

IN THE MATTER OF NIKKI NGOZI MODIE-NWAEFULU, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr L N Gilford (in the chair)
Mr M Fanning
Mr G Fisher

Date of Hearing: 28th January 2010

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 of Jonathan Goodwin, Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT on 6th May 2009 that Nikki Ngozi Modie-Nwaefulu, solicitor, might be required to answer the allegations set out 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. Contrary to Rule 1 and/or Rule 3.01 of the Solicitors Code of Conduct 2007 (“the SCC”), the Respondent acted in a conflict of interest situation, when she accepted a loan from a Mr KB, and failed to advise him to take independent legal advice in relation to the loan.
2. Contrary to Rule 1 of the SCC, she failed to have regard to, and comply with, the Money Laundering Regulations 2007, and in particular:-

- (i) Breached Regulation 5, in that she failed to carry out the required “customer due diligence measures”, in that no steps were taken to verify the identity of Mr KB, and/or
 - (ii) Breached Regulation 8 in failing to conduct ongoing monitoring of the business relationship between herself and Mr KB, and/or
 - (iii) Regulation 11, in that the Respondent continued with the transaction in circumstances where she had been unable and/or unwilling to carry out the ‘due diligence’ enquiries.
3. She withdrew money from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998 (“The 1998 Rules”). This is an allegation of dishonesty, or in the alternative, recklessness.
 4. Breached the terms of Rule 1.04, and/or 4.02 of the SCC by virtue of her failure to advise a lender client of material information.
 5. Breached the terms of Rule 1.04 of the SCC, by virtue of her failure to act in the best interests of a client(s).
 6. Breached the terms of Rule 1 and/or Rule 20.01 of the SCC, in that she carried on practice as a solicitor at a time when she did not hold a current practising certificate.

Dishonesty was not an essential ingredient of allegation 3. However, the case was put against the Respondent in relation to allegation 3, on the basis that she was dishonest with regard to her utilisation of client funds. It would also be open to the Tribunal to find the allegation proved without any element of dishonesty. In the alternative, it would be open to the Tribunal to find the Respondent had acted recklessly.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 28th January 2010 when Jonathan Goodwin appeared as the Applicant and the Respondent did not appear and was represented by Mr Michael Ord, solicitor and partner of Crutes LLP.

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

The Tribunal Orders that the Respondent, NIKKI NGOZI MODIE-NWAEFULU, of 2 Portland Road, South Norwood, London, SE25 4PF, 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 £13,900.00, such costs are not to be enforced without the consent of the Tribunal.

The evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 Statement dated 6th May 2009, together with accompanying bundle, the statement of the Respondent dated 28th January 2010 and the admissions of the Respondent. The Tribunal also had before it a small bundle provided by the Applicant which included correspondence with the Respondent and her indication on the pre-listing questionnaire that she would admit the allegations.

Preliminary Matter

A supplemental statement dated 9th December 2009 had raised additional allegations which were disputed by the Respondent. This supplemental statement had not been served within the requisite 30 days and the witness was unwell. Consequently, the Applicant wished to take a pragmatic view and proceed with the original Rule 5 statement and leave the supplemental statement to lie on the file.

The Tribunal agreed to this course of action, the Rule 7 statement dated 9th December 2009 would be left to lie on the file.

The facts are set out in paragraphs 1 - 32 hereunder:-

1. The Respondent Nikki Ngozi Modie-Nwaefulu was born in September 1965 and was admitted as a solicitor in July 2000 and her named remains on the Roll of Solicitors.
2. At all relevant times the Respondent carried on practice in partnership under the style of Nikki Modie & Co Solicitors from offices at Crown House, 405 London Road, Croydon, Surrey, CRO 3PE, and subsequently for the period 13th May 2008 to 1st September 2008, practised under the style of Nikki Modie Solicitors LLP.
3. Following the termination of the LLP on 1st September 2008, the Respondent now carries on practice on her own account from premises at 2 Portland Road, South Norwood, London SE25 4PF, under the style of Nikki Modie Solicitors.
4. The Forensic Investigation Department of the SRA, carried out an inspection of the Respondent's books of account commencing 6th August 2008, and produced a Report dated 27th November 2008.

