

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF MARSHALL NEIL CRAIG RONALD, solicitor (The Respondent)

Upon the application of Mr Iain George Miller
on behalf of the Solicitors Regulation Authority

Ms A. Banks (in the chair)
Mrs J. Martineau
Mrs V. Murray-Chandra

Date of Hearing: 22nd November 2010

FINDINGS & DECISION

Appearances

Mr Iain George Miller of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, Holborn Viaduct, London, EC4M 7RF appeared for the Solicitors Regulation Authority ("SRA").

The Respondent did not appear and was not represented.

The application was dated 27 March 2009.

Allegations

1. Contrary to Conduct Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007, the Respondent participated in a dubious transaction to return a stolen painting for a fee;
2. The Respondent withdrew client money from client account contrary to Rule 22 of the Solicitors Accounts Rules 1998. This was an allegation of dishonesty;
3. The Respondent acted in circumstances where his interests conflicted with his client's interests contrary to Conduct Rule 3.01 of the Solicitors Code of Conduct 2007;
4. The Respondent failed to disclose relevant information to his client contrary to Rule 4.02 of the Solicitors Code of Conduct 2007.

In emails dated 10 November and 16 November 2010 from the Respondent to the Applicant, the Respondent confirmed he admitted allegation 2 but did not accept that he had been dishonest. He also confirmed he did not intend to attend the hearing as this would attract a media circus and be deleterious to his health.

Factual Background

1. The Respondent, born in 1956, was admitted to the Roll of Solicitors on 16 January 1984. He did not currently hold a practising certificate.
2. At all material times the Respondent practised on his own account under the style of Marshalls Solicitors, 15A High Meadow, Ravenscroft, Upholland, Lancs, WN8 OBE.

Allegation 1

3. On 27 August 2003, the Da Vinci painting "Madonna of the Yarnwinder" ("the painting") was stolen from its owner.
4. During the summer of 2007 the Respondent stated he was approached by two enquiry agents, RG and JD ("the agents"). The Respondent knew the agents as he had assisted them in the set up of their private investigation business in 2003, Stolen Stuff Reunited. The agents had found the painting and wished to instruct the Respondent in its repatriation and to negotiate a financial finder's fee for them. The Respondent agreed to act on behalf of the agents and stated that his remuneration for acting would be 20% of the "finder's fee".
5. On 10 August 2007, the Respondent wrote to the Loss Adjusters acting on behalf of the insurers of the painting advising that Marshalls Solicitors had been instructed to act on behalf of the agents who could assist with the recovery of the painting. It stated that Marshalls did not act for the thieves and did not know the identity of the thieves. It stated that it had instructed two senior Scottish lawyers to assist in negotiating the safe repatriation of the painting to its rightful owners. The letter further stated that the agents could effect the safe delivery of the painting within a "72 hour time frame".
6. A series of meetings subsequently took place between the Respondent, the agents and the senior Scottish lawyers, and a draft agreement was drawn up. The agreement provided for funds totalling £2,000,000 to be deposited into Marshall's client bank account no later than three working days prior to the painting being made available to an intermediary. The Respondent stated that the terms of the agreement were subsequently varied allowing payment of the money on the day on which the painting was being exchanged.
7. The meetings culminated in a final meeting on 4 October 2007 between the Respondent, the agents, the Scottish lawyers, the owner's agent and DR, who verified the painting. This meeting took place at the offices of Solicitors, HBJ Gateley Wareing, Glasgow. During the meeting, the police raided the premises and arrested the Respondent, the agents and one of the Scottish lawyers.

Allegation 2

8. The Respondent held money in client account for JT and PT who were brothers ("the

T brothers"). This was the only client money held by the Respondent at the relevant time and he explained that he had been acting for the T brothers in relation to a Compulsory Purchase Order ("CPO") transaction. The total amount recovered under the terms of the CPO was £1.87m which was to be split equally between the two brothers subject to the payment of debts and taxes.

