

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF MARK DAVID ROWLAND, solicitor (The Respondent)

Upon the application of Peter Steel
on behalf of the Solicitors Regulation Authority

Mr D J Leverton (in the chair)
Mr R Prigg
Mr J Jackson

Date of Hearing: 16th September 2010

FINDINGS & DECISION

Appearances

Peter Steel of Capsticks LLP, 77/83 Upper Richmond Road, London SW15 2TT was the Applicant.

Mohamed Afzal of HMA Law, solicitors, 5 Tenby Street, Birmingham, B1 3EL, appeared for the Respondent.

The application to the Tribunal on behalf of the SRA was made on 10th December 2009.

Allegations

The allegations against the Respondent, Mark David Rowland, on behalf of the Solicitors Regulation Authority ("SRA"), were that:

- (a) he conducted himself in a manner which was likely to compromise his integrity, contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 ("SPR 1990") and Principle 19.01 of the Guide to the Professional Conduct of solicitors 1999 (8th Edition);
- (b) he conducted himself in a manner which was likely to compromise or impair his own good repute and that of the solicitors' profession contrary to Rule 1(d) of the SPR 1990;

- (c) he acted in a matter where his personal interests conflicted with a client of his firm by acting in a conveyancing transaction where he was the purchaser of the property in question, thereby breaching Rule 16(d)(2) of the SPR 1990;
- (d) his behaviour as outlined above was dishonest.

Factual Background

1. The Respondent was born in 1961 and admitted as a solicitor in 1990. At the time of the matters the subject of the application, he was a salaried partner in the firm of Angel & Co of 117-119 New Union Street, Coventry, West Midlands CV1 2NY. On 20th June 2008 Michael Taberner, the senior partner of Angel & Co, wrote to the SRA enclosing various documents relating to internal disciplinary proceedings concerning Mr Rowland. These were due to take place on Monday 23rd June 2008. Following the disciplinary hearing, Mr Taberner wrote again to the SRA on 25th June 2008 with further documents and advising that he had found Mr Rowland guilty of gross misconduct and that Angel & Co had terminated his contract as a salaried partner.
2. The Respondent had become a salaried partner in October 2005. One of the equity partners, Lizzie Duff, had become aware of the possibility in 2005 of the Respondent purchasing a property with an employee of the firm at that time, Antony Raiwa. She spoke to Mr Rowland about that in June 2005. She indicated that she would have concerns about him entering into such a transaction, given that were Mr Rowland to become a partner he would become Antony Raiwa's employer and could find his position compromised. Mr Raiwa was subsequently dismissed from Angel & Co in March 2006 for gross misconduct. He was then subject to disciplinary proceedings brought by The Law Society and was struck off the Roll on 9th September 2008.
3. On 13th October 2006 Mr Taberner dictated a memo to the staff of Angel & Co in the Respondent's presence, to the effect that any attempt by any employee of the firm to associate with Mr Raiwa would be a breach of contract which would lead to disciplinary proceedings. Similarly, any failure to reveal an association with Mr Raiwa would also be considered a breach of contract which could lead to disciplinary proceedings.
4. In 2006 the firm was instructed to deal with the estate of Mrs J. Mr Taberner and Ms Duff were named as executors and trustees of the estate. Amongst its assets was a property in Coventry. The Respondent dealt with the sale of the property, and in the course of his work obtained a valuation by estate agents dated 21st June 2006 valuing the property at £125,000. However, it recommended that if the property were to be sold, the initial asking price should be set at £130,000 or thereabouts. In or about February 2007 the Respondent arranged to purchase the property with Mr Raiwa for the sum of £120,000. The Transfer was signed by Mr Taberner and Ms Duff in their capacity as executors and trustees of the estate. The names of the purchasers were not completed on the form when it was signed.
5. On 9th March 2007 Mr Taberner sent a further memo to the firm's staff, warning against any member of staff having any further contact with Mr Raiwa. Subsequently, on or about 8th March 2008, the Respondent and Mr Raiwa let the

property on an assured shorthold tenancy agreement. Finally, the Respondent applied for a mortgage over the property in his own name, and had it transferred into his sole name. This transaction was handled by a legal executive at the firm.

