

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF PETER ANTHONY DIXON
and [RESPONDENT 2] – NAME REDACTED (The Respondents)

Upon the application of Paul Robert Milton
on behalf of the Solicitors Regulation Authority

Mrs J Martineau (in the chair)
Mr R B Bamford
Mr S Howe

Date of Hearing: 7th September 2010

FINDINGS & DECISION

Appearances

Stephen John Battersby, Solicitor and Partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts SG14 1BY for the Applicant.

The Second Respondent, [RESPONDENT 2], appeared in person. The First Respondent, Mr Dixon, did not appear and was not represented but he addressed a letter to the clerk to the Tribunal dated 2nd September 2010 enclosing a written response. He confirmed that he did not intend to appear and would not be represented at the hearing.

The application to the Tribunal on behalf of the Solicitors Regulation Authority (“SRA”) was made on 20th January 2010.

Allegations

The allegations against the First Respondent, Peter Anthony Dixon, were:-

- (i) He withdrew and/or transferred monies improperly from client account other than as permitted by Rule 22 (1) and/or Rule 22 (5) of the Solicitors Accounts Rules 1998 (SAR).

- (ii) He withdrew and/or transferred monies improperly from client account to office account other than as permitted by Rule 15 (1) and/or Rule 22 (3) of the SAR.
- (iii) He misappropriated clients' funds for his own purposes in breach of Rule 1.02 and/or Rule 1.06 of the Solicitors Code of Conduct 2007.
- (iv) He made withdrawals from client account in respect of costs without first sending a bill or written notification of costs, contrary to Rule 19 (2) of the SAR.
- (v) He failed to remedy breaches of the SAR promptly upon discovery in breach of Rule 7 (i) of the SAR.
- (vi) Contrary to Rule 6 of the SAR he failed to ensure the firm's compliance with the SAR.
- (vii) It was further alleged that the First Respondent had behaved dishonestly in relation to the matters in allegations (i) (ii) (iii) and (iv) (but it was not an essential element in those allegations.)

The allegations against the Second Respondent, [RESPONDENT 2], were that:-

- (i) He permitted monies to be withdrawn and/or transferred from client account other than as permitted by Rule 22 (1) and/or Rule 22 (5) of the SAR.
- (ii) He permitted monies to be withdrawn and/or transferred from client account other than as permitted by Rule 15 (1) and/or Rule 22 (3) of the SAR.
- (iii) He permitted withdrawals from client account in respect of costs without first sending a bill or written notification of costs contrary to Rule 19 (2) of the SAR.
- (iv) He failed to remedy breaches of the SAR promptly upon discovery in breach of Rule 7 (i) of the SAR.
- (v) Contrary to Rule 6 of the SAR he failed to ensure the firm's compliance with the SAR.

The Respondents' admissions

The First Respondent admitted allegations (i), (ii), (iv), (v) and (vi), save that he denied that he had been dishonest (allegation vii); he denied allegations (iii) and (vii).

The Second Respondent admitted all of the allegations made against him.

The Background of the Respondents

1. The First Respondent was born in 1958 and was admitted as a solicitor in 1985. The Second Respondent was born in 1950 and was admitted as a solicitor in 1975. The names of both Respondents remained on the Roll of Solicitors. Neither of them held a current practising certificate. At all material times the Respondents practised in partnership under the style of Dixon Raven & Marsdens at Leyland, Lancashire with another office at Southport. The Second Respondent had been based at the Leyland

office where the firm's accounting function was carried out. The First Respondent had been based at Southport.