9. During an investigation by a Forensic Investigation Officer ("FIO") of the SRA, a shortfall of £638,500 in the money held for the T brothers was identified. This shortfall was due to a number of payments having been paid for matters wholly unrelated to the T brothers' CPO matter. These payments were:

(a) Payments totalling £500,000 in connection with the painting

On Wednesday, 3 October 2007, a payment of £350,000 was made from client bank account with the narrative "Cashcentre". According to the Respondent, this money was sent to a company called Loomis, who were instructed to deliver the same amount in cash to a company called JCC Limited in Netherley, Liverpool. The Respondent was waiting for this money at JCC with Mr G, one of the agents. The cash was then loaded into Mr G's car (the Respondent claims that he took a digital photograph of the money) who drove off with it in order to hand the funds to the intermediary in exchange for the painting. The Respondent also gave Mr G a bank draft in the sum of £150,000 on the same day as payment for his services.

(b) Other payments of £138,500

On a date unknown, £50,000 was withdrawn from client account (equating to a 5% deposit) on a development at A Road in Manchester. In the Respondent's letter to the SRA dated 12 October 2008, he stated that A Road was a project pursued by Firemonkey Developments Limited, a company in which the Respondent was a shareholder and one of the brothers, JT, was also a shareholder. On 16 April 2007 a further £45,000 was paid to Firemonkey Developments Limited. The Respondent stated that this related to the second portion of the deposit for the A Road development. On 3 September 2007 a payment was made of £43,500 to GA. The Respondent stated that GA was a personal friend and the money was a loan in order to assist the Respondent to move house.

10. In relation to all of the above payments, there was no evidence on the file indicating that the clients consented to the payments being made in accordance with Rule 22 of the Solicitors Accounts Rules 1998.

Allegations 3 and 4

11. The Respondent acted for the T brothers in respect of the CPO and held money for that transaction in a client account. Further, the Respondent was a shareholder in Firemonkey Limited, along with one of the brothers, PT. In the Respondent's letter to the SRA dated 12 October 2008 he stated that his role in this company was to look out for suitable investment opportunities which would be mutually beneficial. The Respondent further stated that, unbeknown to JT, the Respondent had a private agreement with the other brother, PT, that PT would have an interest in respect of 50% of the profits of Firemonkey Limited. Payments had been made by the

Respondent to one of the companies from the client account held in respect of the T brothers.

12. The Respondent admitted during an interview with the FIO of the SRA, that on 7 January 2008 it had been wrong to pay out money from client account from funds held on behalf of other unrelated clients. He stated that it was "stupid" of him and "irrational". He also accepted there were client account shortages. He claimed the T brothers had been informed of the shortfall in client account. However, in an undated letter from the Respondent to the SRA, "Re: Compensation Fund Application of JT, it was noted that PT was prepared to await the outcome of the criminal and civil proceedings before deciding upon which action to take to recover the money. JT, however, had already made a claim to the Compensation Fund for the recovery of the money.
13. In his letter to the SRA dated 12 October 2008 the Respondent stated that he was acting with the authority of his client, PT in relation to the three withdrawals from client account in the sums of £50,000, £45,000 and £43,500 and that he was in fact fronting the deals for PT because he did not wish his brother, JT to be aware of his involvement in property transactions. He stated that the recipient of these monies was dealing with PT directly in respect of arrangements to repay what had been paid out with suitable interest. He also stated that the idea behind the Firemonkey business was to give each of the brothers a fresh start in the property development market. He had no problem operating a "Chinese wall" to get them started.
14. The Tribunal reviewed all the documents submitted by the Applicant which included:
 - (i) Rule 5 Statement together with all enclosures;
 - (ii) Hearing Bundle containing various documents;
 - (iii) Statement of Costs dated 16 November 2010.
15. The Tribunal reviewed all the documents submitted by the Respondent which included:
 - Respondent's response to allegations together with all enclosures;

Witnesses

16. The following persons gave oral evidence:

Sean Hankin (Senior Forensic Investigation Officer of the SRA);

Findings as to Fact and Law

17. The Tribunal had considered carefully the evidence, submissions of the Applicant and all the documents provided. The Respondent had not attended the hearing, and his written response was considered by the Tribunal.

