

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF RICHARD MICHAEL JOHN SMITH, solicitor (Respondent)

Upon the application of Stephen John Battersby
On behalf of the Solicitors Regulation Authority

Mr D Glass (in the chair)
Mr A Gaynor-Smith
Mr M Hallam

Date of Hearing: 11th March 2010

FINDINGS & DECISION

Appearances

Mr Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts, SG14 1BY for the Applicant.

The Respondent did not appear and was not represented.

The application to the Tribunal on behalf of the Solicitors Regulations Authority ("SRA") was made on 7th October 2009.

Allegations

The allegations against the Respondent, Richard Michael John Smith, were:-

1. That by failing to comply with decisions of Adjudicators made on 8th September 2008, 17th October 2008 and 20th October 2008 he behaved in a way likely to diminish the trust which the public placed in him or the legal profession contrary to Rule 1.06 Solicitors Code of Conduct 2007.
2. In respect of complaints made by Mr L, Mrs T and Mr O and the investigations which ensued, did fail to deal with the Legal Complaints Service and the SRA in an open, prompt and cooperative way contrary to Rule 20.03 Solicitors Code of Conduct 2007.
3. That he did fail to deliver to the SRA his Accountants' Reports for the three periods ending 31st March 2007, 31st March 2008 and 30th September 2008 and a Ceased to

Hold Report for the period ending 23rd December 2008 contrary to Section 34 Solicitors Act 1974.

4. That he failed to keep his books of account properly written up contrary to Rule 32 Solicitors Accounts Rules 1998.
5. That he withdrew monies from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998.
6. That he failed to remedy breaches of the Solicitors Accounts Rules 1998 promptly upon discovery contrary to Rule 7 of the said Rules.
7. That he dishonestly used a client's monies for his own purposes contrary to Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007.
8. That he dishonestly used clients' money for the purposes of other clients contrary to Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007.
9. That he did dishonestly provide misleading information to an Officer of the SRA during the course of an Investigation contrary to Rules 1.02 and 1.06 and 20.03 of the Solicitors Code of Conduct 2007.
10. That he did practise without there being in force the requisite Indemnity Insurance cover contrary to Rules 4 and 5 of the Solicitors Indemnity Insurance Rules 2008.

Preliminary matter

The Applicant invited the Tribunal to deal with the matter before them in the absence of the Respondent. The Applicant indicated that the Respondent was aware of the proceedings. Documents sent to him had not been returned.

The Tribunal was satisfied that the Respondent had been properly served and given notice of the hearing. Having regard to the public interest and the guidance provided by Rose LJ in *R v Hayward* [2001] QB 862, it agreed that the matter would indeed proceed in the Respondent's absence.

Factual background

1. The Respondent, born in 1960, was admitted as a solicitor in 1985. At the times material to the allegations he was in practice on his own account in the firm of Smith Bates at 101 High Street, Lyndhurst, Hampshire, SO43 7BH. The Respondent closed the practice on Friday 12th December 2008 and ten days later it was intervened into by the SRA. His name remains on the Roll of Solicitors.
2. Following separate complaints from clients Mr L, Mrs T and Mr O about the way in which their matters had been handled, the Legal Complaints Service (LCS) attempted to work with the Respondent in resolving the matters. The Respondent did not engage with the LCS and consequently each of the matters was referred to an Adjudicator.

3. The three Adjudicators' decisions relating to the matters were made respectively on 8th September, 17th and 20th October 2008. Each of the Orders required the Respondent to pay compensation to the client and two of them required him to make refunds of costs as well. Additionally, in each case he was ordered to pay £840.00 costs to the SRA.
4. None of the three Adjudicators' decisions was complied with and the Respondent's explanations for these failures was sought, but not received. His conduct in respect of each failure has been referred to the Tribunal. The compensation due to Mr O was eventually paid by the Respondent's insurers.
5. The Respondent should have delivered Accountants' reports to the SRA for the period ending 31st March 2007 but failed to do so in an acceptable form. The accounts which should have been delivered on 31st March 2008 were not received. As a result of a condition placed upon his practising certificate, the Respondent was thereafter required to deliver reports every six months within two months of the end of each accounting period. The next set of reports should therefore have been filed by 30th November 2008 to cover the period ending 30th September 2008. These have not been. The Respondent should have filed a Cease to Hold Report for the period from 1st October 2008 up to the date of intervention on 23rd December 2008. No such report has been received.
6. On 24th November 2008 Mr Derek Johnston, an Investigation Officer of the SRA ("the FIO"), commenced an investigation of the Respondent's books of account and other documents at his offices in Lyndhurst. The Report produced following the visit is dated 11th December 2008.
7. The investigation revealed that the Respondent had failed to keep his books of account properly written up in that:-
 - When monies had been transferred from client to office account, the office entries were not always shown on the client ledger accounts.
 - No cash account was kept for monies held in a designated client account.
 - Records of the amount held for the client were not recorded in a deposit column of the client ledger account or on the client side of a client ledger kept specifically for that purpose.
8. The inspection revealed a client account shortage of a minimum of £12,926.63 made up by a combination of:
 - (i) Mr Smith's SDT costs paid out of client account of £9,999.32.
 - (ii) Counsel's fees retained in office account of £1,116.25.
 - (iii) Transfers made - client to office account of £950.55.
 - (iv) Shortage in the matter of Mr W of £757.76.

