

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF GARY PAUL LEECH, solicitor (The Respondent)

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

Mr K W Duncan (in the chair)
Mrs E Stanley
Mr M C Baughan

Date of Hearing: 16th December 2010

FINDINGS & DECISION

Appearances

The Applicant, Jayne Willetts, solicitor, appeared on behalf of the Solicitors Regulation Authority (“SRA”).

The Respondent did not appear and was not represented.

The Application and Rule 5 Statement were made on 1 April 2010. A Rule 7 Statement made on 24 June 2010 contained further evidence but no further allegations.

Preliminary Matters

The Tribunal considered whether it should proceed with the matter in the absence of the Respondent.

The Applicant produced a bundle of correspondence between herself and the Respondent. A letter of 17 May 2010 had been posted first class and not been returned via the “dead letter” service or otherwise. The pre-listing questionnaire had been returned to the Tribunal and was received by it on 23 June 2010. It was noted that there was nowhere on the form specifically for a Respondent or his representative to sign, but it could be assumed that an item sent to the

Respondent had been returned by him unless there was some suggestion that the form had been completed by someone else.

The Applicant had served the Supplementary Statement under cover of a letter of 24 June 2010, which had been sent by special delivery. An acknowledgement of this, showing receipt on 29 June 2010, was produced. A letter of 2 July 2010 from the Applicant to the Respondent including the Civil Evidence Act Notice, and posted by special delivery had been acknowledged on 5 July 2010.

It was confirmed that the address the Tribunal held for the Respondent was the same as that used by the Applicant. The Tribunal was asked to deal with the substantive proceedings pursuant to Rule 16 (2) of the Tribunal's Rules.

The Tribunal noted that the pre-listing form indicated that the Respondent both admitted the allegations, and admitted some of the allegations. This form had been lodged before the Rule 7 Statement had been served but there had been no additional allegations contained in that statement.

The Tribunal was satisfied that the Respondent had received appropriate notice and service of the proceedings in this matter and that the hearing should proceed.

Allegations

The allegations against the Respondent were that:-

1. He failed to deal with the SRA in an open, prompt and co-operative manner in breach of Rule 20.05 Solicitors' Code of Conduct 2007 ("SCC").
2. He failed to produce all practice documents in his possession to the SRA intervention agent in breach of Rule 20.08 (1) SCC and Rule 34 of the Solicitors Accounts Rules 1998 ("SARs").
3. He failed to undertake post completion work on conveyancing transactions in breach of Rules 1.04, 1.05 and 1.06 SCC.
4. He made improper withdrawals from client account in breach of Rule 22 (1) SARs.
5. He failed to deliver an Accountant's Report for the year ended 30 June 2008 in breach of Section 34 Solicitors Act 1974 and Rule 35 SARs 1998.

Factual Background

1. The Respondent was born in 1970 and was admitted as a solicitor in June 1998. At the time of the hearing he did not hold a current practising certificate. The Respondent formerly practised on his own account as GPL@Law from 1 July 2006 until that practice was abandoned in December 2008. As a result of the abandonment the SRA resolved to intervene in the practice and the intervention took place from 5 August 2009. All of the allegations related to the Respondent's practice as GPL@Law, and to the abandonment of that practice.

Findings as to Fact and Law

2. The Tribunal had read and considered the Rule 5 and Rule 7 Statements and supporting documents. It was noted that the Respondent had not responded to the allegations made, but had indicated that he would admit some if not all of the allegations made.

