

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ANDREW ODEWORITSE EYEOYIBO
And [RESPONDENT 2] *–name redacted*, (The Respondents)

Upon the application of David Barton
on behalf of the Solicitors Regulation Authority

Mr L N Gilford (in the chair)
Mrs K Thompson
Mr S Marquez

Date of Hearing: 22nd July 2010

FINDINGS & DECISION

Appearances

Mr David Barton, Solicitor Advocate, of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX appeared for the Applicant.

Mr Edwards, Solicitor and Partner in the firm of TV Edwards LLP Solicitors of Park House, 29 Mile End Road, London, E1 4TP appeared for [RESPONDENT 2].

Mr Eyeoyibo did not appear and was not represented.

The application was made on 25th June 2009.

The allegations

The allegations made against the First Respondent, Andrew Odeworitse Eyeoyibo on behalf of the Solicitors Regulation Authority ("SRA") were that:

1. Contrary to Rule 1 of the Solicitors Practice Rules 1990 he had compromised or impaired each of the following:
 - (i) his independence or integrity;
 - (ii) his duty to act in the best interests of the client;
 - (iii) his good repute and that of the solicitors' profession;
 - (iv) his proper standard of work.

2. Contrary to the provisions of Rule 1 of the Solicitors Code of Conduct 2007 he had:
 - (i) failed to act with integrity;
 - (ii) allowed his independence to be compromised;
 - (iii) failed to act in the best interests of each client;
 - (iv) acted in a way that is likely to diminish the trust the public places in him or the profession.

It is further alleged that he was dishonest.

3. Contrary to Rule 20.03 of the Solicitors Code of Conduct 2007 he had failed to deal with the Legal Complaints Service and the SRA in an open, prompt and cooperative way.

4. He had failed to deliver his Accountant's Report for the year 30th April 2007 to 29th April 2008.

The particulars in relation to allegations 1-4 were that:

- (a) he acted in or otherwise facilitated conveyancing transactions during the course of which he failed to be alert to the suspicious characteristics of those transactions;

- (b) he failed to advise his lender clients of material facts, or to otherwise ensure such clients were so advised thereby failing to comply with their instructions and to act in their best interests;

- (c) he submitted certificates on title that were false and misleading;

- (d) he failed to comply with undertakings contained within certificates of title, namely to register purchases and mortgages at the Land Registry;

- (e) he wrote to the SRA on 11th July 2008 and falsely stated that he had nothing to do with City Legal Partnership after the 21st December 2007 whereas on 30th May 2008 he was appointed a director.

- (f) it is alleged that the Respondent acted dishonestly in the conduct of conveyancing transactions, although it is not necessary to establish dishonesty for the allegations to be substantiated.

The allegation against the Second Respondent, [RESPONDENT 2]

5. The allegation against the Second Respondent, made on behalf of the SRA was that she had failed to deliver her Accountant's Report for the year 30th April 2007 to 29th April 2008.

Further allegations against the First Respondent

6. Contrary to the provisions of Rule 1 of the Solicitors Code of Conduct 2007 he had:
 - (i) failed to act with integrity;
 - (ii) failed to act in the best interests of each client;
 - (iii) acted in a way that is likely to diminish the trust the public placed in him or the profession (in connection with matters different from allegations).
7. Contrary to Rule 20.03 of the Solicitors Code of Conduct 2007 he failed to deal with the Legal Complaints Service and the SRA in an open, prompt and cooperative way.

Preliminary Matter

The First Respondent had taken no part in the proceedings. The Tribunal expressed satisfaction that the terms of its Order for Substituted Service had been met and it was deemed that the First Respondent had been duly served with notice of the proceedings.

The Second Respondent's position

The Second Respondent admitted the allegation against her.

