

IN THE MATTER OF DEREK GEORGE DUNCAN HEYS THOMPSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr J P Davies
Mr D E Marlow

Date of Hearing: 11th June 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (SRA) by George Marriott, a partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 24th March 2009 that Derek George Duncan Heys Thompson solicitor 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 should think right.

The allegations against Derek George Duncan Heys Thompson (the Respondent) were that he had:-

1. Withdrawn monies from client account otherwise than in accordance with Rule 22 of the Solicitors' Accounts Rules 1998 ("SAR").
2. Misled his firm as to the origin of monies which had been paid to a client, contrary to Rule 1 Code of Conduct 2007 ("CC").
3. Attempted to obstruct a client complaint by providing misleading information to his firm, contrary to Rule 1 CC.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 11th June 2009 when George Marriott appeared as the Applicant and neither the Respondent nor his representative, Gareth Edwards, were present.

The evidence before the Tribunal

The evidence before the Tribunal included the admissions of the Respondent made, on his instructions, in a letter dated 1st June 2009 from his legal representative, both as to each allegation and as to dishonesty.

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

The Tribunal Orders that the Respondent, Derek George Duncan Heys Thompson solicitor, be Struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000.

The facts are set out in paragraphs 1 - 29 hereunder:

1. The Respondent, born in 1944, was admitted as a solicitor in 1978. His name remained on the Roll of Solicitors.
2. At the material time the Respondent had practised as a partner in the firm of Widdows Mason Solicitors of Delta House, 99-101 Bark Street, Bolton BL1 2AX.
3. On 2nd July 2008 the Respondent had self-reported breaches of professional conduct and accounting irregularities whilst he had been partner in the firm of Widdows Mason ("WM") to the SRA through his solicitors, Crangle Edwards ("CE"). The Respondent had specialised in employment matters although he had also had conduct of a personal injury matter.
4. On 3rd July 2008 WM had reported the Respondent's conduct in the same matters as the Respondent's self-report to the SRA.
5. The SRA had written to the Respondent on 13th August 2008 requiring his explanation of matters raised in the self-report and the complaint from WM. The Respondent had replied by letter of 4th September 2008.
6. The Respondent's conduct had been referred to the Tribunal by decision of an Authorised Officer of the SRA on 17th November 2008.

Wrongful withdrawal of client funds

File of B (a minor)

7. WM had represented B, a minor who had been awarded a substantial settlement in a personal injury matter, most of the proceeds of which had been placed into a trust fund under the receivership of a Mr W. Some monies had remained in WM's client account. B had received regular drawings from those monies to meet his financial needs.

8. The Respondent had conduct of the file following the agreement of costs in 2005. Despite the passage of time, the Respondent had not prepared a final bill and in mid 2007 around £33,000 had remained in the WM's client account.
9. These funds had been at all times client monies. The Respondent had been precluded from the transfer of any such funds to office account and thence for the benefit of other clients and/or office expenses until such time as a final bill of costs had been delivered.

File of H

10. The Respondent had advised H in an employment matter. The Respondent was understood to have erred by missing the time limit within which to file an action as a result of which H's case had been statute barred.
11. The Respondent had made a payment to H of £2,000 in respect of his error on 3rd September 2007. The monies had been paid from the unrelated client ledger of B.
12. The Respondent had admitted to the SRA that the funds had been wrongly withdrawn from B's account in what the Respondent, through his legal adviser, had described as an "incorrect debit". The payment had been misleadingly described on the ledger as relating to the "payment of experts" when in fact it had been a payment to a wholly unrelated client to "cover (the Respondent's) error".

File of J

13. The Respondent had advised J in an employment matter and, as in the matter of H, had missed the time limit within which to issue a claim with the effect that J's action had been statute barred. J's now defunct claim had been valued at £7,500.
14. J had made a complaint to WM which had been considered by Mr Geoffrey Thompson ("GT"), the Client Services Manager.
15. The Respondent had sent a file note to GT in which he had stated that he had secured the payment of £5,000 towards J's claim from J's former employers. The firm had duly made a payment to J of £2,500 by way of compensation for the Respondent's failure to issue proceedings in a timely manner which, coupled with the payment that the Respondent had claimed to have obtained from J's former employers, had equalled £7,500, the value of the claim.
16. The Respondent's file note had been misleading because he had not secured any such payment from J's former employers. Instead, the Respondent had paid J £5,000 from client monies held for B. The client ledger had recorded the payment to J from B's client monies on 18th April 2007.

File of A – J

17. The Respondent had acted for A-J in an employment matter in respect of which fees had been incurred in the amount of £500 plus VAT each to V and to W, both of Counsel.
18. Two cheques in the amount of £587.50 (being £500 together with VAT) had been paid from WM's office account on the instruction of the Respondent on 9th February 2007. The payments had been credited to the office side of the ledger in the matter of B and the Respondent had transferred the sum of £1,175 from client monies to meet the payments.
19. The cheque to W had subsequently been cancelled and £587.50 recredited to the ledger on 23rd February 2007.

