

The Respondent appealed out of time to the High Court (Administrative Court) against the Tribunal's decision dated 12 May 2010 in respect of findings and sanction. The appeal was heard by Mr Justice Singh on 22 January 2014. The appeal was dismissed with costs payable by the Respondent to the Applicant not to be enforced without further order of the High Court. Adelakun v Solicitors Regulation Authority [2014] EWHC 198 (Admin.)

No. 10330-2009

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF MAHMOOD ALI, registered foreign lawyer
[RESPONDENT 2], solicitor
and MONTAGUE MASON SOLICITORS LIMITED, a recognised body

Upon the application of George Marriott
on behalf of the Solicitors Regulation Authority

Mr J C Chesterton (in the chair)
Mr R J C Potter
Mr M Palayiwa

Date of Hearing: 23rd March 2010

FINDINGS & DECISION

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

Appearances

George Marriott, solicitor of Russell Jones and Walker appeared on behalf of the Applicant. Mr Ali did not appear and was not represented. [*Respondent 2*] appeared in person.

At the opening of the hearing the Tribunal was informed that Montague Mason Solicitors Limited had been struck off the Register at Companies House.

The application to the Tribunal was dated 18th September 2009.

Allegations

The allegations against the First Respondent were that he:

1. failed to keep accounting records properly written up contrary to Rule 32 Solicitors Accounts Rules 1998 (SAR);

2. made withdrawals from client account contrary to Rule 22 SAR;
3. caused or permitted accounting records to be destroyed;
4. misappropriated clients funds.

The allegations against the Second Respondent were that he:

1. failed to keep accounting records properly written up contrary to Rule 32 Solicitors Accounts Rules 1998 (SAR)
2. made withdrawals from client account contrary to Rule 22 SAR;
3. failed to comply with Rule 5 of the Solicitors Code of Conduct 2007 in that he did not make arrangements for the effective management of the firm as a whole and in particular the management of risk.

The allegations against the Third Respondent were that it:

1. failed to keep accounting records properly written up contrary to Rule 32 Solicitors Accounts Rules 1998 (SAR);
2. made withdrawals from client account contrary to Rule 22 SAR.

It was not the Applicant's case that the Second Respondent had been dishonest. Dishonesty was alleged against the First Respondent.

Factual Background

1. The First Respondent had made no response or representation in the disciplinary proceedings. The Second Respondent admitted the allegations on the basis of strict liability and made submissions at the hearing.
2. In the absence of the First Respondent the Tribunal was satisfied that the Respondent had been properly served and given notice of the hearing, orders for substituted service having been made and copies of the advertisements handed up at the hearing.
3. The First Respondent, born in 1966 was a Registered Foreign Lawyer. At the material time he was a partner and owner in the firms of Markandan & Uddin Solicitors and Falcon Solicitors both of 720 Romford Road, London E12 6BT and he was a director and sole shareholder in Montague Mason Solicitors Ltd of 6 Connaught Mews, Connaught Road, Ilford, Essex IG1 1QT.
4. The Second Respondent was born in 1966 and was admitted as a solicitor in 2005. His name remained on the Roll. At the material time the Second Respondent was the supervising solicitor in Markandan & Uddin Solicitors and Falcon Solicitors and a director in Montague Mason Solicitors Ltd.

5. The Third Respondent was incorporated on 8th June 2007. The First and Second Respondents were appointed directors on 22nd October 2008. The Second Respondent resigned as a director on 2nd March 2009. The Third Respondent became a “recognised body” on 22nd October 2007. At the hearing the Tribunal was told that the Third Respondent had been removed from the Companies Register by Companies House.
6. On 1st September 2008 the First Respondent purchased the firms of Markandan & Uddin Solicitors, and Falcon Solicitors from Mr M when he did not have the required experience to supervise a practice in his own right as a Registered Foreign Lawyer. Mr M agreed to supervise the practices for two months or until the appointment of another supervising solicitor.
7. On 13th January 2009 a Forensic Investigation Officer of the SRA (the FIO) commenced investigations into all three firms and reports on all three were produced and were before the Tribunal.
8. All three firms were intervened into on 3rd March 2009.

