

IN THE MATTER OF TIMOTHY ONWUAMAEZE OGBUAGU, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. W. M. Hartley (in the chair)
Mr. N. Pearson
Mrs C. Pickering

Date of Hearing: 8th December 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 Jonathan Richard Goodwin, Solicitor Advocate, of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 24th April 2009 that Timothy Onwuamaeze Ogbuagu might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that:-

1. He failed and/or delayed in the delivery of an Accountant’s Report for the period ending 17th July 2007, due on or before 17th January 2008, contrary to section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.
2. He failed to comply with the expectation and/or direction of an Adjudicator dated 7th October 2008 as regards of filing of his Accountant’s Report for the period ended 17th July 2007.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 8th December 2009 when Jonathan Richard Goodwin appeared as the Applicant and the Respondent appeared in person and was represented by Mr David Howell.

The evidence before the Tribunal included the admissions of the Respondent.

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

The Tribunal Orders that the Respondent, Timothy Onwuamaeze Ogbuagu, solicitor, be suspended from practice as a solicitor to commence on the 8th day of December 2009 until such time as the Respondent delivers all outstanding Accountant's Reports, or otherwise until these are dealt with to the satisfaction of the Solicitors Regulation Authority and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,869.54, such costs not to be enforced without the leave of the Tribunal.

The facts are set out in paragraphs 1 to 6 hereunder:-

1. The Respondent, born in 1971, was admitted as a solicitor on 17th March 2003, and his name remained on the Roll of Solicitors.
2. At all relevant times the Respondent carried on practice on his own account under the style of CJ Patterson & Co Solicitors from offices at Maxet House, Liverpool Road, Luton, Bedfordshire, LU1 1RS. The Respondent's practice closed on 18th July 2006, and he did not hold a current practising certificate.
3. The Accountant's Report for the Respondent's former practice of CJ Patterson & Co for the year ended 17th July 2007, was due to be delivered on or before 17th January 2008. By letter dated 16th January 2008, the Respondent wrote to the Law Society seeking an extension of time for the filing of his Accountants Report. By letter dated 21st January 2008, the SRA replied seeking further information from the Respondent in order that his request could be considered. The Respondent replied by letter dated 28th January 2008, requesting an extension of up to two months.
4. On 14th May 2008, an Adjudicator considered and refused the Respondent's request for an extension of time to 17th March 2008 to deliver the outstanding Report. The Respondent was notified by letter dated 16th May 2008, and was requested to forward the outstanding Report "without delay". The Respondent appealed the Adjudicator's decision and on 24th July 2008 the Adjudication Panel resolved to dismiss the Respondent's appeal.
5. By letter dated 6th August 2008, the Respondent wrote to the SRA indicating that he was in a difficult position, and did not appreciate what he was required to do in the circumstances.
6. By letter dated 13th October 2008, the SRA wrote to the Respondent enclosing a copy of the Adjudicator's decision dated 7th October 2008 which required the Respondent to file his outstanding Accountant's Report on or before 10th November 2008. The Respondent failed to do so.

The Submissions of Applicant

7. The Applicant confirmed the allegations were admitted. He submitted these were serious matters as the filing of Accountant's Reports was an important obligation on solicitors and indeed was the first line of regulatory process. It was understood that there were financial reasons for the Respondent's failure to file the accounts but, nevertheless, the Respondent should have dealt with these issues. The Applicant submitted it was particularly important to file a report especially where there were still client funds within the practice after the practice had closed down.
8. The Applicant was aware the Respondent had not been told he could apply for a waiver and indicated that there may have been a good reason why the waiver was not raised. It was unusual for a waiver to be granted where there was money in client account and in any event, the Respondent could have made his own enquiries as to whether any other options were available to him.
9. The Applicant requested an Order for his costs and provided the Tribunal with a schedule confirming the costs came to a total of £3,869.54. The Applicant understood the Respondent was destitute and had no funds and accordingly requested the Tribunal to make an Order for costs but for that Order not be enforced without leave of the Tribunal. He also reminded the Tribunal of 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) which the Tribunal were obliged to consider in relation to the Respondent's means.