Complaint by Mr & Mrs H ("HX")

20. The Respondent had been instructed by HX in an employment matter in the course of which the Respondent had advised HX to attend a meeting and to vote in favour of a company entering into a Company Voluntary Agreement (CVA) in order that their employment claim against it could continue. HX had done so and then went on to be awarded £26,000 against the company in their employment claim.
21. HX had taken steps to enforce their award in full and (without representation) had obtained a warrant from the County Court to enforce the Order. However, their attempt had been thwarted by the CVA as the company had been able to have the award set aside. The company had also sought an Order for costs against HX.
22. HX had made a complaint about the Respondent's advice to WM, which complaint had been investigated by GT.
23. GT had spoken with the Respondent in advance of a meeting that GT had arranged with HX to consider their complaint. The Respondent had told GT that he had met with HX in January 2007 and had given advice relating to the CVA meeting at the company.
24. GT had asked the Respondent for a copy of his file note of the meeting. The Respondent had faxed a file note to GT.
25. GT had subsequently advised HX that the file note had demonstrated that they had been clearly and properly advised by the Respondent about the implications of the CVA meeting upon his claim.
26. The file note provided to GT by the Respondent had not been his original file note of the meeting but had been created by him retrospectively, upon discovery that HX had made a complaint.
27. The Respondent had accepted that he had changed the file note and had provided the altered note to GT.

28. The Respondent had replaced the original file note on the client matter file with his new creation and in providing it to GT during the investigation of a complaint had misled GT.
29. The Respondent had been dismissed from the partnership of MW for gross misconduct for having rewritten the file note retrospectively and attempting to conceal that he had done so and for having misled GT.

The Submissions of the Applicant

30. The Applicant referred the Tribunal to the three allegations and to the relevant facts and the Respondent's admissions and responses.
31. In the matters of H, J and A-J, the Applicant submitted that the Respondent had wrongly and knowingly utilised client monies belonging to B to meet liabilities that had accrued in other client matters. He explained that the Respondent had admitted and accepted that he should not have debited B's client funds and had fully accepted the extent of his wrong doing with regard to B's funds.
32. In relation to the complaint by Mr and Mrs H, the Applicant submitted that by replacing the original file note on the client matter file with an attendance note of his own creation and in providing it to GT, during the investigation of a client complaint, the Respondent had not only misled GT but had also obstructed a client complaint. The Applicant said that the effect of the Respondent having misled GT was that GT had unwittingly relayed the misleading information to Mr and Mrs H, who might otherwise have had a legitimate complaint about the Respondent's conduct of their matter.
33. Although the Respondent had claimed that he had altered the file note in order to clarify "what precisely had been said to the client", rather than to mislead, the Applicant submitted that that was a fanciful explanation for replacing a contemporaneous file note of a meeting with one written more than 12 months later, upon the receipt of a complaint from the client about the nature of the advice given at that meeting. He further submitted that, notwithstanding the Respondent's stated intention not to mislead, that had been the effect of submitting the re-written file note to GT and that the Respondent must have known that that would be the effect of providing the rewritten file note to GT, in the context of the investigation of a client complaint.
34. The Applicant explained that while dishonesty was not an essential ingredient of any one of the three allegations before the Tribunal, the case was put against the Respondent on the basis that he had been dishonest with regard to all three allegations.

The Submissions of the Respondent

35. As well as the Respondent's admissions and responses made during the course of the SRA's investigation, the Tribunal had the benefit of a very helpful and comprehensive letter from Gareth Edwards, from Messrs Crangle Edwards, representing the Respondent.

36. In his letter Mr Edwards explained to the Tribunal that neither he nor the Respondent intended any discourtesy in not appearing before the Tribunal. He was instructed by the Respondent to admit the three allegations as well as the element of dishonesty in respect of each. He stressed that he had considered the “tests” in Twinsectra with the Respondent and that both he and the Respondent were satisfied that both tests had been met.
37. Mr Edwards explained the Respondent’s professional history leading to a merger of his previous firm Linekers with Widdows Mason in 2001. He said that following the merger the Respondent had felt isolated from his colleagues and that the wrongful acts had been committed when he had been under considerable stress with which he had been unable to deal.

The Decision of the Tribunal

38. Having considered all the evidence together with the submissions of the Applicant and the helpful correspondence from Mr Edwards on behalf of the Respondent, the Tribunal was satisfied that the admitted allegations had been proved and that the admitted allegation of dishonesty in respect of each allegation had also been proved. The Tribunal noted that the Respondent accepted that in relation to the dishonesty allegation the tests in Twinsectra had been met and the Tribunal was satisfied also that those tests had been met. The Tribunal Ordered that the Respondent be struck off the Roll of Solicitors. The Tribunal noted that the Respondent had appreciated the seriousness of his wrongful acts and had accepted their consequences.
39. Turning to costs, the Tribunal noted the submissions of both the Applicant and of Mr Edwards. Although Mr Edwards sought an Order for costs to be assessed in the absence of agreement, the Tribunal considered that such an Order could result in inordinate delay and additional and disproportionate expense. The Tribunal considered carefully the Applicant’s statement of costs amounted to £3,227.77 and assessed the Applicant’s reasonable costs at £3,000. The Tribunal Ordered that the Respondent do pay costs fixed at £3,000.

Dated this 8th day of December 2009
On behalf of the Tribunal

A G Ground
Chairman