Allegation 1

3. The Tribunal found, so that it was sure, that the Respondent had failed to cooperate with the SRA in an open, prompt and cooperative manner and so was in breach of Rule 20.05 of SCC.
4. The Respondent's practising certificate expired on 17 December 2008. An SRA caseworker wrote to the Respondent on 19 January 2009 to clarify his practising arrangements. The Respondent informed the caseworker on 26 January 2009 that the practice was effectively closed and he no longer held clients' monies. By letter of 26 January 2009, the SRA caseworker wrote to the Respondent to record the telephone discussion and advised the Respondent of his duties and the regulatory requirements when closing down a practice. There followed several other communications from the SRA caseworker, requesting a substantive response to the request for information about the Respondent's practising status. The Respondent failed to respond to those various communications, including one of 11 February 2009 which stated that it was imperative that he confirm the arrangements being made to ensure that his clients' interests were being protected. Further email exchanges took place from March to April 2009. On 14 April 2009 the Respondent sent an email to the SRA caseworker in which it was said that the client account had been closed and the last balance had been transferred on 13 December 2008. It was further stated that the Respondent had not written to his clients but was drafting a letter for approval by the SRA, and that there were no matters ongoing. By further letters and emails in May and June 2009 the SRA caseworker requested information concerning the closure of the practice. On 12 June 2009 an SRA Intervention Caseworker indicated that the lack of communication combined with the fact that the practice did not appear to have been closed down gave rise to circumstances where an intervention might be carried out. Again, the Respondent did not reply.
5. The Tribunal was satisfied that the SRA had endeavoured on numerous occasions from January to July 2009 to communicate with the Respondent and that the Respondent had failed to provide the SRA with the information requested. There had not even been a response to a letter dated 15 July 2009 which indicated that the matter was being referred for formal adjudication. Accordingly, the Tribunal was satisfied that this allegation had been proved.

Allegation 2

6. The SRA resolved to intervene in the Respondent's practice and appointed an intervention agent. Notice of the resolution to intervene was served by letter of 4 August 2009 and on 6 August 2009 the intervention agent wrote to the Respondent requesting that he contact the agent to give possession of all his papers and files. On 10 August 2009 the Respondent delivered papers and files to the intervention agent.

The intervention agent identified that there were three categories of documents which were missing in their entirety. In the first instance it was noted that there were no copies of client ledgers, either in paper form or accessible on a computer system. It was also noted that there were no bank statements and that the financial records were incomplete. Two client files were also missing at that point.

7. The intervention agent was able to obtain copies of the bank statements relating to both office and client accounts from the bank but the Respondent did not produce any ledgers or the files identified as missing. Accordingly, the second allegation had been proved so that the Tribunal was sure.

Allegation 3

8. The Respondent's practice had been primarily in the field of conveyancing.
9. The Respondent had acted for three clients in relation to three unconnected property purchases.
10. Mr and Mrs B purchased a plot of land. The Respondent sent to the clients a completion statement showing that the amount due from the client to complete the purchase, including a sum for Stamp Duty Land Tax ("SDLT") and Land Registry fees ("LR fees") was in the sum of £17,086.69. The clients paid the Respondent monies on account in order to discharge the SDLT and LR fees. However, after completion, which occurred on 30 June 2008, the Respondent failed to carry out the work necessary to pay SDLT or register the transfer and charge at the Land Registry.
11. Mrs E instructed the Respondent in relation to the purchase of 89D Road. The completion statement sent to her showed a sum due of £52,075.31 to complete the purchase, of which £1,970.00 was in respect of SDLT and LR fees. Completion was on 30 July 2008. Again, the client paid sums to the Respondent's client account to pay the amounts due but the Respondent failed to undertake any post completion formalities including the payment of SDLT and the registration of the transfer and charge at the Land Registry.
12. Mr Y and Miss W instructed the Respondent in relation to the purchase of 70 WC Road. The completion statement sent to them showed a sum of £185,616.22 was due on completion, of which £13,600 was in respect of SDLT and LR fees. Completion was due on 20 November 2008. The necessary funds were provided by the clients but again the Respondent failed to undertake post completion work including the payment of SDLT and the registration of the transfer and charge at the Land Registry.
13. In all of these matters the Respondent had acted for the purchaser and for the lender.
14. The Tribunal was satisfied so that it was sure, that this allegation had been proved.

Allegation 4

15. It was alleged that the Respondent had made improper withdrawals from client account in breach of Rule 22 (1) SARs. Dishonesty was alleged, but it was not

necessary to prove dishonesty in order for the allegation of the breach of Rule 22 (1) SARs to be made out.

