

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF DAVID JOHN SHOESMITH, solicitor, (The Respondent)

Upon the application of Jonathan Goodwin
on behalf of the Solicitors Regulation Authority

Mr A N Spooner (in the chair)
Mr S Tinkler
Mrs N Chavda

Date of Hearing: 29th June 2010

FINDINGS & DECISION

Appearances

Mr Jonathan Richard Goodwin of 17E Telford Court, Dunkirk Lee, Chester Gates, Chester CH1 6LT for the Applicant.

The Respondent appeared in person.

The application was dated 22nd October 2009.

Allegations

1. The Respondent failed and/or delayed in the filing of Accountants Reports for the years ended 30th June 2006, 2007 and 2008, due for delivery on or before 31st December 2006, 2007 and 2008 respectively, contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made there under.
2. The Respondent failed to comply with a request of an Adjudicator dated 27th April 2009, contrary to Rule 20.03 of the Solicitors Code of Conduct 2007 ("SCC").

Factual Background

1. The Respondent, born in 1965, was admitted as a solicitor on 15th September 1992 and his name remained on the Roll of Solicitors.
2. It was understood that between 16th December 2002 – 17th November 2006 the Respondent practiced on his own account under the style of Shoemith Solicitors and with effect from 14th November 2006 – 2nd January 2007 he practiced as Shoemith Legal from 290 Mottram Road, Matley, Stalybridge, Cheshire SK15 2SU.
3. The SRA wrote to the Respondent by letters dated 23rd November 2007, 14th December 2007, 14th February 2008 and 4th April 2008, requesting information as regards the closure of Shoemith Legal.
4. Prior to the closure of Shoemith Legal, the Forensic Investigation Unit attended at Shoemith Legal on 16th August 2007 and 13th November 2007, and produced Reports dated 16th August 2007 and 15th November 2007. The Respondent confirmed that save for £0.16 held on the client account of Shoemith Legal, he did not hold any other client monies.
5. However, on 15th April 2008 the Royal Bank of Scotland (“RBS”) notified the Legal Complaints Service (“LCS”) that the Bank was holding client monies in respect of the Respondents former practice, Shoemith Solicitors, formerly of 1 Dean Street, Stalybridge, Cheshire SK15 2JD.
6. The “RBS” confirmed that on 7th January 2008, it had transferred £41,290.08 from client account of Shoemith Solicitors to the “RBS” in reduction of the Respondents aggregate liabilities to the “RBS”, and following the transfer the client account was closed. The Respondent disputed the transfer on the basis that the “RBS” had no lawful right to transfer the monies that included and/or were client monies. The “RBS” declined to return the monies to the Respondent as he was discharged from bankruptcy on 2nd January 2008 and did not hold a current practising certificate.
7. The matter was considered by an Adjudicator on 27th April 2009, who considered the outstanding Accountants Reports for the years ended 30th June 2006, 2007 and 2008 and expected the Respondent to respond to the issues set out in paragraph 2 of the Resolution, within 28 days of the date of the letter notifying him of the decision. The Respondent failed to respond.
8. There was some dispute as to the date on which Shoemith Solicitors closed, but the “SRA” records showed that the cease to hold Accountants Report for Shoemith Solicitors for the period 30th June 2005 – 31st December 2005 was received on 3rd November 2006.
9. However, the Respondent continued to hold clients monies relating to Shoemith Solicitors since 31st December 2005 and as such, was required under the Solicitors Accounts Rules to deliver Accountants Reports until the date he ceased to hold client monies. It was only as a result of the “RBS” contacting the “SRA” that the existence of funds in excess of £40,000 came to light, and as such the Respondent continued to

hold client monies for which no Accountants Reports had been delivered to the “SRA”.

10. The Reports for the period ending 30th June 2006, 2007 and 2008 due for delivery on or before 31st December 2006, 2007 and 2008 remain due.
11. The Tribunal reviewed all the documents submitted by the Applicant which included:-
 - (i) Rule 5 statement together with all enclosures.
12. The Tribunal reviewed all the documents submitted by the Respondent which included:-
 - (i) Schedule of assets and liabilities and income and expenditure.