The Factual Background

2. A Forensic Investigation Officer of the SRA (the FIO) carried out an inspection of the Respondents' firm commencing on 12th August 2009. The FIO's report dated 27th August 2009 was before the Tribunal and revealed that the firm's books of account were not in compliance with the SAR and it was ascertained that there was a minimum cash shortage on client account of £726,399.26 as at 31st July 2009.
2. The shortage had been caused by:-
 - (i) between 23rd April 2008 and 31st July 2009 43 overpayments varying in amount between £19.90 and £36,682.82 and totalling £205,027.23;
 - (ii) between 29th April 2008 and 28th April 2009 three overtransfers into the firm's office account totalling £967.09;
 - (iii) Two incorrect transfers from client to office bank account - £30,000 on 30th June 2008 and £15,000 on 8th July 2008. These transfers had not been allocated to any individual client matters; and
 - (iv) The firm's cashier had recorded that £429,344.70 of the book difference had resulted from unallocated transfers. The cashier had maintained a running total of these transfers (but not the details) and the total was recorded on the client bank reconciliation as at 31st July 2009. Previous reconciliations indicated that the transfers had been made between 1st August 2008 and 31st July 2009.
4. The senior FIO reported that following the intervention the Law Society's compensation fund received claims totalling £515,364.27 and at the date of the hearing it had paid out £401,828.07. The sum available on client account at the date of the intervention was in the region of £3,000.00.
5. It was the Second Respondent's position that he had not received the monies recorded in his current account and he considered that that document setting this out provided by the First Respondent was the work of fiction.

The First Respondent's position

6. The First Respondent accepted allegation (i) but maintained that the withdrawals or transfers had been made negligently or in error. The First Respondent accepted allegation (ii) only in so far that there were two "incorrect" transfers from client account totalling £45,000 and that those transfers were reported by the FIO to the First Respondent during the SRA's inspection.
7. The First Respondent further admitted that there was a book difference recorded as the result of unallocated transfers although he did not admit the amount set out in the FIO's report.

8. The First Respondent admitted that two “round sum” transfers had been made.
9. The First Respondent denied that he had misappropriated clients’ funds for his own purposes. He admitted allegations (iv), (v) and (vi). The First Respondent denied that he had behaved dishonestly.
10. The First Respondent said that he did not intend to oppose any ruling that his name should be removed from the Roll of solicitors as a consequence of his admissions but he invited the Tribunal to take into account the matters set out in his written response.
11. In about April or May 2009 the Second Respondent notified the First Respondent that it was his intention to retire on health grounds. That decision was to have a profound effect on the future of the firm and discussions were held as to the way forward.
12. By June and July of 2009 largely as the result of the prohibited cost of professional indemnity insurance quoted by the firm’s brokers for the First Respondent to practise as a sole practitioner and in the face of lack of interest shown by admitted members of staff in committing their future to the firm by becoming partners it had been decided that there was little option other than to close the practice. That was done with effect from 31st October 2009 when the professional indemnity insurers and practising certificates expired. Staff were made redundant.
13. The Second Respondent had contacted the Law Society for guidance on the procedures to be implemented for a closure and such guidance was followed. The First Respondent instructed the firm’s bookkeeper to prepare a reconciliation of all accounts to be used by the firm’s accountants to identify all payments due or outstanding to creditors and clients and due to the firm from debtors and clients.
14. The First Respondent pursued opportunities which he had been exploring in particular in relation to a company that was interested in acquiring the First Respondent’s company set up to deal with wealth management; discussions were held with other local firms of solicitors about taking over the conveyancing caseload. The First Respondent said that there was an unpaid bill for £150,000 plus VAT and he had estimated that work in progress was to be valued at between £250,000 and £350,000.
15. When the FIO attended at the firm the First Respondent had notified her that the firm was to close at the end of October 2009. He told her of his concern about shortages on client account which had been caused by a combination of overpayments to clients and over transfers to office account. He believed the shortage to be in the region of £250,000. He also confirmed that the postings would not be up to date. He had arranged for the firm’s accountants to carry out a full audit and reconciliation of the accounts with a view to arriving at a figure which would pay off all clients and creditors so that it could be certain that everyone had been paid before the closure of the firm. The FIO had expressed no interest in meeting with the firm’s accountants or working in conjunction with them. The First Respondent had admitted that breaches of the SAR would be identified but it had been his intention to be transparent and cooperative and assist in every possible way. He felt that this had not been taken into account.
16. With regard to incorrect transfers totalling £45,000 the First Respondent had had an interview with the FIO and a senior male colleague of hers who proved uncooperative

