

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF BLESSING RINGWEDE ODATUWA, solicitor (the Respondent)

Upon the application of Peter Cadman
on behalf of the Solicitors Regulation Authority

Mr L N Gilford (in the chair)
Mr J Astle
Mr M Palayiwa

Dates of Hearing: 14th and 15th December 2010

FINDINGS & DECISION

Appearances

Peter Cadman, solicitor, of Russell-Cooke LLP, 8 Bedford Row, London WC1R 4BX appeared on behalf of the Solicitors Regulation Authority (“SRA”).

The Respondent appeared in person and gave sworn evidence.

Allegations

The allegations against the Respondent were that:

- (a) He provided misleading information to clients.
- (b) He failed to provide relevant information to clients.
- (c) He conducted insurance work when not properly registered with the Financial Services Authority and/or the Law Society.
- (d) He created in conveyancing transactions documents that were misleading.

- (e) He allowed his firm and his firm's client account to become involved in transactions which bore the hallmarks of mortgage fraud.
- (f) He used the firm's client account in transactions where there was no underlying legal transaction.
- (g) He failed to give proper and complete advice to his clients.

Factual Background

1. The Respondent was born in 1961 and admitted as a solicitor in 1999 and his name remained on the Roll of Solicitors. He was also a qualified mortgage broker and director of Fairview Mortgage Centre Ltd which he described as a business supplying services to his firm.
2. At all material times the Respondent practised on his own account under the style of Sharpfields & Co.
3. Allegations (d), (e) and (f) were presented as dishonest and/or consciously improper behaviour by the Respondent. However, even if the behaviour were not dishonest and/or consciously improper, the Respondent's alleged misconduct was presented as extremely serious by the Applicant.
4. An inspection of the books of account and other records of Sharpfields & Co was commenced on 13 October 2007 by the SRA. At the commencement of the investigation the Respondent gave the Senior Investigation Officer Mr Davies ("the SIO") a completed professional history form which indicated that he had practised alone under the style of Sharpfields for the previous five years. He was then assisted by a trainee solicitor and his wife Amanda Odatuwa who acted as his personal assistant. The SIO interviewed the Respondent on 24 November and 3 December 2008. The Forensic Investigation Report was dated 16 December 2008. The SRA wrote to him on 20 January 2009 and he responded on 10 February 2009.

Allegation (a)

5. During the course of the inspection eight property transactions were considered. The firm's bills of costs in each one showed that the cost of telegraphic transfer fees was paid as disbursements. However, each telegraphic transfer fee charged to the client contained an element of profit costs as well as a disbursement.

Allegations (b) and (c)

6. Six ledger files exhibited during the course of the inspection showed that payments were made for search indemnity insurance. The Respondent was in possession of a letter from Countrywide Legal Indemnities stating:-

"The following section should be drawn to the specific attention of the policy holder ...".

7. There was no evidence that any policyholder had been informed of those matters. Further, the Respondent's firm was not authorised by the Financial Services Authority or for insurance mediation or registered with the Law Society for general insurance work.

Allegations (d), (e), (f) and (g)

8. The Respondent's practice included a particular type of conveyancing transaction. The vendors whom the Respondent represented were for various reasons all extremely anxious to sell their properties and were prepared to take considerably less than the market rate because of their desperation to sell. In each case the vendors accepted sale proceeds at a lower value than the price stated at the time of exchange of contracts and the stage of completion. The difference between the sale price and the "accepted" price was paid to third parties. It ranged between £28,000 and £69,000. The differences amounted to £304,458.63. The third parties involved were F1 in two of the transactions, CL in five and WB in three. Two transactions were considered in detail at the time of the inspection.

Mr and Mrs A

9. The Respondent acted for Mr and Mrs A in the sale of their property. The client care letter dated 4 March 2008 confirmed: "Thank you for instructing us in connection with the purchase of your property." The file showed a client care letter and cost estimate sent 28 March 2008. In that letter the Respondent asserted.