MARKANDAN & UDDIN

9. The Second Respondent informed the SRA that at the time he joined this firm, the Respondent opened a client account and an office account with HSBC. These accounts were frozen on 24th December 2008 at the Bank’s instigation and since then the Bank had withdrawn its services.
10. No books of account were produced during the SRA’s investigation so that it could not be established whether the practice held enough client monies to meet liabilities.
11. An invoice issued to the firm included charges for the shredding of 5,931kgs of documentation contained in 47 tea crate boxes and 168 sacks.

FALCON SOLICITORS

12. The Second Respondent had also been appointed the supervising solicitor of Falcon Solicitors in October 2008.
13. When the Second Respondent joined the firm, the First Respondent opened a client account and an office account with HSBC. Again these accounts were frozen on 24th December at the Bank’s instigation; since then the Bank has withdrawn its services.
14. The Second Respondent stated that the accounts were to be operated with the joint signatures of himself and the First Respondent. It had been his belief that no internet facility had been set up on the account, but he had informed the SRA that he had since learnt that an internet facility had been applied to the account having been set up without his knowledge although he was listed as an additional user of the facility and authorised to make payments. The form completed for the Bank contained the Second Respondent’s signature in three places.

15. No books of account or client files were produced during the SRA's investigation. It could not be established what client funds were available to meet its liabilities to clients as at 24th December 2008. From correspondence and bank statements the SRA calculated that there was a shortage of client funds of at least £1,579,418.53.
16. The client shortage had arisen in a number of conveyancing matters of which the First Respondent had conduct.
17. In two matters the First Respondent had acted for the sellers of property. SP Solicitors had sent the purchase monies to Falcon on 18th December 2008 to be held strictly to their order.
18. SP also represented a purchaser of another property where Falcon acted for the purported sellers. On 23rd December 2008 SP wrote to Falcon and explained that they had transmitted funds to Falcon's account to be held strictly to SP's order. Later the same day the return of the funds was requested. The funds had not been returned.
19. Falcon's Bank statements for the period 29th October 2008 to 24th December 2008 recorded that between 12th and 24th December the firm received three credits; £100,000 on 12th December, £750,000 on 18th December and £830,000 on 23rd December 2008.
20. Between 12th December and 24th December 2008 the following payments were made:

Beneficiary	Amount	Date
M AND A VEHICLE MA	£36,700	16/12/2008
MINA CATERING	£35,000	16/12/2008
SHAHSON BRIDGING	£29,068	12/12/2008
	£74,000	16/12/2008
JOHN PROPERTY SERV	£550,000	24/12/2008
	£127,800	22/12/2008
	£591,000	18/12/2008
ELEGANT BUILDER	£30,000	22/12/2008
RAZVI TRADING	£39,000	24/12/2008
HAM FASHION	£32,000	24/12/2008
J A HARDWARE	£32,000	24/12/2008
	£15,000	
A Z EASY PLUMBING	£40,000	24/12/2008
TANGEA INTERNATION	£28,000	24/12/2008
FAROOQI ASSOCIATE	£20,000	24/12/2008
KHAN GAZI	£28,000	24/12/2008
RAZI TRADING	£29,000	24/12/2008
KASHMIR GARMENTS	£18,000	24/12/2008
TOTAL	£1,579,800	

21. Before the credit of funds on 18th December 2008 the client account balance was £344.33. The closing balance on the client account on 24th December was £544.33. No funds were returned to SP from client account. None of the payments were made

to the sellers or to redeem mortgages but had been made to businesses and companies that were not connected with either of the transactions.

MONTAQUE MASON SOLICITORS LTD (Third Respondent)