and not interested in the First Respondent's explanations. The firm's bankers had confirmed that the "Z" code shown on the bank statement against the two transfers meant that the transfers had been undertaken by the bank internally. The FIO had not taken that matter further even though the First Respondent had gone on to explain that it was his view that if the transfers had been made internally by the bank they had probably been made because office account was overdrawn. He had explained that he had a separate private business account with the firm's bank which provided him with an overdraft facility of £30,000 which he used to introduce capital into the firm's office account. Such funds had been drawn down and replenished periodically. The First Respondent had explained to the FIO that the transfers made by the bank should have come from that account and not client account. He had to admit therefore that funds transferred from client account were therefore improper and that he should have rectified the position when he became aware of it but had not done so.

17. The First Respondent had explained that the three overtransfers totalling £967.09 had been made as a result of an error on his part. He accepted that upon discovery he had failed to rectify the error.
18. With regard to unallocated transfers from client to office account the First Respondent had been told at a meeting with the FIO that these totalled £394,194.70 but for reasons of which he was unaware the figure set out in the FIO's report was £475,404.94. The First Respondent had always admitted that transfers amounting to a significant amount had been made in breach of the SAR. He had made it plain from the outset that he had not been able to confirm the total amount. He had not been able to verify and check the position with a view to challenging the SRA's findings because the proposed audit by the firm's accountants had not been able to take place. The firm had been under considerable pressure from its bank to reduce its office account overdraft and transfers had been made in anticipation and expectation of the receipt of costs. The First Respondent had admitted to the FIO that the fact that these transfers had been made before costs had come in was improper. He denied that he had been dishonest in this connection. It had been the First Respondent's intention that once any balance between the total transferred and the total which could be certified as being accurate was verified by the firm's accountants any shortfall of sums to clients could be replaced from funds received as a result of the ascertainment of monies due to the firm.
19. The firm's accountants had not been able to carry out an audit and the FIO had refused to cooperate with them.
20. The First Respondent said he had been given an assurance by the FIO that a copy of her notes for comments to be made thereon would be made available to him before further steps were taken. The FIO's report had not been received until after the decision had been taken to intervene into the firm. The intervention took place and the firm was closed on 15th September 2009.
21. The passage of time and the exhaustion of the First Respondent's resources and his inability to earn an income owing to the suspension of his practising certificate prevented the First Respondent from being able to afford a report from his accountants. As a result of these matters the First Respondent's ability to challenge the figures had been frustrated and his case had been prejudiced.

22. When the FIO had questioned the First Respondent about the overpayments he had admitted each and every one and had provided a full oral and written explanation. The First Respondent had accepted that there were two cases of overpayments, one was an overpayment on a bridging loan and the other was an overpayment made to a client following a commercial transaction. The First Respondent had accepted that in both cases he had been negligent. He accepted that the shortage of client funds had not been made good owing to an oversight on his behalf. There had been a lack of documentary evidence caused by a fire at the firm's off site storage facility. With regard to the second overpayment the First Respondent fully expected the client to make repayment.
23. The First Respondent explained that two round sum transfers (£20,000 and £17,000) had been made to reduce the office account overdraft. Both transfers had been made in the knowledge that costs were due and would have more than covered the amounts concerned. The recovery of the amounts concerned had been frustrated by the intervention.
24. At his final meeting with the FIO the First Respondent had explained that he had arranged through friends to raise £150,000 - £200,000 to be used to rectify the breaches. The opportunity to drawdown that money had been frustrated by the intervention.
25. The First Respondent had been fully cooperative with the FIO and her senior colleague. He had given as much information as possible prior to her commencing the inspection.
26. The First Respondent had made every effort to ensure that the FIO and her colleague were aware the First Respondent took full responsibility for the problems identified and that no blame could be laid at the door of the Second Respondent. He confirmed that that remained the case. The First Respondent said that he would agree to indemnify the Second Respondent against any loss caused by the First Respondent's negligence in not managing the accounts properly. The Second Respondent did not have any direct culpability because he had been suffering from ill health and had been frequently absent from the office. His absence had prevented him from checking the accounting records even though they had been kept at the Leyland office. As a result of the Second Respondent's illness the First Respondent had agreed to supervise the bookkeeper and make sure that everything was kept up to date and was in good order. In a misguided but genuine effort to avoid stress to the Second Respondent the First Respondent had been selective in reporting the true extent of the financial problems facing the firm. The First Respondent almost exclusively had dealt with the bank and had fielded communications from the bank. The Second Respondent had relied completely upon the First Respondent to make sure that the business was being run properly. The First Respondent said he had let the Second Respondent down badly in this respect.

