

IN THE MATTER OF MARTIN COLIN NICHOLAS ROBERTS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J N Barnecutt (in the chair)
Mr K W Duncan
Mr S Marquez

Date of Hearing: 5th 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 Michael Robin Havard, solicitor and partner in the firm of Morgan Cole Solicitors, Bradley Court, Park Place, Cardiff, CF10 3DP on 10th July 2009 that Martin Colin Nicholas Roberts, solicitor, 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:

- A. He deliberately fabricated an invoice in an attempt to misappropriate money from a client;
- B. he sent correspondence to clients the content of which he knew to be untrue with the deliberate intention to mislead the client into paying to him money to which he was not entitled;
- C. he sent letters to Her Majesty's Revenue and Customs ("HMRC") and Her Majesty's Land Registry ("HMLR") knowing the content of the correspondence to be untrue;
- D. he deceived HMRC and in so doing endeavoured to misappropriate client money;

E. he acted dishonestly.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 5th January 2010 when Michael Robin Havard appeared as the Applicant and the Respondent did not appear and was not represented.

At the commencement of the hearing the Applicant gave the Tribunal details of service of the documentation upon the Respondent including service of notice of the date of the substantive hearing. The Applicant said that he had spoken with the Respondent by telephone on the morning of the hearing and the Respondent had confirmed that he did not intend to attend and was content for the matter to proceed in his absence. The Tribunal was satisfied that service had been duly effected on the Respondent, that he was aware of the date of the hearing and that it was right to proceed.

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

The Tribunal Orders that Martin Colin Nicholas Roberts, 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 £12,231.48.

The facts are set out in paragraphs 1-28 hereunder:

1. Mr Roberts, born in 1969, was admitted as a solicitor in 1996 and his name remained on the Roll of Solicitors.
2. At all material times he was employed by Halliwells LLP of Manchester ("Halliwells") having joined the firm on 1st September 1998. Following notification to the SRA by the members of Halliwells of the misuse of client funds by the Respondent, an Investigation Officer commenced an investigation at the offices of Halliwells. The investigation was restricted to the activities of the Respondent in his role as an associate in the real estate department of Halliwells. A copy of the resulting Report dated 10th December 2008 and of an affidavit of the managing partner of Halliwells, Mr A, dated 6th July 2007, was before the Tribunal.
3. The activities of the Respondent came to light during a time when he was absent from the office due to ill health in June 2007.
4. It was discovered that four files had been opened in the name of Ms AS (file numbers S99076.1-4), a person who had been introduced to Halliwells as a client by the Respondent in September 2002. There was no evidence to suggest that Ms AS was aware of the use of the client ledgers in respect of the four files by the Respondent.
5. It transpired that the Respondent used the client ledger accounts to channel funds received from clients of the firm into bank accounts held by a Mr AS (the father of Ms AS), the Respondent and a Mr B.

Allegations A, B and E

C Homes - purchase of KE Road - £21,972.50

6. In the week commencing 11th June 2007 the Respondent requested an assistant solicitor of Halliwells to locate file number S99076.3 (Ms AS's file) and place it on the Respondent's chair for the Respondent to collect when he came into the office.

7. On his return to the office on Monday, 18th June 2007, the assistant solicitor found that the Respondent had been to the office and taken the file but left a letter and note, the note containing an instruction to the assistant solicitor to check for receipt of a payment from C Homes of approximately £22,000 and post it to file S99076.3.
8. In fact the Respondent had submitted an invoice numbered 243282 and dated 16th May 2007 in the sum of £18,700 plus VAT totalling £21,972.50 to C Homes and sent an email to C Homes requesting the client to direct the cheque in settlement directly to him.
9. Fortunately C Homes did not follow the Respondent's instructions but paid the sum of £21,972.50 to Halliwells. However, the accounts department at Halliwells could not match the sum received with any outstanding invoices and therefore contacted C Homes who, in turn, provided a copy of the invoice received from the Respondent but it was an invoice not issued by the practice nor related to any work that had been done to justify such a bill.
10. C Homes confirmed that they had no knowledge of any arrangements to pay money to Ms AS. As a result of these discoveries a full investigation was commenced.
11. The Affidavit of Mr Austen outlined other improper activities on the part of the Respondent. Two of the matters were exemplified in the Forensic Investigation Report as summarised below.

Allegations A-E

C Homes - purchase of a property in L Lane - client shortage £15,600

12. The undated but signed contract showed the purchase price of the property in L Lane as £390,000, such sum being received into client account on 7th February 2007 with completion taking place on the following day.
13. By letter of 9th February 2007 the Respondent wrote to C Homes requesting a cheque for stamp duty although the amount was not stated.
14. On 13th February 2007 the sum of £15,600 was received from C Homes and paid into a client account opened by the Respondent in the name of Ms AS entitled "Sale of 20 Albion Street" as shown on the client ledger.
15. On 14th February 2007 the ledger recorded the transfer of £15,600 into a Lloyds TSB bank account in the name of Mr AS with the telegraphic transfer instruction for such payment signed by the Respondent.
16. By letter of 16th February 2007, purported to be from Mr AS, he authorised the Respondent to make "...the payment of the part deposit in the sum of £15,600 to my nominated account".
17. By letter of 7th March 2008 the Respondent wrote to the Stamp Office stating there had been an error in the SDLT return and the correct purchase price for L Lane was £115,000 which was in contrast to the transfer on the file showing the purchase price as £390,000.

18. The sum of £390,000 was also shown as being paid in respect of completion monies on the correct client ledger.
19. On 9th March 2007 the Stamp Office responded to the Respondent's letter confirming that as the price was only £115,000 no payment was due. As could be seen from the copy of the HMLR Title Register for the property dated 25th June 2007 the purchase price was stated to have been £115,000.