Factual Background

1. The First Respondent, born in 1963, was admitted as a solicitor in 2005. The Second Respondent, born in 1960, was admitted as a solicitor in 1990. Their names remained on the Roll of Solicitors.
2. At all material times the Respondents practised as directors of City Legal Partnership Limited ("CLP") (formed in November 2005) from 57a Mile End Road, London, E1 4TT. The First Respondent became a director on 15th February 2007 and resigned on 21st December 2007. He was reappointed as a director on 28th May 2008 and the SRA's records recorded that he continued to be a director at the date of the SRA's investigation of CLP. The Second Respondent was a director from 1st October 2007 to 30th May 2008.
3. On 4th December 2007 an investigation of the books of account and other records of ("CLP") was commenced by a forensic investigation of the SRA, Mr Davies. A copy of his Report dated 31st July 2008 was before the Tribunal.
4. The First Respondent was present at the office of CLP on 5th December 2007 and when the FIO returned two days later he was informed that the First Respondent had left the firm. The SRA intervened into CLP on 15th December 2008.

5. The First Respondent had conduct of the conveyancing transactions specified in the FIO's Report at paragraphs 9-54. There were twelve purchases from SND Investments and three other transactions.
6. The FIO established that during the period April to September 2007 twelve sums of money had been paid to Triune Solicitors (who acted for SND Investments) in sales of properties to clients for whom the First Respondent acted. He acted simultaneously for the lending institutions involved.
7. Nine of the twelve properties purchased from SND Investments were new build properties purchased by SND Investments from Bovis Homes Limited. Each was purchased by SND Investments at a discounted price and immediately sold on by a "back-to-back" transaction to the final purchasers, for whom the First Respondent acted.
8. With the exception of one transaction the purchase price paid to Triune matched the mortgage advance.
9. With the exception of three of the transactions, parties other than the purchasing client contributed funds to meet costs, disbursements, stamp duty and Land Registry fees.
10. The First Respondent was aware of the nature of the transactions where the ultimate purchaser's name had been substituted in manuscript for SND in the contract and made reference to a "buyer's retention" which served significantly to reduce the price - in one case by £275,856.
11. The certificate of title in each case was signed and submitted to the mortgage lender client by the First Respondent. The First Respondent had not acted, as he was required to do, in accordance with the Council of Mortgage Lenders' Handbook because he had not followed The Law Society Society's Green Card Warning on mortgage fraud and Blue Card Warning on money laundering and he had not told the lender where the contract provided for a "cashback" to the buyer.
12. The First Respondent had certified that the seller had owned or been the registered owner of the property for not less than six months although the properties were newly built and SND Investments had not owned them for six months. The First Respondent paid the purchase monies to SND's solicitors.
13. Client care letters on four of the transactions bore dates that were close to completion dates, which could be taken as an indication that the First Respondent might not have seen some of his purchaser clients. In some files there was no evidence of identity verification. The buyer in one transaction stated that he had not visited CLP's offices.
14. In the first of the three transactions the First Respondent acted for purchasers and their mortgagees, the Bank of Scotland, who instructed him subject to the CML Handbook. Bank of Scotland advanced £247,455 against an asserted purchase price of £274,950. There was an "allowance" of £38,493 about which Bank of Scotland was not informed. It was not informed of the sub-sale. The client care letter described the purchase price as being £250,000. The result was that the Bank of Scotland advanced

a sum which exceeded the purchase price. The First Respondent had utilised the mortgage advance in breach of express instructions not to do so" ...unless you have complied with these instructions and your obligations set out in the Lender's Handbook".