16. The Respondent was the sole signatory on, and had exclusive control of the monies held in, client account. Between 30 June 2008 and 20 November 2008 the Respondent's client account was credited with the total sum of £27,489.85. These sums were intended to discharge the disbursements relating to the three property purchases set out above. The Respondent did not discharge the disbursements, nor did he return the money to the clients.
17. Between 3 January 2008 and 7 January 2009 the Respondent made 104 round sum transfers from client account, totalling £130,600. All but seven of these transfers were credited to office account, with the destination of the funds transferred being unclear in the other seven matters.
18. As at the time of intervention into the practice the client account bank balance held just £12.48. The Tribunal was satisfied, therefore, that very significant sums had been withdrawn from client account by the Respondent but had not been utilised for the purpose for which they were intended.
19. It was noted that the Respondent had informed the SRA caseworker on 14 April 2009 that the firm's client account had been closed and the last balance had been transferred on 13 December 2008. However, this was not true as several transfers had occurred after that date, with the final one being on 7 January 2009.
20. It was noted that the sums transferred from client account had been "round sum" figures. Those funds had not been traced into other accounts. There had been no explanation by the Respondent of the transfers and it was noted that the Respondent had failed to produce the firm's client ledgers. The Respondent had had the opportunity to put his case before the Tribunal, but had not done so.
21. The Tribunal was referred to the test for dishonesty set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 as approved in Bryant v Bench [2007] EWHC 3043 (Admin).
22. The Tribunal was satisfied that the transfers from client account had been improper and in breach of Rule 22 (1) SARs. The allegation was, thus, proved. As to the allegation of dishonesty, the Tribunal considered the test set out in the Twinsectra case as applied to the facts in this matter. The Tribunal was satisfied, so that it was sure, that in transferring money from client account on a number of occasions from 2007, and in particular from January 2008, the Respondent's conduct was dishonest by the standards of reasonable and honest people. The money had been taken by the Respondent and not used for its intended purpose. The Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that the transfers were proper and therefore that he knew that what he was doing was dishonest by those same standards. There was no other explanation possible for the Respondent's conduct.

Allegation 5

23. The Respondent had failed to deliver an Accountant's Report for the year ended 30 June 2008 and was thus in breach of Section 34 Solicitors Act 1974 and Rule 35 SARs. This was a less serious allegation, but concerned a further breach of the SARs.

Mitigation

24. The Respondent did not appear or put forward any mitigation by letter or otherwise, nor was there anything contained in his correspondence with the SRA which explained his conduct.

Costs Application

25. The Applicant sought an Order for payment of her costs in the sum of £12,440.27. It was noted that in this instance most of the costs related to work done by the Applicant and her colleagues, with a comparatively small sum being in respect of the SRA investigation. This was because most of the investigation had been carried out after intervention into the Respondent's firm.
26. It was noted that in relation to the intervention costs the Respondent had provided to the SRA in March 2010 some information about his means. This information was, of course, now out of date but gave some general guidance to the SRA about the Respondent's financial circumstances. It was noted in particular that as at March 2010 the Respondent had been in receipt of state benefits and he did not own any assets.

Previous Disciplinary Sanctions before the Tribunal

27. None.

Sanction and Reasons

28. This was a case in which dishonesty had been found. In the absence of any exceptional circumstances, the Tribunal's Order must be that the Respondent should be struck off the Roll. There had been no explanation by the Respondent of his conduct.
29. The Tribunal was also conscious that as a result of the Respondent's actions there had been a claim on the compensation fund which to date had paid out approximately £55,000 because of the Respondent's defaults. In addition, the Respondent had not yet paid the costs of intervention of £11,163.15. The finding of dishonesty in the use of client funds meant that striking off was the only appropriate Order, given the Tribunal's duty to protect the public and uphold the reputation of the solicitors' profession. Even if dishonesty had not been proved, the findings, in particular in relation to improper transfers of client funds, were serious.

Decision as to Costs

30. The Tribunal found that the costs sought by the Applicant were reasonable. However, in the light of the information about the Respondent's financial circumstances, the Order for him to pay those costs should not be enforced without the further permission of the Tribunal.

Order

31. The Tribunal Ordered that the Respondent, Gary Paul Leech, 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 £12,440.27, such costs not to be enforced without leave of the Tribunal.

Dated this 16th day of February 2011

On behalf of the Tribunal

K W Duncan
Chairman