The Submissions of the Respondent

The Oral Evidence of the Respondent

10. The Respondent affirmed and gave his full name and address. He confirmed he had not practised since July 2006 and that the contents of his statement dated 6th December 2009 before the Tribunal were correct. He confirmed that since closing his practice he had applied to the Law Society for permission to practise but this had been refused. He had sought employment as a locum but due to the conditions on his practising certificate and indemnity insurance issues, he had been unable to obtain such employment.
11. The Respondent confirmed he had borrowed money to renew his practising certificate fee but had subsequently been unable to get a job. As a result of this he had no income and was living on loans from family and friends. His wife, who had also worked in the practice with him, had become depressed due to the way the firm was closed down and had required medical treatment.
12. The Respondent confirmed that following the abrupt closure of his practice forced on him by the SRA, he had written to clients to confirm their addresses in order to forward cheques for client funds which were still in the client account. He did not receive a response from all his clients and wrote to the SRA to request an extension of time within which to file a final report and close the account. However, he was told that as he did not have a current practising certificate he could not deal with the accounts at all. He therefore obtained loans from friends and family and applied for a current practising certificate in order to finalise matters with the client account. However his practising certificate took several months to come through and on receipt it appeared he had

stricter conditions imposed upon him and as a result could not deal with client account. The SRA would not give him permission to deal with his account and therefore he was unable to do so. He was in a catch 22 situation where he had been required to provide an Accountant's Report but could not afford to pay £1,200 for the report.

13. The Respondent confirmed he knew who all the money in client account belonged to and he had asked other firms if they would take over his firm and distribute the money to clients but those other firms had all refused to do so due to the action the SRA had taken and due to the Respondent's lack of a practising certificate. The Respondent confirmed he had borrowed £15 from a friend to buy a shirt to enable him to appear before the Tribunal today. The condition on the Respondent's practising certificate was for three years and he had been informed by the Regulator that if he applied for a practising certificate next year, they may give it to him without any condition so that he would be able to do some work.
14. On cross examination the Respondent confirmed his family home had been repossessed and that he did not have any capital. His accountant had informed him he needed a practising certificate before the Accountant's Report could be prepared but when he obtained his practising certificate, it had conditions upon it indicating he could only work in approved employment. Previously he had been able to practice as a partner.
15. He had spoken to the ethics department about the situation but was told he could not deal with the accounts. He had tried to sort out the position and had not been informed that he could apply for a waiver. The Respondent confirmed that his practice was in debt and the firm had been running at a loss after one of the partners was removed.

The Further Submissions of the Respondent

16. Mr Howell submitted on behalf of the Respondent that the SRA could have suggested a waiver to the Respondent but did not mention this in any letter to him. The Respondent had been in a difficult situation. He was not in employment, he had financial problems and whilst he accepted there had been failures, this was due to a lack of finance. In a stressful situation the Respondent may not have thought about applying for a waiver and now that he had been out of employment for a long period of time, he had effectively become unemployable.
17. The Applicant's submissions regarding costs were accepted but it was submitted that a financial penalty would be out of the question given the Respondent's financial position. The Respondent suggested a reprimand would be a more appropriate penalty subject to the relevance of his previous appearance before the Tribunal dealt with in the next paragraph. He confirmed he would contact the SRA with a view to them assisting him in returning money to clients.
18. The Respondent had appeared before the Tribunal previously on the 12th July 2007 on breaches relating to the Solicitors Accounts Rules 1998. The Respondent accepted that his previous appearance was an aggravating factor and the Tribunal may consider a reprimand was not appropriate. However the Respondent would have problems with a fine.

The Findings of the Tribunal

19. The Tribunal had listened very carefully to both parties and had considered all the documentary evidence before it. The Tribunal found the allegations to have been substantiated; indeed they were admitted by the Respondent.
20. This was a sad case of a solicitor who had taken the trouble to qualify as such but had now found himself in severe financial difficulties which prevented him from dealing with the regulatory requirements. The delivery of Accountant's Reports was a fundamental obligation and went to the heart of policing the solicitors' profession. Whilst the Tribunal were satisfied that it appeared no client had suffered, they were also extremely concerned to note that this was the Respondent's second appearance before the Tribunal. Previously the Tribunal had also found allegations relating to accounts breaches to have been substantiated and a financial penalty had been imposed in the total sum of £7,000. Clearly the previous appearance was an aggravating factor and this, together with the Respondent's current financial position, had been taken into account.
21. In view of all the circumstances of the case, the Tribunal considered the appropriate Order was to suspend the Respondent from practice until such time as he was able to deliver all outstanding Accountant's Reports, or otherwise until these were dealt with to the satisfaction of the Solicitors Regulation Authority. The Tribunal also ordered the Respondent pay the Applicant's costs in the sum of £3,869.54, such costs not be enforced without leave of the Tribunal.
22. The Tribunal made the following Order:-

The Tribunal Orders that the Respondent, Timothy Onwuamaeze Ogbuagu, solicitor, be suspended from practice as a solicitor to commence on the 8th day of December 2009 until such time as the Respondent delivers all outstanding Accountant's Reports, or otherwise until these are dealt with to the satisfaction of the Solicitors Regulation Authority, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,869.54, such costs not to be enforced without the leave of the Tribunal.

Dated this 16th day of March 2010
On behalf of the Tribunal

W. M. Hartley
Chairman