- (v) Improper transfers made from client to office of £102.75.
9. The FIO investigated the background to a payment made by the Respondent to WS & P, a firm of solicitors in London, on 3rd September 2009. This represented payment of costs due to the SRA in respect of an earlier SDT hearing in which the Respondent had been involved. The amount referred to was paid to WS & P from the client ledger of Mrs C.
 10. The Respondent originally told the FIO that the debit balance on the Mrs C ledger resulted from an overpayment made to a beneficiary on 21st October 2008. He subsequently admitted that the shortage was caused by the payment of £9,999.32 to WS & P in respect of Tribunal costs, but claimed that this was a loan to him from Mrs C, despite there being nothing in writing regarding this. He could not explain why the final estate account reflected that the amount had been paid to Mrs C anyway. Mrs C was approached and denied that she ever lent any money to the Respondent or instructed him to pay any money to WS & P. He produced to Mr Johnston a copy of a letter which he claimed to have sent to Mrs C on 6th November 2008 but which Mrs C never received.
 11. On 21st October 2008 when the Respondent paid to Mrs C the balance of the Estate money due to her, he utilised £9,999.32 of money belonging to other clients to make up the payment.
 12. The Respondent was practising during the 2008/2009 indemnity period without the requisite indemnity insurance cover. The period during which he was not covered was from 1st October 2008 to 23rd December 2008.
 13. On 22nd December 2008 a decision was made to intervene into the practice of the Respondent and to refer his conduct to the Tribunal.
 14. The Tribunal reviewed the Rule 5 Statement of the Applicant, together with accompanying bundle, which included a Forensic Investigation Report dated 11th December 2008.

Witnesses

15. The FIO Mr Derek Johnston gave sworn oral evidence.

Findings as to fact and law

Allegations 1 and 2

16. These two allegations were in the Applicant's submission straightforward and whilst Mr L and Mrs T were still waiting for their money, insurers had paid the money due to Mr O. The LCS had worked with the Respondent in an attempt to resolve the matter but as could be seen from the papers before the Tribunal the Respondent had failed to comply with the adjudicators' decisions and failed to deal with the LCS and the SRA in an open, prompt and cooperative manner.
17. The Tribunal found both of these allegations to have been substantiated on the facts.

Allegation 3

18. The Tribunal had also seen evidence that the Respondent had failed to deliver three Accountant's Reports that were due and the Cease to Hold Report and found this allegation to have been substantiated on the facts presented to it.

Allegations 4, 5 and 6

19. The Applicant told the Tribunal that the Forensic Investigation Report support these allegations and Mr Johnston had confirmed its truth in his evidence. The Tribunal found this allegation to have been substantiated on the facts.

Allegations 7, 8 and 9

20. These allegations involved the dishonest use of Mrs C's money and the Respondent had admitted in interview with the FIO that £9,999.32 was paid to WS & P in respect of money that he owed to the Law Society from the client account of Mrs C. He had also told the FIO that this was a loan from Mrs C to himself. There was nothing in writing regarding the loan. Correspondence from Mrs C showed that she did not know who "WS & P" were nor had she received any correspondence or had a telephone conversation with the Respondent regarding this matter. The Tribunal heard the sworn oral evidence of the FIO regarding these matters and was referred to the relevant pages in the bundle. In the Applicant's submission the Respondent had behaved thoroughly dishonestly in this matter.
21. The Tribunal found these allegations to have been substantiated on the facts. In utilising Mrs C's funds without her knowledge or consent in the manner that he had and providing misleading information to the SRA the Tribunal found that the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having assessed all of the evidence before it, the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he was entitled to behave in such a manner and therefore that he knew that what he was doing was dishonest by those same standards.

Allegation 10

22. The Tribunal found from the documents presented to it that there was not the requisite indemnity insurance cover in place for the Respondent whilst he was practising during the 2008/2009 indemnity period and accordingly found this matter to have been substantiated on the facts.

Costs application

23. The Applicant requested costs fixed in the sum of £13,109.75. He had no information with regard to the Respondent's finances although he was aware that he had been made subject to a bankruptcy order.

Previous disciplinary sanctions before the Tribunal

24. The Respondent had previously been before the Tribunal on 13th March 2008.

Sanction and reasons

25. The Tribunal had found all of the allegations proved on the evidence presented to it. The allegations before it today were of an extremely serious nature, particularly those in regard to Mrs C and the manipulation of her funds. In itself those allegations were extremely serious quite apart from the other matters that had been found proved by the Tribunal and the previous findings. The Tribunal had therefore concluded that the Respondent should not be allowed to continue in practice and accordingly he would be struck off the Roll of Solicitors.

Decision as to costs

26. The Tribunal had little information as to the Respondent's financial circumstances but was of the view that the SRA's costs should be awarded in full. Accordingly a costs order would be made in the sum of £13,109.75, not be enforced without the consent of the Tribunal.

The Order of the Tribunal

27. The Tribunal Ordered that the Respondent, Richard Michael John Smith, 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 £13,109.75, such order for costs not to be enforced without the consent of the Tribunal.

Dated this 14th day of May 2010
On behalf of the Tribunal

D Glass
Chairman