"Our role in this transaction will be to ensure that you sell the property with the same title with which you hold the property... we are not to advise you of the reasonableness of the sale price... not able to offer you financial advice."

10. The file showed a letter from Mr and Mrs A dated 6 May 2008 stating:

"We are aware that the property is valued and contract price of the above property is £148,000... we confirm that we only want £120,000 from the proceeds. We are aware that all charges/mortgages on the above property shall be paid from the £120,000... We authorise Sharpfields & Co to pay the difference to F1".

11. Simultaneous exchange and completion occurred on 8 May 2008 with a stated selling price of £148,000. On 9 May 2008 the Respondent wrote to Mr and Mrs A by email confirming the completion of the sale and stated that the balance from the proceeds of £30,247.61 had been paid to their account.
12. At the time of the inspection the Forensic Investigation Officer ("FIO") wrote to Mr and Mrs A by letter of 26 November 2008. Although there was no written reply to that letter the Officer interviewed Mr A on 2 December 2008 and spoke to Mrs A on 5 December 2008 from which it appeared that:-
- (a) Mr and Mrs A never met the Respondent or attended his firm.
 - (b) Mr A never provided the deposit noted in the client ledger

- (c) Mr and Mrs A thought Mr V was buying the property at £120,000 as an investment.
- (d) Mr and Mrs A signed the sale agreement even though it showed a price of £148,000.
- (e) Mr and Mrs A did sign the letter dated 6 May 2008 although they did not know why they were in fact authorising funds to be paid to F1 a name that meant nothing to them.
- (f) Mrs A indicated that she had been told by the Respondent or a lady at the firm that the price of £148,000 was to enable Mr V to obtain a mortgage of £120,000.
- (g) Mrs A was told by Mr V that if valuers arrived she was to say that the sale price was £148,000.
- (h) Mr A thought that the purchaser was paying the costs.
- (i) Mr and Mrs A were then renting the property from Mr V.
- (j) Mr and Mrs A received funds of £30,247.61 namely £120,000 less two mortgages.

Mr and Mrs D

- 13. The Respondent acted for Mr and Mrs D in connection with the sale of their property. There was a client care letter dated 25 January 2008.
- 14. The contract and completion documents signed by Mr and Mrs D showed a sale price at £155,000 to Mr K. The letter also stated "We authorise Sharpfields & Co to pay the difference between £122,000 and £155,000 to CL."
- 15. The Respondent wrote on 17 April 2008 to his clients confirming completion and enclosing a bill of costs and completion statement stating that £11,850.22 had been paid to their account.
- 16. During the course of the inspection the SIO wrote to Mrs D. From her reply it appeared that:-
 - (a) Mr and Mrs D did not meet the Respondent or any representative of the Respondent's firm.
 - (b) Mr and Mrs D did not provide the deposit noted in the client ledger
 - (c) Mr and Mrs D thought that Mr K was buying the property from them at £122,000 as an investment.
 - (d) Mr and Mrs D were then renting the property.