The position of the Second Respondent

27. In the light of his ill health the Second Respondent had been grateful to the First Respondent for relieving him of the day to day responsibility for the running of the firm's accounts and its dealings with the bank. He had believed the First Respondent

to be slightly incompetent but had never believed him to be dishonest and had been delighted when he agreed to take on these responsibilities.

28. The Second Respondent could not understand how such a large shortage could have arisen on the basis that those monies represented two years worth of business expenses and there would of course have been income to set off against those expenses.
29. The Respondents drew a modest notional salary and were provided by the firm with a car. The firm's accountants had provided annual Accountant's Reports which were filed with the Law Society and the Second Respondent had been unaware of the position until he was provided with a copy of the FIO's report and he had not been aware of the First Respondent's submissions until he saw the document which he provided to the Tribunal with his letter of 2nd September 2010.
30. The Second Respondent had been in partnership with the First Respondent for some 22 years and he had believed him to be honest. The Second Respondent pointed out that it appeared from the financial documents that had been placed before the Tribunal that substantial payments had been made to a firm of brokers connected with the First Respondent. The Second Respondent had been unable to understand this. He believed that in these circumstances the First Respondent had taken clients' money for his own purposes.
31. The Tribunal reviewed the following documents submitted by the Applicant:-
The documents accompanying the Rule 5 Statement in particular the FIO's report.
32. The Tribunal reviewed the following documents submitted by the Respondents:-
The First Respondent's written response.

Witnesses

33. The following persons gave oral evidence:-
Mr Freeman, a senior FIO of the SRA.

Findings as to fact and law

34. There was no dispute as to the facts and the shortages on client account and the causes of those shortages were not disputed. The Tribunal therefore found those matters set out under the heading "Factual Background" above to be found as fact.
35. In the light of this finding and in the light of the admissions made the Tribunal found all of the allegations to have been substantiated. The Tribunal found allegations (iii) and (vii) against the First Respondent, which he denied, to have been substantiated. With regard to allegation (iii) the Tribunal concluded that the First Respondent had misappropriated clients' funds for his own purposes and this was exemplified by the fact that it appeared that a substantial broker's fee had been paid from client account to a company of which the First Respondent was either the owner or was connected. Further it was noteworthy that the shortfall which the First Respondent had explained

as arising where the bank required the firm's overdraft to be reduced or paid off represented, as the Second Respondent explained, more than two years of the firm's actual business expenses and it was inconceivable therefore that the substantial shortfall had been used for the firm's purposes as the firm was generating an income and the bank's requirements would have represented a very much lower figure.