Allegations 1 and 2

5. The Respondent indicated that she was acting for Nikki Modie Solicitors LLP in the purchase of a property in Thornton Heath for £499,000.00.
6. On 21st May 2008, the relevant client ledger was credited with an initial client receipt of £100,764.97.
7. The receipt of £100,764.97 was in respect of a transfer of \$200,000 and which was converted to sterling via the bank.
8. The Respondent indicated that the funds were a loan to the firm from a Mr KB. The Respondent indicated that Mr KB had lent her the \$200,000 for use as a deposit for the purchase of the Thornton Heath property and that he would in return, obtain a charge on the property.
9. Whilst the Respondent indicated that it was a business loan, the only documentation found on the matter file relating to the provision of the funds was a faxed letter from Mr KB dated 9th June 2008. The letter makes reference to an initial transfer from

Korea in the sum of \$200,000 and a second transfer of \$100,000, giving a total of \$300,000, said to be used to purchase a property in the United Kingdom.

10. The Report makes reference to the fact that there was no evidence seen relating to the receipt of the second transfer of \$100,000.
11. The Investigation Officer asked the Respondent if she knew where Mr KB's money came from, and she said that she was introduced to him by a mutual friend at her church, and had been known to her for six months. She believed that he was a businessman involved in the import and export of oil, but that she had not made her own enquiries. The Respondent confirmed that she did not obtain any identification from Mr KB.

Allegation 3

12. The Investigation Officer ascertained that following receipt of the £100,764.97, nine payments were effected from the firm's client bank account between 28th May 2008 and 30th June 2008, in varying amounts between £1,092.00 and £10,000, totalling £32,707.00.
13. The client matter file contained no documentary evidence in relation to the payments.
14. The Respondent indicated that she treated the money as if it were her own, and used it to offset the office account overdraft.

Allegation 4

15. The firm acted for Mr TLJ and his lender, Wave Lending Ltd, in relation to the purchase of a property in Colchester, Essex.
16. On 5th June 2007, Mr TLJ agreed to purchase the property for a price of £164,995.00. The contract of sale included an incentive that the seller would pay the deposit for the property of £8,250.00, producing a net purchase price of £156,754.00. Mr TLJ paid a reservation deposit of £1,000.00 to Taylor Wimpey Ltd.
17. On 26th September 2007, Mr TLJ obtained a mortgage offer of £148,500.00, plus £2,272.00 in respect of fees to be added to the loan, based on the gross property price of £165,000.00.
18. The Investigation Officer found no evidence on the client matter file that the Respondent had informed the lender of the incentive of £8,250.00 provided by the seller.
19. The Lender's Handbook in respect of Wave Lending Ltd indicated that incentives had to be reported to the Lender, "Unless specifically referred to in the mortgage offer".
20. The property was registered at the gross price of £164,995.00. The Inland Revenue Land Transaction form shows that £1,649.95 Stamp Duty Land Tax was paid on the property at 1% of the gross purchase price of £164,995.00.

21. Had the net purchase price of £156,754.00 been used by the Respondent to calculate the Stamp Duty, the client would have paid £1,567.54, meaning that the client paid additional Stamp duty of £82.41.
22. The Respondent conceded that she did not declare the incentive of £8,250.00 deposit to the Lender, as she believed that they allowed a 5% discretion in relation to the purchase price.

Allegation 5

23. When asked by the Investigation Officer why the discounted net price of £156,754.00 had not been used for registration purposes and in calculating the relevant Stamp Duty, the Respondent said that there had been a mistake, and that she should have used the discounted price for Stamp Duty Land Tax and for the Land Registry, but that she had carried the gross purchase price throughout the transaction.
24. The firm acted for Ms BN and her lender GMAC Ltd in connection with her purchase of a property in Swansea. The gross purchase price of the property was £165,000.00 and the seller offered a discount of £8,250.00, producing a net price of £156,750.00.
25. By letter dated 7th September 2007, the Respondent notified GMAC Ltd of the 5% discount granted by the seller. The matter completed on 10th September 2007. The property was registered at the Land Registry at a gross price of £165,000.00. The Inland Revenue Land Transaction form completed by the Respondent in relation to the property showed that £1,650.00 was paid on the property at 1% of the gross purchase price of £165,000.00.
26. Had the net purchase price of £156,750.00 been used by the Respondent to calculate the Stamp Duty, the client would have paid £1,567.50, with the result that the client paid additional Stamp Duty of £82.50.
27. The Respondent indicated that it was probably an error that the discounted net price of £156,750.00 had not been used. The Respondent conceded that she had not acted in the client's best interests by failing to use the net or discounted price.