- (e) Mr and Mrs D received funds of £11,850.22 which was the £122,000 less two mortgages and some rent.
17. The FIO wrote to five of the eight clients whose matters he had looked into. Apart from the responses from the As and the Ds only one other set of clients (H and L) responded. They said that they were satisfied with the solicitor's services.
18. There was no evidence on the files that the vendors were ever properly advised of the possible implications of these transactions including their lack of security of tenure as tenants of the property if they continued to occupy the property after completion and the possibility of a claim being made against them by the purchaser's lenders.
21. At least two properties had been bought by Mr V.
22. In seven of the eight transactions examined ES and Co acted as solicitors for the buyer.
23. The authority in respect of Mr and Mrs D was to pay F1. The client ledger however showed payments to F1 and WB.
24. On 3 December 2008 Mr Davies interviewed the Respondent generally about the type of transaction detailed above and he offered his understanding of the type of transactions being investigated.
- (a) The transactions were referred to Sharpfields by CL who had signed agreements with the clients.
- (b) The payments to CL/F1/WB were payments on behalf of the firm's clients.
- (c) The payments were not on behalf of some other person.
- (d) The Respondent prepared the clients' authority letters. Although he was asked who had told him what details to put in the authority letters to the clients he made no response.
- (e) The 'deposits' may have been received from F1/CL and not the clients.
- (f) Client funds were not paid without authority.
- (g) The client was always aware of the release of their equity.
- (h) The clients were not forced to sign anything and everything was done to make them aware that money was going to a specific third party.
25. The Tribunal reviewed documents submitted by the Applicant including:-
- Rule 5 Statement dated 10 September 2009 with exhibits.
 - First Statement of Mike Davies, Senior Investigation Officer at the SRA dated 9 July 2010 with exhibits.
 - Professional history form relating to the Respondent dated 13 October 2008.

26. The Tribunal reviewed documents submitted by the Respondent including:-
- Respondent's statement dated 19 April 2010.
 - Reply dated 19 April 2010 to the first statement of the Applicant.
 - Respondent's second statement dated 12 December 2010 with exhibits including references.
 - Statement of Amanda Odatuwa dated 13 December 2010.
 - Copies of six additional ledger pages not included in the original bundle.

Witnesses

27. Mr Mike Davies, Senior Investigation Officer employed by the SRA gave evidence. He confirmed his statement dated 9 July 2010 with exhibits including the Forensic Investigation Report.

Findings as to Fact and Law

Allegation (a)

28. This allegation related to providing misleading information to clients in the eight conveyancing transactions covered by the Forensic Investigation Report about disbursements for telegraphic transfer fees which actually included an element of profit costs. During the course of the proceedings the Respondent admitted this allegation. He submitted that as soon as it had been drawn to his attention that his firm was in breach of the Solicitors Accounts Rules in making these charges under the heading of disbursements he ensured that the practice ceased. The Tribunal found this allegation to be proven and noted that it was a breach which a significant number of solicitors' practices had made before the Law Society had clarified that administrative fees for arranging telegraphic transfers must be allocated to profit costs rather than disbursements.

Allegations (b) and (c)

29. These allegations were connected and related to the Respondent having procured search indemnity insurance for six clients. Allegation (b) related to the fact that the insurer had required the Respondent to draw the specific attention of the policy holder to certain information. Allegation (c) related to the fact that the Respondent had conducted insurance work when not properly registered with the FSA and/or the Law Society to undertake it. The Respondent took the view that because he had not made a profit from the transactions in terms of any kind of referral fee or commission that he was not required to register with the FSA and/or the Law Society. The Respondent had made submissions to the Tribunal about one particular case in which he said that he had obtained the insurance in order to speed through the transaction, with the consent of his client for the benefit of the purchaser who was advised by another firm of solicitors,. He took the view that because he was not acting for the person who was to benefit from the insurance he had no duty to draw their attention to the information required by the insurer. The Tribunal found that the Respondent had not provided any satisfactory explanation to the SRA or to the Tribunal about the other cases and there was no evidence that he had provided appropriate information to the clients in any of the cases. The Tribunal found both these allegations to have been proved.

Allegations (d), (e), (f) and (g)

