosures.

Witnesses

37. The following persons gave oral evidence:

(i) Adrian Christopher Smith, who was previously a Forensic Investigation Officer from the SRA;

(ii) Faraz Awan, Senior Forensic Investigation Officer from the SRA;

(iii) Praful Parmar, Senior Forensic Investigation Officer from the SRA

Findings as to Fact and Law

Allegations 1, 2 and 3 against both Respondents

38. These allegations related to breaches of the Solicitors Accounts Rules. There had been

reference to problems with the computerised accounts system but it was clear from the documents that shortfalls on client account were not promptly remedied and that client account reconciliation statements had not been regularly prepared. The Tribunal was concerned that the breakdown in the firm's accounts' computers occurred in about May 2007 and as a result the firm's accounting records had been lost which required them to be rewritten from May 2005 when the practice was set up. The firm appeared not to have kept any backup data. The Second Respondent indicated in his written response that there had been cash shortages on client account and that he had relied on the First Respondent. He accepted his responsibilities and obligations under the Solicitors Accounts Rules.

39. The Tribunal noted that the Solicitors' Accounts Rules breaches continued, even after the Second Respondent became a partner on 1st January 2008. Furthermore, Adrian Smith had confirmed in his evidence that he never saw the firm's full books of account, and could not say what any actual cash shortage may have been based on the records that he was given. Accordingly, the Tribunal found these allegations proved.

Allegations 4 - 10

40. These allegations were against the First Respondent only and the Tribunal found them all proved. In his letter dated 30th April 2010, the First Respondent accepted he should have done more to supervise the staff for whom he was responsible. He refuted any notion of non-cooperation with the IOs. He had also stated in his letter of 15th September 2008 to the SRA that MO of Michaels and Co had not applied for a Remuneration Certificate in the cases of Mrs MW and Mrs SK, as he genuinely believed that the "no win no fee" agreement with the clients enabled him to deduct Counsel's fees from their settlements. However, the clients had requested a Remuneration Certificate be obtained on 30th May 2007, which was some time after Michaels and Co became part of Kaihiva and Co. The First Respondent had failed to address any of the client's concerns, and on 17th June 2008, over a year later, the Legal Complaints Service Adjudicator had made an award which had still not been paid by 15th September 2008. Whilst the Tribunal accepted the First Respondent had not had conduct of these cases at the outset, he certainly had responsibility as a partner to obtain a Remuneration Certificate when requested, and had failed to do so.

41. The Tribunal were particularly troubled by the terms of the agreement dated 7th February 2007 between the First Respondent and the partners of Michaels and Co, which appeared to have been entered into to prevent an intervention of Michael and Co. The terms allowed MO and AH to retain control of the Cuffley office and essentially continue to operate in the same way and in the same manner without an intervention. The Tribunal were satisfied the First Respondent's conduct had been improper and misleading. This was particularly in light of Adrian Smith's evidence that at the time the agreement was entered into, there had been an ongoing SRA investigation which could have led to Michaels and Co being intervened. Mr Smith stated as a result of the agreement, Michaels and Co ceased to exist and as a result could not be intervened.

Allegations 13-16 against both Respondents

42. As already stated, the First Respondent, in his letter of 30th April 2010 had accepted he should have done more to supervise the staff for whom he was responsible and that he

had taken on more than he should have. In relation to allegation 16, he did not accept that the firm did not have indemnity insurance cover in place as he stated he had been in touch with the insurers prior to the take over and had been given time to settle the account.

43. The Second Respondent in his written response stated he was not responsible for the day to day running of the firm and was only asked to come to work at the firm for a maximum of two hours per month. He accepted that he did not have supervisory experience to supervise anyone and had relied on the First Respondent. He stated he did not sign any undertakings on behalf of the firm and that the First Respondent was responsible for procuring the firm's insurance. He had not met Mr HJ and knew nothing about him.

44. The Tribunal had considered the written responses carefully and found these allegations proved. Both Respondents had been partners in the practice when Mr HJ and Miss SC had dealt with Mr HJ’s transaction, and were therefore both responsible to ensure proper supervision was in place. That lack of supervision had led to undertakings being given which were not complied with, and funds being used for purposes other than which they were supplied. It was unacceptable for the Second Respondent to claim he did not have supervisory experience and did not sign undertakings or procure the firm’s insurance. As a partner of the practice he had responsibility to ensure regulations were complied with and that staff were properly supervised so that clients would not suffer. It was quite shocking that the Second Respondent only worked at the firm for 2 hours per month but yet had agreed to become a partner of the practice. He had to accept the duties and obligations imposed upon him as a partner.

