

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF DAVID MAY, (The Respondent)

Upon the application of Jayne Willetts
on behalf of the Solicitors Regulation Authority

Mr A G Gibson (in the chair)
Mr R Nicholas
Mr P Wyatt

Date of Hearing: 25th June 2010

FINDINGS & DECISION

Appearances

Paul Milton appeared on behalf of Jayne Willetts of Townshends LLP, Cornwall House, 31 Lionel Street, Birmingham B3 1AP for the Applicant

There was no appearance by the Respondent and he was not represented.

The Application was dated 14th January 2010.

Allegations

The allegations against the Respondent were that:

1. No reconciliations of client account had been undertaken during the period 31st December 2007 to 19th May 2009 in breach of Rule 32(7) Solicitors' Accounts Rules 1998 ("SAR 1998").
2. Monies were improperly withdrawn from client account otherwise than in accordance with Rule 22(1) SAR 1998 which for the avoidance of doubt was an allegation of dishonesty.

3. He created false bills of costs and made false entries in the client and office cashbooks in breach of Rule 1(a) SAR 1998 and Rules 1.02, 1.04 and 1.06 Solicitors Code of Conduct 2007 (“SCC 2007”) which for the avoidance of doubt was an allegation of dishonesty.
4. Monies were received from clients in cash and not paid into a designated client account in breach of Rule 15 SAR 1998 which for the avoidance of doubt was an allegation of dishonesty.
5. Between July 2006 and May 2009 he improperly used client monies for his own purposes contrary to Rules 1(a), 1(c) and 1(d) of the Solicitors Practice Rules 1990 (“SPR 1990”) and contrary to Rules 1.02, 1.04 and 1.06 of the SCC 2007 which for the avoidance of doubt was an allegation of dishonesty.
6. He made false statements to his reporting accountants by telling them that he had authority from his clients to transfer their money from client account to office account when this was not the case contrary to Rules 1.02 and 1.06 of the SCC 2007 which for the avoidance of doubt was an allegation of dishonesty.
7. The Tribunal had before it a letter dated 18th June 2010 from Jack Friend & Co Solicitors, on behalf of the Respondent which confirmed the allegations were admitted.

Factual Background

1. The Respondent (date of birth 26th September 1940) was admitted as a solicitor on 11th January 1964. He did not hold a current practising certificate. He formerly practised on his own account at May & Co, 257 Edgware Road, London, NW9 6LU until an intervention on 4th June 2009.
2. On 19th May 2009 an inspection of the books of account and other records was commenced by a Forensic Investigation Officer (“IO”) from the Solicitors Regulation Authority (“SRA”) and a Forensic Investigation Report (“FI Report”) dated 27th May 2009 was prepared.
3. The IO established that there were two bank accounts operated by the Respondent. These were the client account which was in credit in the sum of £302,576.50 and the office account which was in debit in the sum of £14,510.07. The IO established that there was a minimum cash shortage on client account of £861,645.28.

Allegation 1 – Client account reconciliations

4. The Respondent informed the IO at interview that he had not conducted a reconciliation of his client account since 31st December 2007 (some 17 months prior to the date of inspection).

Allegation 2 – Improper withdrawals from client account

5. The Respondent held the sum of £280,000 on account in relation to a probate matter (“G”). The Respondent informed the IO that the estate monies were due to be

distributed in 2008. He admitted to the IO that in 2007 he had transferred the sum of £110,300.00 from this account to office account when he had no authority to do so.

6. During 2008, the Respondent transferred the balance of the money from G's estate to office account. When interviewed on 19th May 2009 the Respondent informed the IO that "In the year 2007, I transferred without authority £110,300 during the period and I did it by transferring funds from client to office. I had told my accountant that authority had been given for the transfers. I used the funds for personal living expenses and to fund the practice expenses. In 2008 on the same account, I utilised the rest for the same purpose."
7. In 2008 when the money on G's account was due to be distributed, the Respondent utilised funds from another probate matter ("T") in respect of which the Respondent held £364,000.00. The Respondent confirmed to the IO that he had used the remainder of the money from the account of T after the distribution of funds due to be released from the account of G for his own purposes, as he had done in the matter of G. He stated "I paid out on G using funds from another probate matter – T, this had £364,000 and I used the remainder of this money for my own purposes as before. No assets of any sort were purchased."