30. These allegations all related to a particular type of conveyancing transaction. It was the Applicant's submission that the Respondent had failed to fulfil his duties to his clients in transactions which bore the hallmarks of mortgage fraud; that the documentation was of an extremely unusual nature and should have alerted the Respondent to the possibility of fraud; the construction of the completion statements was unusual, since if as the Respondent submitted the third parties were undertaking some kind of estate agency work it would be normal for the payments to be described as estate agents' fees but this was not the case; that the fact that the clients had signed documents drafted by the Respondent authorising him to pay the difference to the third parties did not relieve him of his duty to his clients; that there was no evidence on the files of receipt of instructions from the clients save for two attendance notes in the cases of Mr and Mrs A and Mr and Mrs D which were not found on the files when the SIO perused them but which were subsequently produced by the Respondent to the SRA. Apart from those notes the only documents in any way setting out clients' instructions were letters of authority which the Respondent admitted having drafted of his own volition which authorised him to make payments to the third parties. It was pointed out that in one of the transactions the amount which the clients, Mr and Mrs G were prepared to accept, £80,000, was originally shown as the purchase price in documentation sent to the Respondent's firm and then later amended to a higher price, £109,950 which was shown on the transfer and contract documents when they were executed. By the Respondent's own admission during evidence there had been 20 to 30 such transactions in which the firm had always charged around £650 notwithstanding that they were very simple conveyances. The Respondent had not taken proper steps to investigate the nature of any agreement between the vendors and any other parties concerning the payment of monies from the proceeds of sale to business entities which did not appear to have undertaken any or any significant work in return for the monies paid. There was little if any evidence on the Respondent's files that he had given proper advice to the clients.
31. The Respondent submitted that he had acted in good faith throughout. He challenged the evidence of the SIO on the basis that interviews had not been tape recorded nor notes read over to him. The typed summaries of the interviews were paraphrases rather than verbatim notes. He disputed that he had remained silent when asked who provided the detail for the letters of authority. He felt that the SIO should have carried out an interview with Mrs A, spoken to Mr D and contacted all the clients not just five. He denied that anyone from his firm had advised Mrs A that the figure of £148,000 shown as the purchase price on the contract and transfer was to enable the purchaser to obtain a mortgage of £120,000, though he did not have personal conduct of the transactions.
32. The Respondent accepted that the payments to the third parties were unusually high. He submitted that they were a feature of a particular type of business transaction where the vendor clients were desperate to sell their properties and needed the assistance of very particular types of agents such as F1, CL and WB. He conceded with the benefit of hindsight that he should have taken the additional step of asking the clients to produce to him written evidence of the agreements they had entered into to make the payments to the third parties. At the time he felt that it was adequate to protect his own position to draft authority letters which he had all the clients sign

directing him to make payments. He also relied on the purchasers' solicitors to satisfy themselves that the transactions were proper. The Respondent was under the impression that the purchasers were providing deposits and borrowing the balance of the purchase price and his being satisfied of this was sufficient to discharge his duties. He did not feel it was for him to give any advice to his clients about the unusual features of the transactions. He considered his clients to be literate people who knew what they were doing.

33. The Respondent explained to the Tribunal that he had not operated as a mortgage broker but obtained this stream of business following his placing adverts in various locations including churches. He had invited representatives of C1 and F1 to his offices to discuss the nature of the business they would refer to him. There was no referral agreement nor was any payment received by his firm in respect of the clients sent to him. He could not point to any written evidence of the meetings or their contents. He assured the Tribunal that the two attendance notes which he had sent to the SRA which the SIO had not found had been in the relevant files at the time of the inspection. If there had been mortgage fraud it had been as a result of collusion between the client Mrs A and the purchaser in that transaction of which he was completely unaware. He was not able to explain what role F1 had played in obtaining a purchaser for Mr and Mrs A. He had not been aware of the email contact between the vendor and purchaser before the business came to him, which did not refer to any involvement of FI.
34. In respect of the payment to WB in circumstances where the clients Mr and Mrs A's instructions had only extended to a payment to F1, the Respondent submitted that on receipt of their authority to pay F1 he had become a trustee of the money for F1. It was therefore legitimate for him to act on F1's instructions to pay the money to WB Ltd. The Respondent also submitted that he had possibly been naive and misguided and relied too much on others in his practice to do work for him for which he as principal had to take responsibility.
35. Having carefully considered the documents and the evidence including the witness evidence and having noted that the Respondent's wife had not given evidence to support her witness statement the Tribunal found as follows having carried out the test set down in *Twinsectra Ltd v Yardley and Others* [2002] UKHL 12 in respect of allegations (d), (e), and (f):
36. Having regard to allegation (d) that the Respondent had created in conveyancing transactions documents that were misleading the Tribunal considered that the hallmarks of mortgage fraud were very clear. The Respondent, being fully aware of the very unusual nature of the transactions which appeared to be dishonest, chose to continue with them and to create documents which purported to show a purchase price well in excess of that actually sought and agreed by the vendor clients.
37. In respect of allegation (e) that the Respondent allowed his firm and his firm's client account to become involved in transactions which bore the hallmarks of mortgage fraud, the Respondent had told the Tribunal that he was aware that the circumstances of the transactions were most unusual and yet he had proceeded to make payments to third parties of significant amounts of monies where there was no evidence that those third parties had undertaken work related to the conveyancing transactions.

