No. 10518-2010

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF SUSAN JANE SPENCER, solicitor (The Respondent)

Upon the application of Geoffrey Williams QC
on behalf of the Solicitors Regulation Authority

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Mr D Green (in the chair)
Mr P Housego
Mrs L Barnett

Date of Hearing: 10 November 2010

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# FINDINGS & DECISION

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**Appearances**

Geoffrey Williams QC of The Mews, 38 Cathedral Road, Cardiff CF11 9LL was the Applicant.

The Respondent appeared in person.

The Application to the Tribunal was made on 30 April 2010.

**Allegations**

The allegations against the Respondent Susan Jane Spencer ("SJS") were that she had:

(a) Transferred monies for purported costs and disbursements from client bank account to office bank account without having sent bills of costs or other written notifications of the costs incurred to her clients contrary to Rule 19(2) Solicitors Accounts Rules 1998 ("SAR"); and

(b) Withdrawn monies from client bank account otherwise than in accordance with Rule 22 SAR

**Factual Background**

1. The Respondent was admitted as a solicitor in 1986 and was born in 1962. Her name remained on the Roll of Solicitors but she was not currently in practice. At all material times the Respondent carried on practice in partnership under the style of Devonshires in London. She became an equity partner of the firm in around 1998 and was suspended and resigned on 12 June 2009, both as a result of the matters the subject of the allegations in this application. On that day the firm contacted the SRA to report concerns about the Respondent's conduct. In consequence an inspection of the firm's books was carried out. It was ascertained that the Respondent had been preparing bills of costs to clear residual client balances of clients' money held by the firm. The bills were not sent to the clients but the funds in question had been transferred from clients' bank account to office bank account at her direction. The firm investigated as did the SRA. It was concluded that the total value of bills raised by the Respondent was £232,813.98. The billing had taken place between 1999 and 2009. When liabilities to the clients in question for unpaid interest were added in, the shortage to be replaced (which was replaced) amounted to £254,883.59. In general terms the bills and the consequent transfer of funds to office account, reduced the client account balance on the ledgers in question to nil. This enabled the files to be archived. On 29 June 2009 the senior partner of the firm provided two lever arch files to the SRA's Investigation Officer which he said were the files identified by the firm during its investigation as belonging to the Respondent. The two files were labelled on the spines as follows:-

    - File 1 - "SJN [standing for Susan Jane Nunnerley, the Respondent's maiden name] Archiving Bills 2000-2006"

    - File 2 - "SJN Archiving Bills 2007-"

    The officer reviewed the contents of both files which among other things contained copies of 234 bills dated between 1 February 2000 and 13 May 2009 in the total value of £203,473.19 inclusive of VAT, and all but three bills displayed the Respondent's initials referenced by either "SJN" or "SJS". The value of the bills during the period 2000-2006 was £89,267.92 and those in the file marked 2007- was £114,205.27. The lowest value bill including VAT in the earlier file was £0.50 and in the later file £2, and the highest value bill including VAT in the earlier file was £10,932.71 and in the later file £22,055.61. The two archiving bill files contained the majority of the total bills alleged to have been improperly raised by the Respondent (87.4%).

2. The Respondent told the Investigation Officers that she had raised the bills in an attempt "to ensure that the firm was paid for work that it had done and to tidy up files prior to archiving". She said that "some transfers were breaches [of the Solicitors' Accounts Rules] and I should have known that at the time".

**Applicant's Submissions in relation to the allegations**

3. The Applicant submitted that the Respondent had behaved dishonestly by failing to send the offending bills to her clients; and transferring or causing funds to be transferred from client account to office account to discharge the bills. However, the

allegations did not depend on findings of dishonesty for them to be made out. The applicant referred the Court to the case of Twinsectra -v- Yardley [2002] UKHL 12, the test was as follows: "Before there can be a finding of dishonesty it must be established that the Defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest". The Applicant also referred the Tribunal to the case of Weston -v- The Law Society which was heard in the then Divisional Court in July 1998. The latter case concerns the duty of anyone holding anyone else's money to exercise proper stewardship of it. That was violated if a solicitor with a duty to see that the rules were observed failed to do so. The Applicant submitted that what the Respondent had done was a glaring breach of that duty of stewardship in respect of clients' money and that it struck at the heart of the duties of the profession. The Applicant emphasised that he made no criticism of the firm.