6. Following a routine supervision of files, on 12th June 2008, Mr Taberner discovered the tenancy agreement, an application to change the register at the Land Registry, and the ledgers relating to the original purchase of the property from the estate. As a result of this discovery, Mr Taberner met the Respondent to discuss matters on 12th and 13th June 2008. He wrote to Mr Rowland outlining their discussion. Subsequently he began the disciplinary process which resulted in the termination of the Respondent's employment.
7. In the light of Mr Taberner's concerns that the executors had not obtained the full market value for the property, the firm paid £10,000 to the estate, which was divided among the residuary beneficiaries. The Respondent subsequently reimbursed the firm for that amount.
8. On 23rd July 2008 the SRA wrote to the Respondent seeking an explanation of the matters raised by Mr Taberner. He replied on 4th August 2008, admitting that "...it was a serious breach of the Practice Rules by not going through the correct procedures....", and that he knew "...that I have brought into question my integrity as a solicitor and this has blighted my otherwise spotless record". On 8th July 2009 the SRA wrote to the Respondent seeking his explanation of the circumstances surrounding his application for a mortgage on the property. The Respondent's solicitors replied on his behalf on 22nd June 2009 with further comments on 19th August 2009.
9. The Applicant advised the Tribunal that allegations (a) to (c) were admitted, but the Respondent denied that his behaviour was dishonest.

Preliminary Matter

Application for an order that there was no case to answer

10. Mr Afzal advised the Tribunal on behalf of the Respondent that he intended to apply for an order that there was no case to answer on dishonesty and that allegation (d) should therefore be struck out. After a discussion with the Court, and taking his client's instructions, Mr Afzal agreed that it would be more helpful if the application were put after the Applicant had made his case, and the Applicant's evidence had been heard.

Documentary evidence before the Tribunal

11. The Tribunal reviewed the following documents:
 - (i) The Rule 5 statement with appended documents, including the letters from Mr Taberner to the SRA dated 20th June and 25th June 2008 with attachments. These included a "Schedule of Admitted Improper Conduct" dated 23rd June 2008 and a letter from Mr Taberner to the Respondent dated 24th June 2008 detailing the disciplinary hearing on 23rd June;

- (ii) Mr Michael Taberner's witness statement dated 5th March 2010, with exhibits;
- (iii) The Respondent's witness statement dated 19th May 2010, with exhibits;
- (iv) The Respondent's submission and a chronology of events;
- (v) A note of an appraisal of 25th February 2010 unsigned;
- (vi) Various testimonials in support of the Respondent;
- (vii) A Statement of costs dated 10th September 2010.

Submissions by the Applicant in relation to the allegations

12. The Applicant rehearsed the facts of the case and pointed out that the amount for which the property was purchased was £5,000 lower than the then Stamp Duty threshold. No contracts had been exchanged, the property had never been placed on the open market and the Respondent had never opened a file for the transaction. Mr Taberner said that he had been deceived into signing the Transfer. Miss Duff said that she relied in signing, on the fact that the Transfer had already been signed by Mr Taberner and prepared by the Respondent, a partner whom she trusted. It was submitted that the deceit and the circumstances surrounding the transaction, including the concealment of the identity of the purchasers, led to the conclusion that the higher standard of proof had been satisfied and that the Respondent had been dishonest in the objective sense and that he knew that it would be considered dishonest by the standards of reasonable and honest people. Accordingly the two limbed test in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 had been satisfied.

Witnesses

13. Mr Michael Taberner gave sworn evidence relying on his statement of 5th March 2010. He first wished to make a correction regarding paragraph 19 of the statement in that the decision to terminate the Respondent's employment did not take immediate effect but was implemented with one month's notice. He had a very clear recollection of the events surrounding his signature of the Transfer. The names of the purchasers had not been entered, and when he raised this with the Respondent he was advised that contracts had not been exchanged, and that the names would be inserted straightaway. If the Respondent was known to have been the purchaser Mr Taberner could not have signed the Transfer on that date as there were a number of necessary processes involving third parties which would have included the beneficiaries being satisfied that a correct market price was being obtained. Also, he would not knowingly have signed any document involving Mr Raiwa. Furthermore, he presumed that because the document had been signed in the Respondent's presence the Respondent would witness his name. In fact it bore the name of the Respondent's secretary as witness, and she had not seen him sign. None of these facts had come to light until sometime later when he was carrying out a supervisory audit of the file. The witness confirmed the contents of his letter to the Respondent of 16th June 2008, particularly the paragraph on page 5 referring to the Respondent having stated in the disciplinary proceedings as follows:

“You immediately provided information that the house had been purchased from an Estate with which you had been dealing. You indicated that you had concealed that fact from Lesley Duff and me when we were asked to sign a Transfer. You indicated that you had put the Transfer with other Transfers. You accepted that it was dishonest to deceive us. You accepted that it was improper to ask Lesley Duff and I to sign the Transfer concerned.”

Further in that letter Mr Taberner confirmed:

“I asked you what the appropriate procedure should have been. Your response was that you should have spoken to Lesley Duff and me. You should have had a separate solicitor acting for your [sic] and Antony Raiwa, and we might have taken the beneficiaries’ instructions. I indicated to you that if that had happened I would have indicated that (1) it was not appropriate for you to continue to act in the estate, (2) I would take over the Administration of the Estate, (3) the property would have to be marketed, (4) you and Antony would have had to make offers, (5) if Coopers [the estate agents/valuers] were satisfied that yours was the best offer, we would ask them to certify it, (6) we would then send a copy of the certificate to each of the residuary beneficiaries revealing an involvement and indicating that we would proceed with the sale if they did not object. I asked you why you did not do that. Your response was that you did not want to say that you were in contact with Antony Raiwa.”