22. The Second Respondent explained that he had attended the registered office of the Third Respondent on a couple of occasions before he was made a director, but he had not been able to gain access to the premises since December 2008 as he did not have keys for the shutters on the front of the building.
23. The Third Respondent also maintained accounts with HSBC and those accounts had been frozen on 24th December at the Bank's instigation and the Bank had withdrawn its services.
24. The Second Respondent explained that the Third Respondent's accounts could be operated with the joint signatures of himself and the First Respondent. The Second Respondent informed the SRA that he understood that no internet facility had been set up on the account but he had come to learn that an internet facility had been available. The bank recorded the Second Respondent's position in the Third Respondent company but the First Respondent had been the only user of the internet account.
25. No books of account or client files were produced during the SRA's investigation so that the SRA's FIO was unable to ascertain the Third Respondent's total liabilities to clients as at 24th December 2008. From available correspondence and Bank statements a shortage of clients' funds of at least £3,738,317.28 was identified.
26. On 19th January 2009 the SRA and the Second Respondent gained access to the registered offices of the Third Respondent.
27. It had been established that ten mortgage advance payments had been made to the Third Respondent between 11th November and 24th December 2008, totalling £2,152,600.
28. In each case the Third Respondent apparently acted for the purchaser of a property and for the purchaser's institutional mortgage lender. The lender had been supplied with a certificate of title and a request for funds to enable completion to be effected. The purchasers and the transactions were fictitious.
29. Between 18th December 2008 and 24th December 2008 42 payments totalling £2,078,067.33 had been made from client account to individuals or businesses that were unconnected with the purported conveyancing transactions, some of the recipients had also received payment from Falcon's client account.
30. When these payments had been effected there was a closing balance in client account of £248,030.72. Upon closure of the account, HSBC returned the sum of £163,715 to one institutional lender and the remainder of £84,315.72, was sent to another institutional lender, both of which had paid mortgage advances to the Third

Respondent. When these returns had been made the account had a nil balance and was closed.

31. On 5th January 2009 the First Respondent wrote to the SRA stating, “Due to personal and family issues, I am moving back to Pakistan for an indefinite period.” The letter made reference to his letter dated 22nd December 2008 in which the First Respondent informed the SRA that he had resigned as partner and director/secretary from Markandan & Uddin, Falcon Solicitors and Montague Mason Solicitors Limited.
32. During the SRA’s investigation no responses or explanations had been received from the First Respondent.
33. The Second Respondent explained that having been introduced by an acquaintance to the First Respondent he had been employed by the firms to be their principal solicitor. The Second Respondent had been away on holiday from 15th December 2008. The First Respondent had destroyed the firms’ records during the holiday period. On 9th January, having been unable to contact the First Respondent, the Second Respondent forced his way into the premises to discover that all the files, books and computer servers had been removed whereupon he contacted the SRA, the police and insurers. On his first day with the firms the Second Respondent had set out guidelines for the practices which included his seeing all incoming correspondence, new clients had to be seen by him and he had to certify their identity, undertakings and certificates of title could be completed only by him, and payments from client account required the joint signatures of the First and Second Respondents.
34. In a written explanation to the SRA the Second Respondent had said, “My supervision however stringent and cautious I could have been would not have covered or prevented such organised fraud”. It was the Second Respondent’s position that he was another victim of the First Respondent’s fraud.
35. The Second Respondent had been a director in the Third Respondent but did not hold any shares. He had not been aware of the receipt of any new instructions in the year prior to the events before the Tribunal. The Second Respondent’s position was that the fraudulent conveyancing transactions involving fictitious characters had been carried out by the First Respondent without his knowledge or consent. The First Respondent had explained to the Second Respondent that he had not advertised for new clients as he wanted to refurbish the premises using the proceeds of a sale of property in Pakistan. He proposed thereafter to attract new staff and advertise for business.
36. The Tribunal reviewed the Applicant’s statement made pursuant to Rule 5 of the Tribunal’s procedural rules and the documents annexed thereto. A notice of dissolution of Montague Mason Solicitors Ltd and copies of the advertisements appearing in The Law Society’s Gazette relating to substituted service were handed up at the hearing.

Findings as to fact and law

37. The facts established that the First Respondent had failed to keep accounting records properly written up and he had made withdrawals from client account contrary to Rule 22 of the Solicitors Accounts Rules and he had caused or permitted accounting records to be destroyed. Further he had misappropriated clients funds. The FIO's Reports indicated that accounting records had not been kept. The Tribunal accepted that an invoice relating to the shredding of a large number of documents established that he had either caused or permitted his records to be destroyed and the FIO's Report as to the payment of monies held in client account being monies either due to or received from mortgage lenders had been misappropriated by the First Respondent.
38. In his capacity as partner, member or supervising solicitor the Second Respondent also failed to keep accounting records properly written up and was responsible for the improper withdrawals from client account implemented by the First Respondent.
39. With regard to the Second Respondent's failure to comply with Rule 5 of the Solicitors Code of Conduct 2007 he himself accepted that he had not made arrangements for the effective management of the firm and in particular the management of risk.
40. With regard to the allegations against the Third Respondent the FIO's Report supported the allegations that it failed to keep accounting records properly written up and that withdrawals had been made from its client account and that improper withdrawals had been made from its client account.
41. The Tribunal therefore found all of the allegations to have been substantiated against each of the Respondents.
42. The Tribunal found that in taking money that belonged to institutional mortgage lenders and in not applying that money for the purpose for which that money had been paid to the First Respondent, his conduct was dishonest by the standards of reasonable and honest people. The First Respondent had made application for mortgage advances and had paid out the monies received in this respect having deliberately misled the lenders as to his true intent. The Tribunal was satisfied that it was sure that the Respondent did not have an honest belief that he might properly utilise those monies as he did and therefore that he knew that what he was doing was dishonest by those same standards.