Mitigation

45. Both Respondents had provided details of mitigation in their written responses to the Tribunal.

Costs

46. The Applicant provided the Tribunal with a schedule of his costs in the total sum of £62,515.11. The Applicant submitted that the First Respondent should bear the brunt of the costs given that the majority of the allegations were against him and the Second Respondent's role had been more minor. The Applicant submitted that an apportionment of 90% to the First Respondent and 10% to the Second Respondent would not be an unfair apportionment.

Previous disciplinary sanctions before the Tribunal

47. None.

Sanction and reasons

48. In relation to the First Respondent, Mr Kaihiva, the Tribunal was of the view that he did not appear to have any understanding of the need and importance to comply with the Solicitors Accounts Rules and other regulations. He had not made any enquiry as to the origin of deposit monies and other funds received, which bore all the hallmarks of

money laundering, and he clearly did not act in the best interests of safeguarding his clients' interests. There had been a lack of supervision of staff and this was exemplified by the fact that an unadmitted caseworker had been able to give undertakings on behalf of the firm, which were not honoured. On other cases proper costs information had not been provided to clients and requests for Remuneration Certificates had been ignored. It was quite clear to the Tribunal that clients had suffered as a result of the Respondent's conduct and, as already stated, the Tribunal was most concerned by the nature of the agreement entered into by the First Respondent with Michaels and Co which clearly appeared to have the sole purpose of avoiding Michaels and Co from being intervened, and allowing Michaels & Co to continue trading in the same manner that had led to the concerns of the SRA in the first place.

49. The First Respondent had stated in his letter of 30th April 2010 that he refuted the notion that anyone at the firm was merely a token partner and that he had respective agreements in place with each and every partner as to what was expected of them. However, the Tribunal was not satisfied that the terms of the agreement reached with Michaels and Co were bona fide, particularly as the partners had agreed to sell the practice to the First Respondent for £1 and in addition they were to pay him £30,000 which would allow them to continue practising as self-employed Consultants, retaining the profits from the Cuffley office, save 10% which was to be paid to the First Respondent.

50. The Tribunal was satisfied that the First Respondent's conduct was such that he had caused serious damage to the reputation of the profession, he had allowed clients to suffer losses, particularly the lender who suffered a loss of £605,000, and he had failed to pay a premium for his professional indemnity insurance thereby putting clients at further risk. The Tribunal considered the First Respondent was not fit to be a solicitor and should be struck off the Roll of Solicitors.

51. Dealing with the Second Respondent, *[Respondent 2]*, the Tribunal was extremely concerned to note from his written replies that he was only working at the firm for a maximum of two hours per month and as a result, clearly he was not involved in the day to day running of the firm. He had become a partner on 1st January 2008 and the Tribunal noted that a number of breaches had already taken place prior to him joining the firm. The Tribunal also noted that he claimed to have resigned from the practice at the end of May 2008 but then a few days later returned to the partnership having been asked to do so by the First Respondent. The Second Respondent appeared to have been receiving a salary in return for working only two hours per month at the practice and the Tribunal was extremely concerned about this arrangement which appeared to allow the Second Respondent's name to be on the firm's letterhead. This was a deplorable practice and was not acceptable.

52. The Tribunal noted the Second Respondent qualified as a solicitor in September 2006 and was therefore relatively inexperienced and had been somewhat naive in agreeing to join the partnership on the terms that he had. The Tribunal had taken into account the mitigation set out in his written responses and had also taken into account the references provided. However the breaches had been serious, clients had suffered as a result of the Second Respondent’s conduct and the profession's reputation had been damaged. Accordingly, the Tribunal Ordered the Second Respondent should pay a fine of £10,000.

Decision as to costs

47. The Tribunal considered the Applicant's costs to be a little on the high side and assessed these in the sum of £60,000. The Tribunal had taken into account the cases of Merrick v The Law Society [2007] EWHC 2997 (Admin) and D'Souza v The Law Society [2009] EWHC 2193 (Admin) on the question of the Respondents' means. However, neither Respondent had provided the Tribunal with any details of their assets, capital, liabilities, or income and expenditure, and accordingly the Tribunal Ordered that the costs should be paid in full and were to be apportioned. The First Respondent, Abuid Karate Kaihiva, was Ordered to pay £54,000 in costs and the Second Respondent, *[Respondent 2]*, was Ordered to pay £6,000.

48. The Tribunal Ordered that the Respondent, Abuid Karate Kaihiva of Chelmsford, Essex 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 fixed in the sum of £54,000.

49. The Tribunal Ordered that the Respondent, *[Respondent 2]* of London, SE5, solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,000.

DATED this 24th day of June 2010
on behalf of the Tribunal

Miss J Devonish
Chairman