14. Mr Taberner was then subjected to cross-examination by Mr Afzal. Mr Taberner confirmed that the Respondent had been a very valuable employee. He was conscientious. If anybody had asked Mr Taberner before the incident if something like that could happen, he would have said no. If it had not happened the Respondent would have had a secure future with the firm. Mr Taberner agreed that Mr Raiwa was a manipulative and dominant person. This was why the staff had been instructed to have no contact with him. The Respondent was not streetwise. He was looking after his elderly parents and looking for somewhere to live at the time, and planned to make arrangements with family members to look after his parents.
15. Mr Taberner rejected suggestions that he had a personality clash with Mr Raiwa, he had simply taken appropriate action to deal with his conduct. The witness also rejected suggestions that the Respondent might have been intimidated by him and on that account not disclosed the identity of the purchaser. Mr Taberner felt that he had recorded in enormous detail what had occurred, and made sure that the Respondent did not suffer more than he had to in the circumstances. Mr Taberner was aware that in the first disciplinary meeting the Respondent was not operating properly. At other meetings he was always accompanied, but Mr Taberner had followed standard procedure, which he had also followed in a number of other investigations which he had undertaken professionally. He agreed that at a later point two matters relating to banking slips, which the Respondent had admitted, proved to be incorrect, and these had been redacted from the Rule 5 Statement.
16. The only reason the Respondent had not been dismissed immediately for gross misconduct was because Mr Taberner wished to follow proper disciplinary procedure, and investigate before arriving at a decision. He was also aware that the Respondent

was in a very low state and wished to explore the possibility with the SRA of his being allowed to continue working while the investigation was carried out. At that time Mr Taberner was satisfied that the Respondent was not a danger to the public, the profession or to his fellow employees, and therefore considered it not improper to give him the opportunity to prove he could conduct himself properly in future. This continued until as a result of a later discussion Mr Taberner had to terminate his employment.

17. The Chairman clarified the firm's accounting procedures with Mr Taberner. As the Respondent had not complied with them, in that he had not opened a file or client ledger, it was not possible for Mr Taberner to know who the purchasers were. The firm's banking slips required only that the bank or building society source of funds should be identified.
18. In respect of matters admitted by the Respondent which later proved not to be correct. Mr Taberner had carried out a great deal of checking.
19. Mr Taberner confirmed that the partners would not normally sign documents where no purchasers were shown, but he had been assured that all was in order.
20. The Respondent's employment was finally terminated because it came to Mr Taberner's attention that he had transferred the property from joint into sole names with the benefit of a mortgage which specifically forbade investment in buy to let properties, and the building society had not been advised that he had created a tenancy.
21. Regarding the undated form of appraisal, Mr Taberner explained this had been carried out on 25th February 2010 in anticipation of a Lexcel audit. Mr Taberner had only become aware on the day of this hearing that it was to be used in the proceedings. If he had been asked to sign it subsequently he would have reconsidered his words that he was satisfied that the Respondent was not a dishonest person. The Respondent had undertaken a deliberate course of conduct over an extended period. If the Respondent had been acting honestly, he would not have been in a position to produce the transfer to his partners as he would have had to instruct separate solicitors who would have done it on his behalf after he had made a declaration of his desire to buy the property, and the transaction had been conducted fairly at arm's length.

Preliminary matter

22. The Tribunal reverted to the application to dismiss the allegation of dishonesty as disclosing no case to answer, which Mr Afzal had indicated at the beginning of the proceedings. Mr Afzal stated that he did not wish to proceed with that application.

Witnesses continued

23. Mark David Rowland, the Respondent, gave sworn evidence relying on his witness statement dated 19th May 2010. He explained to the Court that the property in question was intended eventually to be his home. It was in poor condition and needed work. He further stated that he had always denied acting dishonestly in the discussions he had had with Mr Taberner. He did not recall saying that he had been

dishonest. His state during the disciplinary conversations was such that he didn't know what he was saying, and subsequently he had denied dishonesty.