Allegation 6

28. The Respondent's practising certificate for the practice year 2007/2008 terminated on 17th December 2008. By letter dated 7th January 2009, the SRA made reference to the Respondent's practising certificate having terminated on 17th December 2008, and indicated that she was uncertificated and not entitled to practice as a solicitor. In her reply dated 22nd January 2009, the Respondent said,

“We confirm that we have since filled out a form and paid a cheque in view of my practising certificate. We would be grateful if you could confirm that this had been received. I have been on holiday from 23rd December, and started work on 12th January 2009.”

29. It is understood that the Respondent's practising certificate for practice year 2008/2009 was effective on 16th February 2009, with the result that the Respondent practised uncertificated for the period following the termination of her certificate on 17th December 2008, until the issue of the next certificate on 16th February 2009.
30. By letter dated 7th January 2009, (the letter being incorrectly dated 2008), the SRA wrote to the Respondent seeking her explanation in connection with the matters particularised in the Report dated 27th November 2008.
31. The Respondent failed to reply, and it was necessary for the SRA to write to the Respondent by letter dated 20th January 2009, (the letter being incorrectly dated 2008), requesting the Respondent reply within 7 days.
32. By letter dated 22nd January 2009, the Respondent provided her explanation. The Respondent indicated that:-
 - There was no agreement between her and Mr KB and that she was naive not to have had one in the circumstances.
 - That she had not complied with Regulations 5, 8, and 11 of the Money Laundering Regulations.
 - That she should have written to the lenders informing them of the incentives, and in failing to do so, she was not in compliance.

The Submissions of the Applicant

33. The Applicant indicated that the allegations were admitted, save for dishonesty in allegation 3 which was denied. The test for dishonesty was the dual test in the case of *Twinsectra v Yardley and others* [2002] UKHL 12, in which it had been said that before there could be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those same standards his conduct was dishonest.
34. The Respondent had conceded that there had been no written agreement in respect of the loan to Mr KB and that it had been agreed between the parties verbally. She had also conceded that Mr KB did not take any independent legal advice and that no repayment terms in relation to the loan had been agreed. It was therefore submitted that the Respondent acted in a conflict of interest situation, in that her own interests conflicted with those of Mr KB and further, that prior to accepting the loan, the Respondent should have advised Mr KB to seek independent legal advice in relation to the matter. The Respondent had failed to do so.
35. It was also submitted by the Applicant that solicitors should not be involved in these situations. The Respondent had failed to comply with the Money Laundering Regulations 2007 and in particular Regulations 5, 8 and 11 and that such failure must lead to considerable concern.
36. In relation to the allegation of dishonesty it was submitted that the Respondent had acted dishonestly in relation to her utilisation of client funds and that no reasonable, prudent and honest solicitor would have acted as the Respondent did. She had treated the money as if it were her own and still did not appear to appreciate that she should

not have done so; she seemed to think that she could do with it what she wanted. The public in these circumstances would conclude that her actions were dishonest and that she knew at the time that what she was doing was wrong. In these situations client funds were sacrosanct. The Applicant referred the Tribunal to a letter from Mr BK dated 9th June 2008 which had made it clear that the sum of US\$300,000 was to be used for the purchase of a property in the United Kingdom. Both before and after the date of this letter the Respondent had used the monies for other purposes. In the period 28th May 2008 to 30th June 2008 a sum of £32,707.00 had been withdrawn from the firm's client account, four payments going to the office account and five to the Respondent's personal account with no documentary evidence in relation to the nine payments that had been made.

37. In relation to allegation 4 it was submitted that the Respondent should have disclosed the incentive as it was material to the lender's decision as to whether to lend, and if so, the amount. Similarly, in relation to allegation 5 she had failed to act in the client's best interest and the client had paid additional monies in relation to Stamp Duty Land Tax and Land Registry fees.
38. Overall it was submitted by the Applicant that these were serious matters even absent dishonesty. There had been a failure to comply with the SCC, the Money Laundering Regulations, breach of the Accounts Rules, acting in a conflict of interest situation, utilisation of funds for her own benefit and a failure to act in the best interests of clients.
39. Costs were agreed in the sum of £13,900.00.