4. It was submitted that the Respondent had benefited to some extent by her actions, in the region of £15,000 during the period of her equity partnership. The Respondent disputed that, and the Applicant would not press that point. Proof of gain was not an essential element of proving dishonesty under the tests in Twinsectra.

5. In her letter of resignation to the firm, the Respondent apologised for what she said "in hindsight were lapses of judgement on my part". The file note dictated by the senior partner in respect of his and the finance partner's interview with the Respondent on the day she resigned describes the Respondent's explanation of her actions. "....I explained to her that this was not really "survivable". Jane then stated that she had not thought her career would end in this way. I asked her when she had commenced taking client monies in this manner. She replied that she guessed "she had just got used to doing this over the years"." The SRA did not accept the Respondent's explanation.

6. The Applicant drew the Tribunal's attention to two specific transactions, particularly one involving L Road. There was an amount of £22,055.61 in client account. The deposit account was closed and the funds brought to the general client ledger. Six days later a bill in exactly the amount in the ledger was raised. In the senior partner's email to the SRA reporting his concerns about the Respondent he had stated "for the most part the monies involved were residual interest monies, but in the worst case they were capital monies as well as interest, which Jane knew should have been refunded to the client and instead these were taken as costs." This was the case to which he was referring. A bill had been delivered in respect of this property in June 2002 but an amount of £19,875.07 had remained on file accruing interest. The bill raised by the Respondent took effect six years after the last transaction on the file. It appeared that the bulk of the work had been carried out by a fellow partner of the Respondent's, who had subsequently retired. Before he left she had referred the file to him to deal with the monies remaining on deposit. The file itself was missing and the matter was referred back to the Respondent who ordered "bill it credit to me". In an interview with the Investigation Officers the Respondent had said that "the bill should not have been raised. In the absence of anything else, the money should have gone back to the client but it would have been difficult to explain. To go back to the client would have been embarrassing because we had lost the file and we had held the money since 2001. It was such a large amount so it should have gone back to the client." The Respondent could not recall who had composed the bill narrative but her signature was on the "green slip" authorising the transfer of money to office account.

There was nothing on the ledger to support the bill which had been raised. The Applicant also drew the Tribunal's attention to another case where a bill of £8,093.49 had been raised, and where unbilled disbursements on the file amounted only to £3,479.

7. The Applicant submitted that the Respondent had undertaken a file clearing activity which involved dishonestly sweeping up on a vast scale, amounting to monies in the region of £250,000 belonging to clients. It was accepted that she had co-operated with the investigation and provided a written explanation of her actions to the SRA in a letter of 28 September 2009. In respect of the amount of in excess of £22,000 her explanation was that she "stupidly took the easier way out and billed the amount and transferred the funds to office account to the credit of Devonshires. I accept entirely that this was a ridiculous decision and I bitterly regret it. I should have discussed this matter with the other property partners and we should have agreed a letter explaining in so far as we could why we were sending them such a large sum plus all interest." It was submitted that the Respondent's summary of her thought processes indicated that she had made a conscious decision to act as she did. She chose a dishonest option, and it was submitted that this was a very serious case indeed, constituting a total failure of the duty of stewardship highlighted in the case of Weston. The matter was regarded at the very top end of the scale of seriousness, even if dishonesty were not found to be proved. This was an experienced solicitor and one who apart from these events was considered to be a good solicitor, a conveyancing specialist who frequently carried out monetary transactions and dealt with all her own billing and authorities for transfers from client to office account. She knew exactly what was involved in raising proper bills and understood that a crucial element in the process was to send the bill to the client. This was a situation where the billing process had been worked backwards, starting at the amount to be cleared and creating a bill which would avoid having to confront clients about the length of time money had been held, and avoiding facing embarrassment. Clients had been kept completely in the dark. It was submitted that the Respondent knew that what she was doing was wrong, and having regard to the scale of the activity and the time over which it had been carried out, the matter was very serious.