C Homes - purchase at BT Park - shortage - £15,600

20. Again, the client involved was C Homes and the Respondent acted on behalf of one of its associated companies in a purchase at BT Park for the sum of £390,000.
21. The client ledger recorded the transfer to the seller's solicitors of a deposit in the sum of £39,000 on 16th February 2007 and the balance of £351,000 on 9th March 2007.
22. On 13th March 2007 the Respondent wrote to C Homes requesting a cheque for stamp duty in the sum of £15,600 representing 4% of the purchase price, whereas in fact it should have been 3%.
23. On 3rd April 2007 the sum of £15,600 was paid into the client ledger account opened by the Respondent in the name of Ms AS entitled "Sale of 20 Albion Street", the same account as used in the activities relating to the purchase of L Lane. The narrative relating to £15,600 was misleading, stated to be in respect of "C Homes Limited completion monies".
24. In the same way as the Respondent conducted himself in the activities relating to L Lane, the sum of £15,600 was paid into Mr AS's Lloyds TSB bank account as part of a larger payment in the sum of £16,005.38. In an affidavit of 16th July 2007 Mr AS confirmed that such sums had been received from the Respondent. The cheque request form was also signed by the Respondent.
25. The Land Transaction Return in respect of this property recorded a purchase price of £145,000 which would, at that level, not attract stamp duty liability and this contrasted with the figures contained in the transfer dated 9th March 2007 showing the purchase price at £390,000.
26. The HMLR Title Register for this property dated 25th June 2007 showed the purchase price to be £145,000.
27. Mr A's affidavit referred to 18 irregular transactions which were discovered and which fell into six categories namely:
 - (i) Stamp Duty Land Tax claimed/overclaimed from C Homes Ltd (a client) and not paid to HMRC but paid to Ms AS;
 - (ii) fabricated invoice submitted to client and diversion of payment;
 - (iii) payment of bogus disbursements to Mr AS - surveyor;
 - (iv) other client receipts misapplied to Ms AS;

(v) an apparent wrongful payment of money to the Respondent from another client, R Estates Limited;

(vi) client receipts paid to Mr B.

The total sums involved amounted to £90,716.33.

28. On 22nd February 2008, a consent order was made by His Honour Judge Hodge QC which established the Respondent's acceptance of his obligation to repay money to Halliwells. The Respondent's undated letter to Mr M of Halliwells similarly accepted an obligation to repay money to Halliwells.

The Submissions of the Applicant

29. The Applicant submitted that the Respondent's activities were unlawful and were dishonest within the meaning of the test set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Applicant had focused on three transactions in which it appeared that the Respondent had redirected funds into various client accounts for his own benefit. It was particularly unsatisfactory that in the matter of KE Road, the Respondent had attempted to involve an assistant solicitor. The Tribunal was referred to the handwritten note from the Respondent to the solicitor.
30. In relation to this transaction the Applicant submitted that the Respondent had deliberately fabricated an invoice in an attempt to misappropriate money from a client, by correspondence had deliberately attempted to mislead a client into paying to him the sum of £21,972.50 to which he was not entitled, had deliberately involved an innocent third party in an attempt to defraud a client of money and had acted dishonestly.
31. In relation to the property in L Lane the Applicant submitted that the Respondent had sent letters to HMRC knowing the content of them to be untrue. The course of conduct on the part of the Respondent led to HMRC being defrauded of a sum of money equivalent to the stamp duty payable on the property, such sum then being misappropriated by the Respondent. The Respondent's course of conduct was deliberate and carefully planned and the Respondent acted dishonestly.
32. The transaction at BT Park bore striking similarities to that of L Lane. All the documentation leading up to completion had stated that the purchase price should be £390,000 on which SDLT would have been payable of £15,600. The Applicant submitted that the narrative relating to the £15,600 on the client ledger was deliberately misleading. The Respondent had deliberately set out on a course of conduct designed to deceive HMRC, HMLR and his client. His sole aim had been to misappropriate client money and he had acted dishonestly.
33. Despite indicating in his letter to Mr M that he would supply contact details the Respondent had not done so and the Applicant had had no substantive contact with him.
34. The Respondent had replied to the pre-listing questionnaire from the Tribunal stating that he was not in a position either financially or mentally to defend himself.

35. The Applicant invited the Tribunal to find the allegations substantiated.
36. The Applicant provided to the Tribunal a schedule of his costs. He had not provided this to the Respondent as the Respondent had not indicated that he had admitted the allegations.

The Findings of the Tribunal

37. The Tribunal had considered carefully the documentation and the submissions of the Applicant. The Tribunal noted the Respondent's comments in his undated letter to Mr M and also his comments at the time of returning the Tribunal's pre-listing questionnaire. The Respondent had not made any admission to the allegations nor had he put forward any defence. The Tribunal was satisfied on the evidence before it that all the allegations were substantiated. Applying the tests in Twinsectra v Yardley the Tribunal was satisfied that the Respondent's conduct had been dishonest, indeed the Tribunal considered it to have been disgraceful. The Tribunal accepted the submissions of the Applicant in relation to the three examples of dishonest conduct which had been put before it. In the light of such clear dishonesty on the part of the Respondent it was right that the Respondent's name be struck off the Roll of Solicitors.
38. The Tribunal considered the Applicant's schedule of costs and found that the costs claimed were reasonable and made an Order in the fixed sum sought.
39. The Tribunal Ordered that Martin Colin Nicholas Roberts, 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 fixed in the sum of £12,231.48.

DATED this 26th day of March 2010
on behalf of the Tribunal

J N Barnecutt
Chairman