38. Having regard to allegation (f) the Respondent had failed to show that there was any underlying transaction which connected F1, CL and WB Ltd to the conveyancing transactions. He had not seen and was not able to produce any agreement between his vendor clients and these businesses as estate agents or in any other relevant capacity which would have justified making payment to them. In one case he had also acted in breach of his clients' instructions by making payment to WB when his only written instruction was to make payment to F1.
39. In respect of allegations (d), (e) and (f) while there was no evidence before the Tribunal of a connection between the Respondent and any of the parties apart from his own clients, the Tribunal was satisfied that in circumstances where objectively the transactions could be seen to be dishonest, he proceeded with them and the only step which he took outside the normal conveyancing process was to create a letter which he required his clients to sign which was designed to protect his own position with the regulator. His incentive in undertaking the work was to protect an income stream and the Tribunal found that in undertaking the work he knowingly acted dishonestly for the profit of himself and his firm.
40. Having regard to allegation (g) that the Respondent failed to give proper and complete advice to his clients the Tribunal took the view that the Respondent was motivated by a desire to protect his own position. He had not been able to produce any evidence either to the SRA or to the Tribunal that he had fulfilled his duty to advise his clients about the very unusual/apparently dishonest nature of the transactions and in doing so he had exposed them to risk of becoming tainted by involvement in the transactions. The Tribunal considered that he had totally disregarded his clients' interests in so doing and found the allegation proven.

Mitigation

41. The Respondent relied on his statements and sworn evidence. He emphasised the clean sets of accounts which his firm had in 2008 and 2009 and that no serious complaints had been made against him. He repeated that he had done all he believed was properly required of him and that the transactions which had brought him to the Tribunal were ones which he honestly considered to be proper at the time, unusual though they were. He had already decided that he no longer wished to be involved in running a law firm but he did wish to continue working in the profession.
42. The Respondent informed the Tribunal that he was unemployed and unable to make payment of what he had been advised were the costs of the proceedings. He had planned to sell his home because of mortgage arrears but had obtained a reprieve from his bank. He had little or no equity and along with his wife, had been unemployed since November 2009 when he closed down the firm. He was living on money received from his family abroad.

Application for Costs

43. The Applicant sought costs in the sum of £17,109.61 but accepted that the Tribunal might be minded to order that costs should not be enforced without its leave. The Respondent submitted that the costs of the investigation were somewhat high. He particularly pointed out that no record had been kept of the timing of interviews and

he referred the Tribunal to the other criticisms he had made of the investigation process. The Applicant informed the Tribunal that copies could be produced to verify the amount of time attributed to the investigation.

Previous Disciplinary Sanctions by the Tribunal

44. None.

Costs Order

45. Having carefully considered the schedule of costs the Tribunal felt it appropriate to reduce the amount claimed to £15,000 not to be enforced without its leave having regard to the Respondent's financial circumstances.

Sanction

46. The Tribunal Ordered that the Respondent, Blessing Ringwede Odatuwa, 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 £15,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 31st day of January 2011

On behalf of the Tribunal

L N Gilford
Chairman