36. In the light of these findings and to support its finding of dishonesty against the First Respondent by finding allegation (vii) to have been substantiated the Tribunal applied the two part test for dishonesty set out in the case of *Twinsectra Ltd v Yardley and Others* [2002] UKHL 12. The Tribunal found that in taking money from client account in breach of the SAR to reduce the office account overdraft, in particular round sums in anticipation of costs and transferring costs where bills or written indications of costs had not been given to the clients concerned, the First Respondent's conduct was dishonest by the standards of reasonable and honest people. Having taken into account the First Respondent's written response and the Second Respondent's observations the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he was entitled to those monies either for the use of the firm or for his own purposes and therefore that he knew that what he was doing was dishonest by those same standards.

The First Respondent's mitigation (contained in his aforementioned written response)

37. The Respondent had been fully cooperative throughout the investigation. He had never formulated an intention to deprive any clients as a result of his actions. He had already decided to close the firm and not to renew his practising certificate. It was fully his intention to have final accounts drawn up, any shortages identified and ensure that funds were made available to pay in full any clients or creditors who were owed money.
38. He had been an equity partner in the firm and its predecessor for 20 years and had been employed as a solicitor since 1985. He had never before faced disciplinary proceedings.
39. He had lost his practice which had been built up over many years, his source of income, his standing in the community and amongst his clients and friends.
40. The First Respondent had found a position as a Business Development Consultant with a firm of financial advisors. That position was part time and was not secure. He received a modest income therefrom which was dependent upon his ability to generate business. He was struggling financially and had an appointment before the Bankruptcy Court of Liverpool at the end of September. He had been served with two statutory demands relating to the costs of the intervention and one from the Bank of Ireland Finance. The sums demanded totalled in excess of £150,000.
41. The First Respondent found himself becoming increasingly isolated and withdrawn. He had resigned from bodies of which he was a member and his longstanding trusteeship of a charity.
42. As a result of the Second Respondent having declared himself bankrupt in December 2009 the First Respondent alone had had to deal with all of the firm's creditors including the staff. That had caused him great hardship, worry and distress. He had

been constantly harassed by creditors and debt collectors. The First Respondent was facing possession proceedings and was told that he would lose his home.

43. The First Respondent's wife had been supportive but all of this had placed a strain on their relationship and had adversely affected the First Respondent's health. He had had to borrow money from friends and family to supplement his income.
44. The First Respondent was truly sorry for his actions and he had learnt a lesson that he would never forget. He had lost everything that the status of being a solicitor had given him.

The mitigation of the Second Respondent

45. The Second Respondent told the Tribunal that his admission as a solicitor had been the proudest day of his life. He had been a member of the profession for 35 years and had never been called upon to answer for his behaviour. He had been a man of integrity. No complaint had been made about him to the SRA and he had always honoured the Solicitors Code of Practice.
46. The Second Respondent was in partnership with the First Respondent. Upon learning of the matters set out in the FIO's report he had to accept that he was strictly liable for the breaches of the SAR and it was on that basis that he admitted the allegations against him.
47. The Second Respondent had already paid a high price. He had spent 29 years building up his firm which had been closed down and all of the files and clients had been lost. He had been suspended as a solicitor. The SRA's website had indicated that there had been a suspicion of dishonesty on the part of the Second Respondent and this had been reported on two front pages of a local newspaper. Even if this was only a suspicion those reading the articles would consider that there was no smoke without fire.
48. The Second Respondent had been aware of a shortage of some £51,000 but had believed that the situation was getting better. The shortage had been larger and had reduced and he felt indebted to the First Respondent on the basis that the First Respondent had "got him out of a hole" that was making the Second Respondent ill. He had reminded the First Respondent on a monthly basis that the £51,000 had to be repaid. The Second Respondent had developed a heart condition and he had been delighted when the First Respondent agreed to take over the management of the firm's accounts. On the day that the Second Respondent went into hospital a secretary at the firm had telephoned him to say that a cheque had been dishonoured. The First Respondent assured the Second Respondent that it was a problem with the bank and that he would sort it out. At that time the Second Respondent had already indicated his intention to terminate their partnership and to retire.
49. The Second Respondent had believed that both partners had taken modest drawings from the firm. He did not understand the size of the shortage and did not accept that it could be explained by the First Respondent's need "to keep the bank happy". The Second Respondent said that he believed that three people had played a part in the firm's difficulties. He had been in partnership with the First Respondent for 22 years and had believed the First Respondent to be honest. He had not expected the First

