

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF MARTIN JOHN DAVY, solicitor (respondent)

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

Mr W M Hartley (in the chair)
Mr M Sibley
Mr M C Baughan

Date of Hearing: 18th March 2010

FINDINGS & DECISION

Appearances

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

The Respondent did not appear and was not represented.

The application to the Tribunal on behalf of the Solicitors Regulation Authority ("SRA") was made on 19th October 2009.

Allegation

In breach of Rule 1 of the Solicitors Code of Conduct 2007 the Respondent failed to act with integrity. He had also been dishonest.

Factual Background

1. In an email addressed by the Respondent to Mr Barton on 17th March 2010 the Respondent indicated his admission of the facts and the allegation.
2. The Respondent, born in 1963, was admitted as a solicitor in 1987. His name remained on the Roll of Solicitors.

3. From 17th May 2004 to 20th March 2008 the Respondent was employed as an assistant solicitor at Rupert Wood & Son Solicitors at Ashton-under-Lyne and from 31st March 2008 to 7th November 2008 he was employed as an associate solicitor at Geoffrey Lucas Solicitors.
4. On 20th January 2009 an Investigation Officer ("IO") of the SRA commenced an inspection of the books of account and other documents of Rupert Wood & Son Solicitors. His report dated 8th April 2009 was before the Tribunal.
5. The IO reported that the books of account were not in compliance with the Solicitors Accounts Rules 1998 because of a cash shortage on client account of £5,950 caused by improper payments made by the Respondent for his own benefit. He had misappropriated money held in trust on behalf of Mrs G, who had recovered £80,370.07 in damages. The Respondent had been the sole trustee of the trust established to administer her money.
6. The Respondent had admitted to the IO his misappropriations on 31st August 2007 (£1,700 for a kitchen), 14th December 2007 (£3,000 for furniture) and 30th January 2008 (£1,250 for decorating). He had also admitted to the IO that he had misappropriated £15,232.50 paid to him by clients on account of costs by paying it into his own personal account, indicating that he had intended to pay it back, but he had not done so.
7. The Respondent had admitted making false accounting entries in one client matter to cover up negligent conduct in another. He had paid £5,000 as damages to Mr F when his claim had been lost. The money paid to Mr F belonged to Mr L. The Respondent had decided not to tell Mr F that his claim had proved unsuccessful owing to the Respondent's negligence. The Respondent had made false ledger entries concealing what had occurred.
8. The Respondent had admitted to his employer Mr C at Geoffrey Lucas Solicitors that he had intercepted letters from his former firm making enquiries about his conduct.
9. The Respondent had admitted three further instances of misappropriation of money paid to him by clients on account of costs totalling £1,150 and a further instance of using the money of one client to cover up his negligent conduct in the matter of another client.
10. The Tribunal reviewed the statement of the Applicant and the supporting documents. The Tribunal considered the before-mentioned email written by the Respondent to the Applicant dated 17th March 2010.

Findings as to Fact and Law

11. The Tribunal found the facts set out above to be proved, indeed they were not contested by the Respondent. For the same reason the Tribunal found the allegation to have been substantiated.

Mitigation

12. The Tribunal took into account the mitigating factors set out in the Respondent's email addressed to the Applicant dated 17th March 2010.
13. The Respondent had never formulated an intention to deprive the injured parties from the money taken. He had always intended to repay it and foolishly believed that this would be possible within a short period of time and without anybody suffering any harm.
14. The Respondent had been an equity partner at a firm in Manchester, he had worked there for 17 years and believed that he would spend the rest of his career there. He had been asked to leave in 2004 following the negligent handling of some personal injury cases.
15. The Respondent believed he had suffered some sort of breakdown at the time. He did not react well to losing that position which had carried a six figure salary, car, health insurance and more importantly, his best friends. He managed to find a position with Rupert Wood & Son at a fraction of his former salary. He found that he was struggling financially. He had lost contact with all his former friends and became increasingly isolated and withdrawn. He felt physically sick at the prospect of going to Manchester City Centre for fear of bumping into someone from his former life. In addition he was having problems in his personal life. He had separated from his wife in 1993 following the death of his father and had a number of unsuccessful relationships thereafter. At the time when he left the Manchester City Centre firm his then relationship was floundering.
16. He did not feel that he fitted in at Rupert Wood. It was a traditional high street firm which proved resistant to the Respondent's ideas for modernisation. He felt that he had been subject to a whispering campaign and bullying which made his position very difficult.
17. The Respondent had begun to drink heavily, his relationship was failing and he was struggling financially at a time when he had an ex-wife and two children to support. He hated his job.
18. That was the background when he started to "borrow" money from the firm in various ways. He knew that if he could sell his house there would be more than enough equity to replace those moneys and that no-one would be out of pocket. It was only with the benefit of hindsight that he realised how stupid he had been.
19. The house had been sold by the time of the hearing and the proceeds of sale had been sufficient to repay the moneys taken but were in the control of the police and awaiting distribution to the injured parties.
20. At the date of the hearing the Respondent had been unemployed for 15 months and he thought it unlikely he would be able to work again in his chosen profession. He enjoyed that work and invited the Tribunal not to impose the ultimate sanction upon him. Her confirmed that he would be willing to be subject to whatever conditions were felt to be necessary.

21. The Respondent was sorry for his actions. He had learnt a lesson that he would never forget. He was having to live on Jobseekers Allowance. He had lost everything that the profession had given to him.
22. The Tribunal was invited to take account of the Respondent's cooperation with the IO and his early indication that he admitted the allegation.
23. The Respondent had no assets and any financial sanction or costs Order would result in even more financial hardship.

Costs

24. On the subject of costs the Applicant requested fixed costs in the amount claimed of £25,385.93.

Sanction and Reasons

25. The Tribunal had found the Respondent not only to have been in breach of Practice Rule 1 but had found the Respondent to have been dishonest after considering the two part test in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. In particular the Tribunal found that in taking money from clients for his own purposes and in taking money from his employer for his own purposes and in paying moneys belonging to one client to an unrelated client in order to conceal his negligent handling of the payee client's case, the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he was entitled to take such moneys or to act as he did and therefore that he knew that what he was doing was dishonest by those same standards. The Tribunal was aware that the Respondent stated that it had been his intention to return the moneys taken, but such intention has no bearing on the before-mentioned test for dishonesty.
26. Having found that the Respondent was dishonest the Tribunal, bearing in mind its primary responsibility to protect the public and its other responsibility to protect the good reputation of the solicitors' profession, considered that it was both appropriate and proportionate to Order that the Respondent be struck off the Roll of Solicitors.
27. The Tribunal further considered that it was both appropriate and proportionate that the Respondent pay the costs of and incidental to the application and enquiry. The Tribunal was satisfied that the sum claimed by the Applicant was entirely reasonable. The Tribunal had been apprised of the Respondent's current financial circumstances and in view of the fact that he had been struck off the Roll of Solicitors and thereby deprived of his ability to make a living as a solicitor and in view of his explanation of his parlous financial circumstances, the Tribunal having Ordered that he should pay the Applicant's costs in a fixed sum went on to Order that such Order for costs was not to be enforced without the consent of the Tribunal.
28. At the conclusion of the hearing the Tribunal made the following Order:

The Tribunal Orders that the Respondent, Martin Davy, 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 £25,385.93, such costs not to be enforced without the consent of the Tribunal.

Dated this 24th day of April 2010
on behalf of the Tribunal

W M Hartley
Chairman