Allegation 1

18. This allegation related to an extraordinary chain of events connected to a stolen Da

Vinci painting. The Respondent in his response submitted that it was not professionally improper for him to facilitate the return of stolen property in return for a reward/finder's fee/professional remuneration. He submitted his actions did not breach Rule 1.02 and Rule 1.06 of the Solicitors Code of Conduct and indeed, he submitted he had sought independent legal advice from two senior Scottish lawyers to protect his legal position. The Tribunal noted from the Forensic Investigation Report dated 30 May 2008 that the Respondent had informed the FIO "that he was asked to act informally (he could not recall any client file being set up or engagement letters being sent) as an intermediary in the repatriation of the painting. He said his remuneration for acting would be 20% of the "finder's fee"."

19. The Applicant had submitted that the Respondent had not been acting as a solicitor in view of the fact that there appeared to be no client file or engagement letters and the remuneration was referred to as a "finder's fee". The Applicant submitted no solicitor should have gone anywhere near such a transaction and indeed, it was particularly pertinent that one of the terms of the agreement was that the police should not be informed of the agreement. The Applicant submitted that as a solicitor, the Respondent should have informed the police in view of the fact that he was dealing with stolen goods: The transaction was made even more dubious by the fact that £350,000 in cash was delivered to a construction company in Liverpool where the Respondent was waiting with one of the agents, Mr G. The Applicant submitted that even when the Respondent was threatened and feared for his personal safety and that of his family, he still failed to notify the police of the transaction.
20. The Tribunal was of the view that although the Respondent sought advice from senior Scottish lawyers and had contacted the loss adjusters involved in the case he had still failed to inform the police of developments relating to the stolen painting. Furthermore, the Respondent was due to receive a fee of 20% of the finder's fee which initially was £2m, however the fee to be paid to the Respondent was increased to £4.25m as the transaction was reaching its conclusion. The value of the painting, on the Respondent's own admission was in excess of £50m and the insurers had apparently paid out £3.8m.
21. The Tribunal considered the case of Bolton -v- The Law Society [1994] 1 WLR 512 CA and in particular to the judgment of Sir Thomas Bingham MR who had stated:

"It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness."
22. The Tribunal was satisfied that the Respondent had failed to act with integrity by allowing himself to become involved in a transaction which involved a stolen painting, an agreement, one of the terms of which was that the police should not be informed of the circumstances, and by agreeing to receive a fee at the level indicated. Furthermore, the Tribunal was satisfied that the Respondent's conduct was such as to diminish the trust the public would place in him or in the profession. The Tribunal was satisfied that allegation 1 was proved.

Allegation 2

23. The Respondent had admitted allegation 2 but did not admit that he had been dishonest. Accordingly, the Tribunal was required to consider the issue of dishonesty

in relation to client money withdrawn from client account contrary to Rule 22 of the Solicitors Accounts Rules 1998. The Tribunal considered the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 in relation to the question of dishonesty. The Tribunal was satisfied that by the ordinary standards of reasonable and honest people, the use of client money for purposes not authorised by that client would be regarded as dishonest and therefore the Tribunal was satisfied that the first part of the test set out in Twinsectra was satisfied. The second part of the test required the Tribunal to establish that the Respondent realised by those standards his conduct was dishonest. In this regard, the Tribunal took into account the following comments made by the Respondent during an interview with the FIO on 7 January 2008 when the Respondent was asked by the FIO:

FIO: "Did you know it was wrong to pay out from client account from funds held on behalf of other unrelated clients?"

Respondent: "Yes"

FIO: "Why did you do that?"

Respondent: "Attempting to make things right. Money made [from the repatriation of the painting] would have put other things right. Was stupid. Irrational."

The Tribunal was therefore satisfied that the Respondent clearly knew his conduct would be regarded as dishonest by those standards and therefore the Tribunal was satisfied that allegation 2 was proved including dishonesty.