Mitigation

43. The Second Respondent had admitted the allegations and addressed the Tribunal orally in mitigation.
44. The Second Respondent explained that he had been introduced to the First Respondent by a third party who recognised that the First Respondent in his capacity as a Registered Foreign Lawyer needed a supervising solicitor to enable him to

practise. The third party had told the Second Respondent that the First Respondent was a “nice person and a good employer.” As a result the Second Respondent had got in touch with the First Respondent but he had not known him prior to that.

45. The Second Respondent recognised that he had failed to exercise a proper supervision and he apologised deeply to the Tribunal and to the solicitors’ profession.
46. The Second Respondent pointed out that at the time when the First Respondent paid away substantial sums of money received from mortgage lenders, the Second Respondent had been away from the office on holiday.
47. The Second Respondent had been aware that the practices had not received recent new instructions in conveyancing and had been told by the First Respondent that he was endeavouring to sort out files and show the staff what to do and get to grips with a new computer and generally sort out the affairs of clients and the firms before seeking to progress the firms’ business. He said also that he intended to sell property in Pakistan, invest the proceeds in the firms and then take on new staff with a view to the future success of the firms. As a result there had been very little work for the First Respondent to do and he had not been suspicious of this. He had seen all incoming post but had not seen outgoing post. Because there had been no new instructions no money had been coming into client account and the work which he undertook on the whole had been dealing with post completion matters.
48. A member of the Tribunal pointed out that the First Respondent had perpetrated a five million pound fraud at a time when he was being supervised by the Second Respondent and the Second Respondent acknowledged that however diligent he would have not been able to prevent that fraud. He accepted however that it was a fair comment that the fraud had occurred “on his watch.”
49. The Second Respondent deeply regretted the embarrassment that he had brought upon the solicitors’ profession. It had been his dream when growing up to be a solicitor. Many people had invested in his future. Many people had trusted the Second Respondent and their reaction upon learning what had happened had been shock and horror. The Second Respondent felt that he had let down all of his senior colleagues who had helped him. He had formerly been a clerk, had passed examinations and then trained to be a solicitor. He had joined a conveyancing practice which undertook a high volume of such work. That practice had been badly hit by the recession and the Second Respondent had been made redundant in February of 2008. He had made considerable, although unsuccessful, efforts to get a job. It was against that background that he had joined the First Respondent’s firm.
50. The Second Respondent invited the Tribunal to recognise that he had been a victim of circumstances and had acted in a naive manner. He had not been fully in the picture as far as the First Respondent’s practices were concerned. He had come to recognise that the practices were in serious trouble and the First Respondent was looking for a way out. The Second Respondent had been a “sacrificial lamb on the altar of greed.”

51. The Second Respondent fully accepted, with the benefit of hindsight, that if he had asked all of the right questions the First Respondent would not have been able to act as he did. As it was he had committed what appeared to be the perfect crime. The previous owner of the practice had retired, the First Respondent had duped lenders into paying large sums of money to the firms and had then left for Pakistan having paid those monies out of client account to a number of recipients in all of which the First Respondent was believed to have an interest.
52. The Second Respondent had come to the United Kingdom in 1994 and had over time handled many millions of pounds of clients' money with the utmost care and propriety.
53. The Second Respondent was well aware of the need to protect the public and maintain public confidence in the solicitors' profession. The Second Respondent had made sacrifices to qualify as a solicitor. He had made a great mistake in joining the First Respondent's practices. His failures amounted to omissions and not commissions. He himself had not been dishonest but had without his knowledge joined a dishonest practice.
54. The First Respondent's fraud had been in the pipeline for a long time. The Second Respondent had trusted the First Respondent but accepted that he had not known him at the time when he joined the practice.
55. The Second Respondent had cooperated and helped in every way that he could. The Second Respondent had been part of the police investigation. He maintained great respect for the professional regulator and hoped that he might be forgiven for his failure. He invited the Tribunal not to impose the ultimate sanction. He had not himself been dishonest.
56. The Second Respondent had had to watch his family, his partner and three children, suffer as a result of what had happened and that had been difficult for him.