15. The client care letters on the matter file were addressed to Mr M and Mr and Mrs K. The completion statement from Bovis was addressed to Penchant Properties, a company run by Mr M.
16. In the second and third transactions a similar state of affairs had arisen.
17. A Mr A and/or Mr M had been involved in the transactions so that there was a repeated course of conduct involving (including payments to them) these individuals as middlemen. Payments to these individuals had been mis-described in CPL's books of account.
18. The First Respondent had admitted in correspondence that he had been in breach of the Rules and that he had no excuses for his "carelessness, oversight and misreading of the practice".
19. The First Respondent absented himself from the offices of CLP and was not available to be interviewed by the FIO.
20. Mr B and Mr O had lodged complaints that they made payments in respect of stamp duty which had not been delivered to Revenue and Customs and their properties were still unregistered at the Land Registry. The First Respondent had undertaken to attend to these matters in the certificate of title provided to Ms B's lender.
21. The Legal Complaints Service first wrote to the First Respondent on 16th October 2008. He did not reply. Another letter was addressed to him on 23rd October. The SRA's records suggested that the First Respondent was working with a firm of solicitors called Orié & Co. The SRA telephoned Orié & Co on 30th October 2008 when the caseworker was informed that the First Respondent was no longer working there. The SRA wrote again on 17th November. The First Respondent replied by letter bearing the date of 20th October in which he said, "I have just received a bundle of letters from you at my above address".
22. On 12th May 2008 Speed Search Limited obtained judgment against CLP for £1,902.66. The First Respondent failed to reply to subsequent correspondence.
23. Letters were written to both Respondents by the SRA dated 9th February and 20th April 2009 referring to their failure to deliver their Accountant's Report for the period 30th April 2007 to 29th April 2008. This Report remained outstanding.
24. The First Respondent acted for a purchaser of property and his mortgagee. On 19th February 2009 HM Revenue and Customs wrote to the purchaser making demands for unpaid stamp duty of £6,020.50. The purchase had been completed on 20th September 2007. The stamp duty payable was £8,248. £2,749.50 stamp duty had been paid.

25. An unaccounted for surplus of £4,144.10 as at 16th November 2007 remained on the client ledger.
26. On 5th June, 6th and 25th August and 3rd November 2009 the Legal Complaints Service and the SRA wrote to the First Respondent to obtain an explanation, but he had not replied.

The Tribunal reviewed the following documents submitted by the Respondent:

The SRA's Investigation Officer's Report.

Witnesses

The following person gave oral evidence:

Mr Davies, the SRA's Forensic Investigation Officer

The Findings as to Fact and Law

27. The Tribunal found allegations 1 and 2 to have been substantiated against the First Respondent in that he acted in conveyancing transactions during the course of which he failed to be alert to the suspicious characteristics of those transactions, he failed to advise his lender clients of material facts or otherwise to ensure that such clients were so advised. He submitted certificates of title that were false and misleading. He did not comply with undertakings contained within the certificates of title in connection with the registration of purchases and mortgages at the Land Registry.
28. With regard to allegation 3, the First Respondent wrote to the SRA on 11th July 2008 falsely stating that he had nothing to do with CLP after 21st December 2007 when he had on 30th May 2008 been appointed a director of that company.
29. The Tribunal found that the First Respondent had acted dishonestly in the conduct of the conveyancing transactions identified in the FIO's Report. In so finding the Tribunal applied the two-part test in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 as the Tribunal found that in failing to notify lending institutions of significant allowances given to purchasers in conveyancing transactions that served as a reduction in the purchase price and in notifying lending institutions that the vendor to the ultimate purchaser (the lending institutions' borrower) when the properties were newly built properties which had not previously been occupied and the "middle man" had not owned the properties for six months, the Respondent's conduct was dishonest by the standards of reasonable and honest people. Further the Respondent's conduct was dishonest by the standards of reasonable and honest people when he gave undertakings to lending institutions to perfect their security by paying stamp duty and attending to registration of title and did not do so. The Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that the information which he had given to his lending institutional clients was true and therefore that he knew that what he was doing was dishonest by those same standards.
30. The First Respondent's failure to deal with the Legal Complaints Service and the SRA and in particular his failure to provide truthful information and his failure to respond

to correspondence addressed amounted to an unacceptable failure to cooperate with his professional regulator.