The Submissions of the Respondent

40. Mr Ord, on behalf of the Respondent, apologised for her absence before the Tribunal today. There were good reasons for her absence and she was going through a very difficult time and had found herself unable to cope with the hearing today.
41. The Respondent's statement was before the Tribunal today and while she admitted the allegations, save for dishonesty, she said that the monies from Mr KB had been a personal loan to her from a family friend. The ledger produced by the Applicant showing the withdrawals of the monies from client account had been a ledger in her name. While she did admit to some naivety in the matter concerning the informality of the arrangement, her belief that this was a personal loan to her explained why the ledger was in her name and explained why she had treated the monies as her own and as a loan to her personally. The money had been paid to her to assist a move to a new premises and that was as much as had been agreed between Mr KB and the Respondent. The Law Society had told her to move the monies from client account to office account and she had been personally advancing monies to the firm to purchase a property in London Road. However she did accept that there was a conflict of interest with the interest of Mr KB and that she should have advised him to take legal advice. She had also agreed that the monies should never have touched the accounts of her firm. The Respondent had made these points to the SRA in her letter dated 22nd January 2009, where she had confirmed that Mr KB was a family friend and had loaned her the money on that basis. It was therefore submitted on behalf of the Respondent that her actions fell short of dishonesty or extreme recklessness. She had

applied the monies in an appropriate way given the purposes of the loan whilst she accepted that the loan should never have been in client account. This was not an institutional lender arrangement. Mr Ord had been instructed that the monies had been repaid in full to Mr KB and that he had made no complaint.

42. Whilst allegations 4 and 5 were accepted there was no evidence as to whether a declaration of the incentive would have affected the lender's decision to lend and the amounts in allegation 5 were small in any event with the only beneficiary being HMRC.
43. In relation to her failure to renew her practising certificate, she had honestly believed at the time that following the correspondence with the SRA her certificate would have been backdated. This was not a case of blatantly ignoring her responsibility to renew her practising certificate but one of inadvertence and misunderstanding.
44. While costs had been agreed in the sum of £13,900 the Tribunal was asked to take the cases of *D'Souza v The Law Society* [2009] EWHC 2193 (Admin) and *Merrick v The Law Society* [2007] EWHC 2997 (Admin) into account in reaching a decision as to whether the costs should be payable, depending on the sanction that they were to impose. The Respondent's personal circumstances were difficult, she was living on benefits and was bankrupt.

The Decision of the Tribunal and its Findings

45. The Tribunal found all of the allegations proved, indeed they had not been contested save for dishonesty. In relation to dishonesty the Tribunal also found this proved although it had not been accepted by the Respondent.
46. The Tribunal had considered the documents before it most carefully and the submissions of both the Applicant and the Respondent. However, it had been struck by the fact that there was no Statement of Truth upon the Respondent's statement and what she had had to say in that statement about Mr KB (that he was "not known to me personally but through a mutual friend") conflicted with the statement in her letter dated 22nd January 2009 to the SRA that Mr KB was a 'family friend'. While the letter from Mr KB dated 9th June 2008 had stipulated that the US\$300,000 were to be used for the purchase of a property in the United Kingdom, this was not what the monies had been used for. The letter had been addressed to the firm and not to her personally; she had asked for the monies to be put into client account. There was no evidence that the monies were given as a personal loan, indeed all the indications were to the contrary. There was initially a transfer to client account and the Respondent must have given the client account number to Mr KB. The monies had been used immediately upon receipt for her own purposes and in part after receipt of the letter of 9th June which had stipulated that they were to be used for the purchase of property. There had been no attempt to comply with the Money Laundering Regulations albeit that this was a situation in which she should have exercised the utmost care. Whilst the Respondent had asserted that all the monies had now been repaid to Mr KB no evidence to that effect had been produced and there was nothing about the purchase of a property in Thornton Heath within her evidence. On the facts found the Tribunal found that the Respondent's conduct was dishonest by the standards of reasonable and honest people. In all of these circumstances the Tribunal

was satisfied so that it was sure that the Respondent did not have an honest belief that she could withdraw the monies from client account in the way she had and therefore that she knew that what she was doing was dishonest by those same standards.

47. The only appropriate sanction in these circumstances was to strike off the Respondent. In regard to costs, given the Respondent's personal circumstances and her Bankruptcy an Order would be made that costs should not be paid without the consent of the Tribunal.
48. The Tribunal Ordered that the Respondent, NIKKI NGOZI MODIE-NWAEFULU of 2 Portland Road, South Norwood, London, SE25 4PF, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,900.00, such costs are not to be enforced without the consent of the Tribunal.

Dated this 4th day of May 2010
On behalf of the Tribunal

L N Gilford
Chairman