Allegation 3 – False bills/entries in books of account

8. The IO established (and the Respondent admitted) that the sum of £350,970.79 had been improperly transferred from client account to office account. The Respondent gave to the IO 56 copies of handwritten bills of costs totalling £70,552.35 dated from 14th July 2006 to 28th November 2006. The Respondent informed the IO that these were false bills which he had created in order to facilitate improper transfers from client to office account.
9. The IO asked the Respondent how he could identify the false entries made in order to transfer client money from client account to office account. The Respondent referred the IO to the client and office cashbooks and stated "...the false entries have no names shown and are simply shown as TFR".
10. By analysis of the cash book it was evident that further transfers had been undertaken from client account to office account during the period 10th August 2007 to 8th May 2009, totalling £280,418.44.

Allegation 4 – Receipt of cash from clients

11. The Respondent informed the IO during his interview on 19th May 2009 that "... on odd occasions when clients have paid me in cash I have used these monies and did not put them through the books."

Allegation 5 – Misappropriation of clients' funds for own purposes

12. On 19th May 2009, the IO questioned the Respondent regarding the improper transfers and withdrawals. The Respondent confirmed that "I have been funding my personal living expenses from the client account by making transfers from client to office account.."

Allegation 6 – False statements to reporting accountants

13. In the interview conducted by the IO on 19th May 2009 the Respondent informed the IO that in respect of the improper transfers made from client to office account that “I had told my accountant that authority had been given for the transfers.”
14. Further in the final interview conducted on 21st May 2009 the IO put to the Respondent that he had “misled his reporting accountants into believing that the unallocated transfers from client to office bank account which were not allocated to any individual account or accounts in the clients ledger were legitimate transactions.”

To which the Respondent’s response was “Yes.”

15. The Tribunal reviewed all the documents submitted by the Applicant, which included:-
 - (i) Rule 5 Statement together with all enclosures;
 - (ii) Applicant’s schedule of costs dated 8th June 2010;
16. The Tribunal reviewed all the documents submitted by the Respondent, which included:-
 - (i) Letter dated 18th June 2010 from Jack Friend & Co Solicitors to the Tribunal.

Witnesses

17. No witnesses gave oral evidence.

Findings as to Fact and Law

18. The Tribunal found all the allegations to be substantiated, indeed they were admitted by the Respondent.

Mitigation

19. The Respondent’s mitigation was contained in the letter from his solicitor, Jack Friend & Co, dated 18th June 2010. Details of the Respondent’s financial position were also contained within that letter. The Respondent apologised unreservedly for his conduct and it was stated that he was thoroughly ashamed of what he had done, and deeply aware of the damage he had done to his clients, his family and the profession.

Costs Application

20. The Applicant requested an order for costs in the total sum of £6,601.96 and provided the Tribunal with a schedule of costs.

Previous Disciplinary Sanctions before the Tribunal

21. None

Sanction and Reasons

22. The Tribunal had considered carefully all the documents and submissions made. This was one of the worst cases that had come before the Tribunal, and the Respondent had shown a disgraceful abuse of client trust. The Respondent had admitted the allegations and indeed, had self-reported his conduct to the Authority, and subsequently made a full confession. The Respondent was currently serving a sentence of two years' imprisonment, having been convicted of theft.
23. The Respondent's conduct exploited clients' funds thereby causing a number of clients to suffer as well as causing serious damage to the reputation of the profession. It was totally unacceptable for him to use client money to fund his own personal living expenses and his practice expenses, and he clearly could not be trusted. The Respondent was not fit to be a solicitor and the Tribunal ordered that he be struck off the Roll of Solicitors.

Decision as to Costs

24. The Tribunal ordered the costs should be paid in full. However, in view of the Respondent's financial situation, 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). The Respondent would certainly not be working in the immediate future and it was unlikely that he would gain employment when released from prison. The Tribunal also noted that the Crown Court had made a rather unusual order in that the term of imprisonment would be doubled in the event that a substantial sum was not paid within six months. Accordingly, the Tribunal Ordered that the Order for costs should not be enforced without leave of the Tribunal.

Order

25. The Tribunal Ordered that the Respondent, David May, 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 £6,601.96, such costs not to be enforced without the leave of the Tribunal.

Dated this 17th day of September 2010
On behalf of the Tribunal

A G Gibson
Chairman