

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF STEWART QUARTZ, solicitor's clerk (Respondent)

Upon the application of Daniel William Robert Purcell
on behalf of the Solicitors Regulation Authority

Mr A G Ground (in the chair)
Mr J R C Clitheroe
Mr S J Hill

Date of Hearing: 16th March 2010

FINDINGS AND DECISION

Appearances

Daniel William Robert Purcell solicitor of Capsticks LLP, 77-83 Upper Richmond Road, London SW15 2TT appeared for the Applicant, the Respondent did not appear and was not represented.

An application was made on behalf of the Solicitors Regulation Authority ("SRA") on 1st December 2009 that an order be made in respect of Stewart Quartz of 38 The Mount, Hailsham, East Sussex BN27 2DT pursuant to Section 43 of the Solicitors Act 1974 (as amended).

Allegations

The allegations against the Respondent were that he had been guilty of conduct of such a nature that in the opinion of the Law Society it would be undesirable for him to be employed by a solicitor in connection with his or her practice as a solicitor in that:

- (a) he made or caused to be made, payments from client account of his employers which were unauthorised, in that they purported to relate to transactions of which Mr Quartz had conduct, when in fact the payments were not for matters relating to those transactions, and were not authorised by clients;

- (b) that some or all of the payments referred to above were made for the benefit of the Respondent and/or to discharge debts owed by the Respondent;
- (c) That the Respondent's conduct as set out above was dishonest.

Preliminary Matter

1. The Tribunal expressed itself satisfied that the Respondent was aware of the proceedings and the date of the hearing. He had responded to the Tribunal's own questionnaire stating that he admitted the allegations.

Factual Background as presented by the Applicant

2. The Respondent was unadmitted and had been employed by Mayo Wynne Baxter of 13 Vicarage Field, Hailsham, East Sussex between February 2004 and July 2008, initially as a completions clerk and then, from April 2007, as a conveyancing clerk.
3. Following a report on the Respondent's conduct from his employer to the SRA an inspection by one of its forensic investigation officers took place. His report dated 30th March 2009 was before the Tribunal, as was a statement prepared by Mayo Wynne Baxter's accounts manager.
4. Between April 2006 and July 2008, on thirty-eight occasions, the Respondent caused payments to be made from the client accounts of Mayo Wynne Baxter which were not, as his payment requests had purported, for the purposes of transactions in which the firm was instructed. The payments, or some of them, had been applied for the Respondent's own benefit in that they were used to meet the Respondent's personal indebtedness.
5. The total of such payments was £30,270.44. The shortfall in clients' funds had been rectified by Mayo Wynne Baxter LLP. Some of the payments used the firm's own money.
6. A total of eighteen payments had been made to Barclaycard between 8 June 2007 and 8 July 2008 in the total sum of £18,106.06. The payments were made electronically. By way of example, on 19 June 2007 the Respondent paid £1000 by TT from the client ledger of T to Barclaycard. The client had not authorised the payment and it was not made in connection with the client's business.
7. Eight payments had been made to the Respondent's mortgagees from client account between 17 April 2007 and 23 May 2008 totalling £9,148.62 and recorded as debits on unrelated client ledgers.
8. Seven payments had been made to Endeavour Finance Ltd between 14 September 2007 and 16 June 2008 totalling £1,944.78. The payments had been made by cheques drawn by Mayo Wynne Baxter LLP. The payee was the Respondent's second mortgagee.
9. Three payments by client account cheques had been made to Wealden District Council between 16 May 2007 and 2 June 2008 totalling £719.38 in payment of the

- Respondent's council tax. The payments had been recorded as debits on individual unrelated client ledgers.
10. Two payments by client account cheque had been made to South East Water between 3 September 2007 and 22 July 2008 totalling £351.57 in payment of the Respondent's own water bill. Individual client ledgers had been debited with these sums.
 11. The Respondent had obtained payments by submitting false requisition slips. He had concealed his activities by making sums of money apparently available on individual client ledgers, for example, preparing VAT credit notes that were not delivered to the client, by overstating necessary expenditure to clients such as land registry fees and understating the value of property to secure a lower charge of stamp duty land tax and not passing on amounts due to clients from mortgagees upon adjustment by those mortgagees of redemption figures in the client's favour.
 12. The Tribunal was invited to conclude that the Respondent's conduct had been dishonest in that it satisfied the two part test described in Twinsectra v Yardley and Others [2002] UKHL 12. Even if the Tribunal did not make a finding of dishonesty, the Respondent's conduct was such that the order sought would be appropriate.
 13. The Tribunal reviewed the Applicant's statement prepared pursuant to Rule 5 of the Tribunal's procedural rules with the appended documents.
 14. On the subject of costs the Applicant requested costs in the full amount claimed, a schedule having been handed up at the hearing.

Findings as to Fact and Law

15. The Tribunal found the facts set out above to have been established and the allegations to have been substantiated, indeed they were not contested.
16. The Tribunal found that the Respondent had been dishonest. In making such a finding the Tribunal considered the two part test in Twinsectra v Yardley and Others [2002] UKHL 12. The Tribunal found that in taking money from client account belonging to clients of his employer firm and in taking money from his employer by issuing false credit notes the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Respondent had concealed his activities by making it appear that the payments for his own benefit were related to client transactions and his manipulation of the client ledgers in order to conceal his activity. The Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he was entitled to such money and that he had concealed his nefarious activities and therefore that he knew that what he was doing was dishonest by those same standards.

Sanction and Reasons

17. The Tribunal having found the allegations against the Respondent to have been substantiated and having found him to be dishonest, in order to protect the public and the good reputation of the solicitors' profession the Tribunal concluded that it was both proportionate and appropriate to make the order sought by the Applicant

pursuant to Section 43 of the Solicitors Act 1974 (as amended). The Tribunal made the following order:

The Tribunal Ordered that as from the 16th day of March 2010 (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor; (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice; (iii) no recognised body shall employ or remunerate; (iv) no manager or employee of a recognised body shall employ or remunerate in connection with the business of that body Stewart Quartz except in accordance with Law Society permission; (v) no recognised body or manager or employee of such a body shall, except in accordance with Law Society permission, permit Stewart Quartz to be a manager of the body; (vi) no recognised body or manager or employee of such a body shall, except in accordance with Law Society permission, permit Stewart Quartz to have an interest in the body and the Tribunal further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

Costs

18. The Tribunal considered carefully the schedule of costs submitted by the Applicant. The Tribunal felt it appropriate to reduce the amount claimed. The Respondent was not present. He had made no representation about costs and the hearing had taken rather less time than the Applicant had anticipated in his schedule of costs. The Tribunal considered that it was both appropriate and proportionate that the Respondent bear the Applicant's reasonable costs and it ordered him to pay the Applicant's costs which the Tribunal summarily fixed in the sum of £15,000.

Dated this 7th day of May 2010.

On behalf of the Tribunal

A. G. Ground
Chairman