24. In cross-examination the Respondent agreed he had been present when Mr Taberner had dictated the Memorandum on 13th October 2006, forbidding staff to associate with Mr Raiwa. He had interpreted this as relating to group social events. He had agreed that he had had a previous conversation with Miss Duff, who had advised him against purchasing a property with Mr Raiwa. He agreed that he had not opened a file for the purchase of the property, and accepted that he should have, that it had not been marketed, and that he had a clear conflict of interest. It was put to him that he was trying to hide his association with Mr Raiwa. He agreed that he did not wish to reveal it. He stated that his reason for not disclosing the purchasers to the transaction was that he knew Mr Taverner did not like Mr Raiwa, but he was not entirely sure whether it would constitute a breach of his contract of employment to associate with him. He agreed what the proper procedure for a purchase from an estate should have been, and that he had not followed it. When it was put to him that he had concealed what he was doing, he stated rather that he had not revealed it. He maintained that he had not been dishonest because he thought that he and Mr Raiwa were paying the right price, saving the estate the cost of marketing, and that the beneficiaries would receive their share relatively quickly.
25. In answer to questions from the Tribunal the Respondent confirmed that he had not told the mortgagees of the sub-letting arrangement, which had been entered into with Mr Raiwa's sister who was still living in the property, rather longer than he had originally expected. He also confirmed that he had bought out Mr Raiwa's share in the property in early 2008. He also agreed that it was only after Mr Taberner began his investigations about the file that the Respondent had disclosed his joint purchase with Mr Raiwa. The property had improved in value between purchase and the transfer into his sole name, and he had paid Mr Raiwa some £75,000 for his share, as against the £60,000 which each had put in on purchase.

Submissions by the Respondent in relation to the allegations

26. In his closing submission Mr Afzal went through the Respondent's submission to the effect that the higher standard of proof and the tests for dishonesty had not been met. He submitted that there was a conflict of evidence between Mr Taberner and the Respondent. The reasoning given by Mr Taberner for signing the blank transfer was because the Respondent told him that contracts had not been exchanged. It was not being alleged that this statement was not true, therefore it was difficult to know on what basis dishonesty was being asserted. It was submitted that his non-disclosure of involvement of Mr Raiwa in the transaction was a result of the relationship between Mr Raiwa and the firm. The Respondent had been naive and foolish and admitted that he had made mistakes, but genuinely did not believe that what he was doing was dishonest.

Findings as to Fact and Law

Allegations (a) - (c)

27. Having carefully considered all the evidence, both oral and written, and the

Respondent having admitted these allegations, the Tribunal found them to have been proved.

Allegation (d)

28. The Tribunal also found allegation (d) to be proved to the higher standard. Having considered the papers in the case, and particularly the oral evidence given by Mr Taberner and by the Respondent, the Tribunal found Mr Taberner was a wholly credible and honest witness. He was at pains to explain exactly the procedures he went through with the Respondent at the time that he discovered what the Respondent had done. Mr Taberner dictated full and contemporaneous notes of conversations with the Respondent and it was clear that Mr Taberner was entirely fair in dealing with the Respondent, and did what he could to ensure that his investigation was as fair as possible. In particular, in his letter of 16th June 2008 it was recorded that the Respondent accepted that it had been dishonest to deceive Mr Taberner and Ms Lesley Duff. The Tribunal were of the view that there was absolutely no evidence of any intimidation on the part of Mr Taberner towards the Respondent, and the Respondent was not cross-examined about this. The Tribunal was also of the view that having seen the Respondent give evidence he did not appear to be naive as stated; he was described by Mr Taberner as a very good intelligent lawyer. There was no evidence before the Tribunal that the Respondent was intimidated or manipulated by Mr Raiwa. The Respondent came across the house in question as part of his work on the estate, of which it was an asset, and he decided, when he knew he should not associate with Mr Raiwa, to purchase the property with him from the estate, whilst concealing this from Mr Taberner and Ms Lesley Duff. His course of conduct in failing to open any file or ledger sheet, hiding his identity and Mr Raiwa's as the purchasers, and persuading Mr Taberner to sign an incomplete transfer form, was a deception and as such was dishonest. The Tribunal was quite clear that the Respondent's behaviour fell squarely in the Twinsectra subjective and objective test. His behaviour was clearly dishonest and he knew it was at the time. The higher standard of proof was satisfied.

Mitigation

29. Mr Afzal submitted that the allegations all arose from the same facts, and save from allegation (d) regarding dishonesty they had been admitted at an early stage, and the Respondent had co-operated with the SRA. He had paid back £10,000 to the firm in respect of the property. References had been sent in to the Tribunal yesterday.

Sanction and reasons

30. The Tribunal had listened to the mitigation and considered the references which had been submitted. However, it had to bear in mind the principle established in Bolton v The Law Society [1994] 1 WLR 512CA, in deciding its approach to sanction. The Respondent had been found to have acted dishonestly. The Respondent's bad conduct reflected on himself as a solicitor and on the entire profession. The inevitable penalty in a case like this was an order to strike off, and that was the order which the Tribunal had decided to make.

Decision as to costs

31. In addition, the Respondent would pay the agreed costs of £11,501.25.

Order

32. The Tribunal Ordered that the Respondent, Mark David Rowland, 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 £11,501.25.

Dated this 11th day of November 2010
On behalf of the Tribunal

D J Leverton
Chairman