**Respondent's submissions in relation to the allegations.**

8. The Respondent had provided a statement dated 9 November 2010, upon which she relied. Exhibited to it was a letter of explanation to the SRA. The Respondent admitted both the allegations but she denied the allegation of dishonesty. She explained that she accepted culpability but did not consider her actions constituted dishonesty. She relied on the character evidence of the senior partner and the finance partner of her former firm, who had written to the Tribunal dated 1 November 2010, attesting to her honest character when they had no need to do so. Her former firm dealt with five or six housing association clients and at any one time might have 30 files per client in hand. The Respondent accepted that what she had done was not the right approach. She had taken a broad brush approach on the basis that even if there were no particular time or disbursement entries on the ledger the monies which she had appropriated would be credited against other work done for the same client. She had not been motivated by the desire to make partnership or any other kind of gain. She had simply not thought enough about what she was doing. Generally, there was money due from the client in respect of disbursements and time worked. In respect of the L Road property, she accepted that this case was different and repeated that she

had made a ridiculous decision in respect of monies which had been held for around eight years. She simply did not know what to do with the money and had behaved stupidly in a way that she would always regret.

**The Tribunal's Findings as to Fact and Law**

Allegations (a) and (b)

9. The Tribunal had carefully considered all the evidence, including the submissions, the Respondent's statement, the letter from her former partners of 1 November 2010, the decision in the case of Weston and most particularly the test for dishonesty set out in Twinsectra. The Tribunal found allegations (a) and (b) proved to the higher standard but was not satisfied that the second limb of the test in Twinsectra had been satisfied. The Tribunal felt that the Respondent's conduct was dishonest by the standards of reasonable and honest people but that she herself did not realise that by those standards her conduct was dishonest. The Tribunal had been particularly impressed by the assessment of her honest character, submitted by her former partner colleagues, particularly bearing in mind the difficulty and disruption which her actions had caused to them and to the firm. They had worked with her for a period of some years and were satisfied generally as to her honesty. The Tribunal was satisfied that there was a reasonable doubt in the matter. It took the view that the Respondent had over a period of time developed a mindset, beginning with sweeping up small amounts of money in order to archive files, so that when the amounts became larger she had become completely blind to her professional duties. The Tribunal had noted that the Respondent had behaved in a completely open way within the firm in carrying out the process, even to the extent of maintaining files, meticulously listing the cases which she had "archived" which was inconsistent with any intention to deceive. The fact that this mindset might fairly be described as ridiculous did not displace that doubt. Accordingly, while the Tribunal found the allegations to be proven, they did not find that the second limb of the test in Twinsectra had been satisfied.

**Mitigation**

10. The Respondent reminded the Tribunal of her previous good character and her unblemished record of 23 years in practice as a solicitor. She had accepted culpability immediately, co-operated fully with the SRA and expended considerable personal resources putting matters right, including paying the expenses of her former firm incurred in investigating the matter. She had lost her income, her career and her reputation and would find it very difficult to get any kind of employment. She asked the Tribunal to take particular account of the significant financial restitution which she had made, and her greatly reduced financial means when determining costs.

**Costs**

11. The Applicant provided a costs schedule, which the Respondent did not dispute. There had been some discussions between the parties about the possibility of the Respondent entering a regulatory settlement agreement with the SRA, but recently the SRA had determined to continue taking the matter to the Tribunal. Accordingly the costs of those negotiations had been removed from the Schedule. The Respondent submitted that while she agreed the Schedule of Costs she would of course have to pay her own solicitor for representing her, including in the RSA negotiations which

had lasted from the beginning of July to the week preceding the hearing.

**Sanction and Reasons**

12. The Tribunal had found the allegations proved, save for that of dishonesty, but considered that it had been quite proper for the case to come before the Tribunal because it was at the high end of breach of conduct, and not clear cut. The Respondent had committed numerous breaches of her duty of stewardship. Her behaviour had been systematic and taken place over a decade. Her conduct clearly constituted a violation of the duty to exercise a proper stewardship of client money. That was a duty which bound solicitors quite apart from the duty to act honestly as had been set out in the judgment in the Weston case. Accordingly notwithstanding that dishonesty had not been proved, the Tribunal concluded that having regard to the high degree of seriousness of the allegations which had been proved the Respondent should not be allowed to continue to practice. Accordingly the Tribunal ordered that she be struck off the Roll of Solicitors.

**Decision as to Costs**

13. A costs order was made against the Respondent in the sum sought by the Applicant, that is £18,987.09.

**Order**

14. The Tribunal Ordered that the Respondent, Susan Jane Spencer, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the total sum of £18,987.09.

DATED this 6th day of December 2010
on behalf of the Tribunal

D Green
Chairman