Allegations 3 and 4

24. The Respondent had been holding the sum of £1.87m on behalf of the T brothers as a result of acting for them in a CPO transaction. Funds had been paid out from this amount for unrelated transactions and whilst the Respondent subsequently claimed one of the brothers, PT, had consented to the three withdrawals from client account, it was clear that the other brother, JT had not been aware of the payments. The Tribunal had been provided with a statement from PT confirming this. However PT did not attend before the Tribunal to give evidence and the Tribunal therefore attached due weight to his statement.
25. The Respondent had made reference in his various responses and submissions to operating a "Chinese wall" in respect of each brother's business activities. The Applicant submitted this was a nonsense and the Respondent was under an obligation to share all relevant information with his clients. It was not possible for the Respondent to operate a "Chinese wall" in his own mind.
26. As the Respondent had made payments from the client account of JT and PT without obtaining authorisation from both of them and furthermore payments had been made for the Respondent's own benefit, the Tribunal was satisfied that the Respondent's interests conflicted hopelessly with the interests of his clients and he had acted contrary to Rule 3.01 of the Solicitors Code of Conduct 2007. Furthermore, by making payments from the joint account to a company in which both the Respondent and one brother had an interest and by failing to inform the other brother of these payments, the Respondent had failed to disclose relevant information. The Tribunal

rejected the Respondent's assertion that he had operated a "Chinese wall". It was clear to the Tribunal that the Respondent was fully aware of the conflict between the two brothers and their "differing interests". The Tribunal was satisfied that both allegations 3 and 4 were proved.

Mitigation

27. The Respondent in his email dated 10 November 2010 to the Applicant had stated:

"With a view to being pragmatic the admission in respect of the Rule 22 breach will leave the SDT with no alternative other than to order a strike off the Solicitors' Roll."

28. In the Respondent's responses to the allegations, the Respondent confirmed he had been unable to work and had suffered a nervous breakdown. He had provided a letter dated 1 October 2010 from Dr Sur confirming that he had suffered from bipolar disorder and type 2 diabetes and that the pressure of pursuing the debt was affecting his health.

Costs application

29. The Applicant provided the Tribunal with a Schedule of Costs dated 16 November 2010 and requested an Order for his costs in the total sum of £16,312.60. The Applicant confirmed that the Respondent had not been served with the Schedule of Costs and that a copy had been sent to the Respondent by email that morning. Given that the Respondent had not had the opportunity to comment on the schedule, the Applicant suggested the Tribunal make an interim Order for costs in the sum of £10,000 and for the remainder of the costs to be assessed if challenged by the Respondent within the next seven days.

Previous Disciplinary Sanctions before the Tribunal

30. None.

Sanction and Reasons

31. The Tribunal had considered all the documents provided in detail. Four allegations had been found proved one of which was an allegation of dishonesty.

32. Sir Thomas Bingham MR had stated in *Bolton v The Law Society*:

"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal.... The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors".

33. In the case before the Tribunal the Respondent had allowed himself to become involved in a dubious transaction. He had withdrawn client money from client

account without the authority of the client and he had used some of those funds to finance his own personal interests.

34. The Tribunal was satisfied that the Respondent's conduct was such that he had caused serious damage to the reputation of the profession and was a risk to the public. The Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

Decision as to Costs

35. In relation to the question of costs, the Tribunal was concerned that the Schedule of Costs had not been served on the Respondent until this morning and he had not had the opportunity to comment upon it. The Respondent in his response to the allegations made reference to substantial mortgage arrears and a Possession Order being secured against his home. He indicated his only income was incapacity benefit and there were County Court Judgments against him. In short, the Respondent stated he had been left "financially ruined".
36. The Tribunal took into account the cases of William Arthur Merrick v the Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's financial circumstances. The Respondent had been struck off the Roll of Solicitors and had lost his livelihood. The Tribunal took into account the medical report provided which clearly indicated the Respondent had medical problems. Accordingly, the Tribunal Ordered the Respondent pay the Applicant's costs to be subject to detailed assessment if not agreed. However the Tribunal also Ordered that such costs were not to be enforced without leave of the Tribunal.

Order

37. The Tribunal Ordered that the Respondent, Marshall Neil Craig Ronald, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society, such costs not to enforced without leave of the Tribunal.

Dated this 3rd day of February 2011

On behalf of the Tribunal

Ms A. Banks
Chairman