Costs

57. The Applicant sought the costs of and incidental to the application and enquiry. He provided figures to the Tribunal and invited it to make a fixed order for costs. In making that application the Applicant recognised that the levels of culpability of the respective Respondents were very different. The Applicant reminded the Tribunal that the Third Respondent was a company which had been dissolved.
58. The Second Respondent accepted that a costs order would be made against the Respondents. He asked the Tribunal to way up the quantum and the Respondents' relevant culpabilities and also to take into account the Second Respondent's parlous financial circumstances. He had no equity in his home, his wife worked as a care assistant and they had three young children. He owed a substantial sum to various creditors which included the costs of the SRA's interventions.

The Tribunal's sanction and its reasons

59. The Tribunal found that the First Respondent had deliberately and dishonestly obtained monies from mortgage lenders and had taken that money for his own benefit and purposes. Such behaviour will not be tolerated on the part of a person operating as a Registered Foreign Lawyer under the umbrella of the solicitors' regulatory regime.
60. The Tribunal deprecates the First Respondent's dishonest and fraudulent behaviour which has seriously affected mortgage lenders, renders him a threat to the public and has seriously damaged the good reputation of the profession. The Tribunal was in no doubt that the First Respondent should be struck off the Roll of Registered Foreign Lawyers forthwith.
61. With regard to the Second Respondent, the Tribunal could not avoid the conclusion that he had abdicated his responsibility. He had acted in a manner that was so naive that he left himself open to be used by the dishonest First Respondent to further his own nefarious purposes.
62. The Tribunal recognised that the Second Respondent had not acted dishonestly and had enjoyed a hitherto unblemished record as a solicitor.
63. The Tribunal also recognised that a conveyancing solicitor who had been made redundant as the result of the economic recession in the country, who had not been able to find other work whilst having responsibility for a young family, found himself in the most difficult position and the Tribunal is of the view that the First Respondent took advantage of his vulnerability because of that difficult position.
64. It had to be said that the Second Respondent is nevertheless a solicitor. Whilst there are many advantages in being a solicitor there are also very considerable burdens and if a solicitor, whatever his personal circumstances, accepts responsibility for supervision of a Registered Foreign Lawyer that supervision must be meaningful and serve to prevent precisely the sort of mischief perpetrated by the dishonest First Respondent.
65. The Tribunal does give the Second Respondent credit for his admissions and his cooperation with all investigators.
66. The Tribunal recognised that the Second Respondent had as a result of the circumstances and the disciplinary proceedings effectively been out of practice for a year. The Tribunal considered that it was both appropriate and proportionate to mark his serious abdication of his duty as a solicitor with an order that he be suspended from practice for two years.
67. On the question of costs the Tribunal recognised that the Second Respondent was impecunious and that he had been the victim of the First Respondent the Tribunal therefore made no order for costs against the Second Respondent. It Ordered the First Respondent to pay the whole of the Applicant's costs which the Tribunal fixed

in the sum of £15,000. Such Order reflected the respective culpability of the Respondents.

The Third Respondent

68. The Tribunal noted that the Third Respondent was a Limited company which had been dissolved. The Third Respondent had been a recognised body and under the SRA Recognised Body Regulations 2009, Regulation 10, whereby the body's recognition will automatically expire if the company is wound up or for any other reason ceases to exist and the Tribunal was not required to and did not take any further step.

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

69. The Tribunal Ordered that the Respondent, Mahmood Ali of Redhill, Surrey RH1, registered foreign lawyer, be Struck off the Register of Foreign Lawyers 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.
70. The Tribunal Ordered that the Respondent, [*Respondent 2*], solicitor, be suspended from practice as a solicitor for the period of two years to commence on the 23rd day of March 2010.

Dated this 12th day of May 2010

On behalf of the Tribunal

JC Chesterton
Chairman