The Second Respondent's Mitigation

31. The Second Respondent spent 14 years building up a well regarded business relying on legally aided immigration work and family law work. It was necessary to be on a Legal Services Commission panel and she relied on employed staff experienced in immigration work. She had decided that she could not continue in this way. She gave up immigration work and let staff go. This was an awful decision which had haunted her. The Second Respondent's own specialism was family law. The Second Respondent had considerable expenses including a lease. A member of the First Respondent's staff had approached her. His employer needed someone to supervise his matrimonial lawyers. She could have a room in his offices and she would not have to pay rent. Gadwah & Co continued as a firm operating from this room. It remained fully compliant. Unbeknown to the Second Respondent the First Respondent had just lost his other director and the Second Respondent agreed to act as a director of his firm. The member of staff who had approached her initially was three years qualified and could have taken this on. She had never been a partner and any reference to her being a partner was nonsense. Unusually for her the Second Respondent had been ill in December. When the police arrived and mortgage fraud was suggested, this came as a real shock to her.
32. The Second Respondent wanted to end the CLP relationship as soon as possible. The difficulty was that the First Respondent had resigned so that as the remaining director she could not resign. It took from December to May to put pressure on the First Respondent to go back as a director so that she could resign. She had been powerless and deeply frustrated. The First Respondent retained all accounting records so that the Second Respondent had not been able to instruct accountants.
33. Since these unfortunate events the Second Respondent had set up a new business which was well regarded in the East End of London. She undertook family law matters. She began with 20 cases per month which had gone up to 100. She concentrated on domestic violence. Her clients had much confidence in her in this difficult area. Many CPL clients had contacted her since the closure of CPL and she had not failed to answer any enquiry. She had asked her representative to assist her with enquiries relating to CPL.
34. Only at the time of the hearing had the Second Respondent's position collapsed again. In the latest Legal Aid bid round there were certain minimum requirements for undertaking publicly funded family law work. She had failed to obtain a contract although her position was subject to judicial review proceedings which might be brought by The Law Society. She faced having to close her business in which she employed fourteen fee earners, four of whom were solicitors. She faced a grim period in which she had to decide what to do. She would not be assisted by having been subject to disciplinary proceedings. It was hoped that a sanction, if any, at the lower end of the scale would be considered and that this would not have too great an adverse effect upon any application by the Second Respondent to undertake legally aided work.

Costs

35. The Applicant sought the costs of and incidental to the application and enquiry. The Tribunal agreed that this was appropriate but in the absence of the First Respondent it was right that such costs be subject to a detailed assessment if not agreed between the parties. The Second Respondent should be required to make a contribution towards the overall costs that reflected her level of culpability.

Sanction

36. The Tribunal had found the First Respondent to have been dishonest. The Tribunal, mindful of its primary duty to protect the public and its second duty to protect the good reputation of the solicitors' profession could not permit a solicitor who had failed to display the probity, integrity and trustworthiness required of a member of that profession to remain a member of that profession. The Tribunal concluded that it was both appropriate and proportionate to order that the First Respondent be struck off the Roll of Solicitors.
37. With regard to the Second Respondent the Tribunal recognised that she was to a large extent a victim of the First Respondent and she had been placed in a position where she could not file the outstanding Accountant's Report because she did not have access to the accounting records. In all of the particular circumstances the Tribunal concluded that it would be appropriate and proportionate to reprimand the Second Respondent.
38. The Tribunal Ordered that that the Respondent, Andrew Odeworitse Eyeoyibo of 2 Slater Close, London, SE18 6SQ, 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 subject to the contribution of [RESPONDENT 2] of £1,650, such costs to be subject to a detailed assessment unless agreed between the parties to include the costs of Investigation Accountant of the Law Society.
39. The Tribunal Ordered that the Respondent [RESPONDENT 2] of Isle of Dogs, London, E14, solicitor, be Reprimanded and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,650.00.

Dated this 1st day of September 2010

On behalf of the Tribunal

L N Gilford
Chairman