Respondent to lie to him. The firm's cashier had let the Second Respondent down. She had known what was going on but she did not tell the Second Respondent. The First Respondent had put her under pressure and had told her not to tell the Second Respondent because he was ill. Also the firm's accountants had to take some responsibility. The improper transfers had been made prior to the completion and filing of the firm's annual Accountant's Report. The accountants had not picked up those improper transfers and had allowed the situation to continue. It was the Second Respondent's opinion that the First Respondent had got away with it once and kept on doing it.

50. The Second Respondent felt badly let down. At the time of the hearing he was unemployed and had not worked since the firm had been closed down.
51. The Second Respondent felt that he still had an important role to fulfil and he still had a lot to offer. He hoped that he might be able to continue in the profession.

Sanction and Reasons

52. Having found the First Respondent to have been dishonest the Tribunal concluded that it was both appropriate and proportionate in order to protect the public and maintain the good reputation of the solicitors' profession to order that the First Respondent be struck off the Roll of Solicitors.
53. With regard to the Second Respondent the Tribunal accepted that he had found himself in a very unfortunate position. He had misplaced his trust in his partner of many years standing whom he believed to be honest at a time when he was suffering from ill health and was intending to retire from practice. He very properly admitted the allegations against him on the basis of absolute liability although it was the Tribunal's view that a partner in a two partner firm abdicates his duty to ensure the proper stewardship of client funds if he takes no interest at all in the firm's accounts and the management of client funds. The Tribunal has taken into account that the Second Respondent's partner lied to him, his cashier was prevented from giving him necessary information and the firm's accountants appeared not to have found anything wrong with the firm's accounts having provided annual Accountant's Reports to the SRA. The Tribunal could not ignore the fact that the Second Respondent had been aware of a deficiency and had sought to remind his partner that this had to be corrected on a monthly basis. In all the particular circumstances of this matter the Tribunal considered that it was appropriate and proportionate to impose a financial sanction upon the Second Respondent and that a fine of £5,000 met the seriousness of the breaches substantiated.

Costs

54. The Applicant sought the costs of and incidental to the application and enquiry. A schedule of costs had been prepared and the total sum sought was £9,995.54. The Second Respondent told the Tribunal that he did not quibble with the quantum but he invited the Tribunal to take the view that it would not be fair for payment of those costs to be joint and several and invited the Tribunal to apportion the costs between the two Respondents 80% as to the First Respondent and 20% as to the Second Respondent.

55. On the question of costs the Tribunal noted that the Second Respondent did not quibble with quantum and, indeed, it appeared to the Tribunal that the costs were relatively modest. The Tribunal recognised that culpability for what had happened was in the main that of the First Respondent and, indeed, the Tribunal had found him to be dishonest. The Tribunal accepted the Second Respondent's suggestion that the costs should be apportioned between the Respondents as to 80% to be paid by the First Respondent and 20% to be paid by the Second Respondent.
56. At the conclusion of the hearing the Tribunal made the following Orders:-

The Tribunal Ordered that the Respondent, PETER ANTHONY DIXON of 41 Blundell Drive, Birkdale, Southport, PR8 4RE, 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 £9,995.54 to be paid 80% by Peter Anthony Dixon and 20% by [RESPONDENT 2].

The Tribunal Ordered that the Respondent, [RESPONDENT 2] of Leyland, Lancashire, PR25, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,995.54 to be paid 80% by Peter Anthony Dixon and 20% by [RESPONDENT 2].

Dated this 24th day of November 2010
On behalf of the Tribunal

J Martineau
Chairman