Witnesses

13. No witnesses gave oral evidence

Findings as to Fact and Law

Allegation 1

14. The Applicant’s case was that the Respondent had failed or delayed in filing Accountants Reports for the years ending 30th June 2006, 2007 and 2008. The Respondent had submitted there was only 16p in the client account and that the Authority had agreed in the circumstances that no final Accountants Report was necessary. The Respondent had stated the sum of approximately £40,000 came into client account from a client but that the client had been invoiced and the monies were in fact due to the Respondent. They should have been transferred to office account but, instead, RBS had transferred the client monies to themselves and would not accept the money belonged to the client. The Respondent submitted the application had been brought on the assumption that these monies were client monies but that there was no evidence that they were client monies and therefore there was no requirement for the Accountants Report to be filed for that period.
15. The Tribunal were mindful that the Respondent had accepted there was money in client account and had not provided the Tribunal with any evidence that that money was anything but client money. Indeed, the Respondent had sent an email to the Authority on 8th September 2008 in which he stated “if any monies previously held in the closed RBS client account, as notified by RBS to you in breach of their duties to me, are due to be paid to a former client of Shoemith Solicitors, then that is a matter for me.”
16. The Tribunal were satisfied that there had been client money in client account on 7th January 2008 and accordingly, Accountants Reports should have been filed for the years ending June 2006, 2007 and 2008. Accordingly the Tribunal found this allegation proved.

Allegation 2

17. The Respondent submitted he had replied in detail to the Authority, he had cooperated and given the information they required. The Adjudicator in his report dated 27th April 2009, had requested the Respondent to deal with three specific issues and the Respondent claimed he had already dealt with those issues in his email to the Authority dated 8th September 2008 and also in his written response dated 4th October 2007 and his email to the Authority of 1st August 2008. He had taken the view that when he received the Adjudicator's Report dated 27th April 2009 he had already replied to the questions raised and therefore did not reply to that report.
18. The Respondent, under questioning, had admitted he had failed to reply to an Adjudicator's Award, albeit that he felt that he had answered specific parts of two of the Adjudicator's Reports in earlier correspondence. That, in the Tribunal's view, was not good enough and the simplest thing for the Respondent to have done would have been to answer the points raised in the Report. The Tribunal found allegation 2 proved.

Mitigation

19. The Respondent was no longer working in the legal profession but did intend to rejoin the legal profession at some point. His wife was expecting a baby in six weeks time and his finances were not good. The Respondent provided the Tribunal with a Schedule of his assets, liabilities, income and expenditure. He had been in practice since 1992 up until 2006/2007 and had only had one complaint made by a client which was a minor matter relating to the non filing of a secretaries return. There had been a few administrative problems which had resulted from the pressure of working as a sole practitioner and dealing with everything. The Respondent did not currently have a practising certificate and was not in a position to meet a large financial penalty even though he was working for an insolvency practice at the moment doing compliance work and debt management but he was not earning very much.

Costs Application

20. The Applicant confirmed his costs had been agreed with the Respondent in the sum of £3,750.

Previous Disciplinary Sanctions before the Tribunal

21. The Respondent had appeared before the Tribunal previously on 4th July 2006 and 29th July 2008.

Sanction and Reasons

22. The Respondent had failed to file a number of Accountants Reports and had failed to comply with the request of an Adjudicator. These were serious regulatory matters which prevented the Authority from carrying out its proper regulatory function and ensuring clients were not at risk. The Tribunal was concerned that this was the Respondent's third appearance before the Tribunal and that previous appearances also related to failure to deliver Accountants Reports, failure to comply with an

Adjudicator's decision and other regulatory breaches. The Respondents had shown little respect for his regulatory Authority and little regard for his regulatory obligations. In the circumstances, the Tribunal Ordered the Respondent be suspended indefinitely and that the suspension should only be lifted once the Respondent had filed the outstanding Accountants Reports for the years ending 30th June 2006, 2007 and 2008 and he had complied with the request of the Adjudicator dated 27th April 2009.

23. The Tribunal further recommended that if the Respondent's practising certificate were granted again in the future, there should be conditions placed on that practising certificate preventing the Respondent from practising on his own account and requiring him to practise in supervised employment only.

Decision as to Costs

24. The Tribunal Ordered the costs in the sum of £3,750 as agreed between the parties.
25. The Tribunal had taken into account the Schedule of assets, liabilities, income and expenditure filed by the Respondent and noted the Respondent had been declared bankrupt on 2nd January 2007. The Respondent's financial situation was poor and as a result of his wife's pregnancy, his wife would be losing her income while she was on maternity benefit for approximately 12 months. The Tribunal considered the cases of William Arthur Merrick -v- The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza -v- The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's means. Having given those cases due consideration, the Tribunal Ordered that the Costs Order was not to be enforced without leave of the Tribunal.

Order

26. The Tribunal Orders that the respondent, David John Shoesmith of Shoesmith Legal, 290 Mottram Road, Matley, Stalybridge, Cheshire, SK15 2SU, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 29th day of June 2010 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,750.00, such Order for costs not to be enforced without the leave of the Tribunal.

Dated this 30th day of September 2010
on behalf of the Tribunal

A N Spooner
Chairman