

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JONATHAN MARTIN GILBERT, solicitor (The Respondent)

Upon the application of Jonathan Goodwin
on behalf of the Solicitors Regulation Authority

Mr A H B Holmes (in the chair)
Mr A Ghosh
Lady Bonham Carter

Date of Hearing: 18th November 2010

FINDINGS & DECISION

Appearances

Mr Jonathan Richard Goodwin of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT for the Applicant.

The Respondent appeared and was represented by Mr Paul Garlick QC.

The application was dated 17 May 2010.

Allegations

1. Contrary to Rule 10.05 of the Solicitors Code of Conduct 2007 ("SCC"), the Respondent failed to comply with an undertaking dated 4 April 2008.
2. Contrary to Rule 1.02, 1.04, 1.05 and 1.06 of SCC the Respondent failed to disclose material information to lender clients.
3. Contrary to Rule 1.02, 1.04, 1.05 and 1.06 of SCC the Respondent failed to act in the best interests of lender clients.

4. The Respondent improperly paid away funds held on behalf of mortgagee clients and/or failed to utilise such funds towards the purchase of the properties for which the funds were intended. This was an allegation of dishonesty.

The Respondent admitted allegation 1.

The Respondent admitted allegations 2, 3 and 4 in relation to the transactions for PE covering the purchase of 44 S. Road and the purchase of 46 S. Road.

The Respondent admitted allegations 2 and 3 in relation to PB and the purchase of M. House.

The Respondent admitted allegation 3 in relation to the S Brothers Ltd and the purchase of 9 P. Street.

The Respondent denied dishonesty.

Factual Background

1. The Respondent, born in 1969, was admitted as a Solicitor on 17 January 1994.
2. At all material times the Respondent carried on practice in partnership under the style of Willmetts Solicitors, from offices at 34-38 Broadway, Maidenhead, Berkshire, SL6 1LU; 60 Headly Road, Woodley, Berkshire, RG5 4JE; 27 Sheet Street, Windsor, Berkshire, SL4 1BX; and 13-15 Castle Street, Reading, Berkshire, RG1 7TB. By an email dated 2 March 2009 the Respondent wrote to the partners in the firm confirming his retirement from the partnership with immediate effect. The Respondent wrote:

“I can only apologise to you all for the situations I have created and which you all now have to endure. As a result of these my position within the partnership has become untenable and quite understandably any trust and confidence you had in me as your partner has broken down.

As remaining partners you will now need to protect yourselves and the interests of the partnership, a purpose best served in my absence. The problems now requiring resolution were caused by me alone and not you as my fellow partners or the partnership business. You can best preserve your position and act in the partnership’s defence on these issues without me as a partner. The SRA etc.... will be understanding of your position if you are not in a situation where you need to consider protecting me or where the interests of the partnership conflict with mine.”

3. As a consequence of the Respondent’s actions, the remaining partners in Willmetts Solicitors were forced to close the firm, facing an insurance shortfall of some £50 million and facing bankruptcy. Willmetts Solicitors was also subject to an intervention on 21 December 2009.
4. On 12 March 2009, Mr M B Berryman (a partner at Willmetts Solicitors), wrote to the Solicitors Regulation Authority (“SRA”) reporting serious misconduct in respect of the Respondent. As a result the Forensic Investigation Department of the SRA carried

out an inspection of Willmetts Solicitors and produced a Report dated 12 October 2009.

5. Mr Berryman informed the Investigation Officer (“IO”) that on 12 November 2008 the firm had received a complaint from the SRA regarding the Respondent and a breach of undertaking. He confirmed he had received a telephone call from Stevensdrake Solicitors, on 27 February 2009, who were acting on behalf of the Royal Bank of Scotland (“RBS”). In May 2008 RBS had forwarded the sum of £2,850,000.00 to the Respondent in respect of the purchase of two properties, 44 and 46 S. Road, by R. New Homes Ltd. Mr Berryman indicated that Stevensdrake Solicitors had enquired if he knew the whereabouts of the money. Mr Berryman indicated he knew nothing about the transaction but would speak to the Respondent immediately.
6. Mr Berryman spoke to the Respondent on the afternoon of 27 February 2009 who informed him that he was in a meeting but would speak to him regarding the transaction later. Mr Berryman had not heard from the Respondent since.
7. Mr Berryman made enquiries in respect of the £2,850,000.00 and ascertained that the cashier confirmed that the monies had been transferred out of the firm’s client bank account and that the client was R. New Homes Ltd, the Director of which was a Mr ME. It was ascertained that the £2,850,000.00 received into the firm’s client bank account had not been utilised for the purpose of purchasing 44 and 46 S. Road. Mr Berryman attended the Maidenhead office on 2 March 2009 and was informed that the Respondent had resigned from the partnership.
8. At the initial meeting with the IO, Mr Berryman indicated that all files relating to Mr ME, Mr PE and Mr PB had been removed from the premises. At the meeting on 13 August 2009 Mr Berryman indicated that all branches of the firm and the archive storage had been searched to recover any of the files, but without success. Mr Berryman also confirmed that the Respondent’s laptop had been removed from the Maidenhead office. The laptop belonged to the firm, but despite numerous requests to the Respondent and his Solicitor the laptop was not returned.
9. Mr Berryman notified the firm’s insurers of the potential claim from RBS totalling £2,850,000.00 and also notified the police. Mr Berryman undertook a review of the Respondent’s other matters when the Respondent had acted for Mr ME and his companies together with Mr PE and Mr PB. The list which Mr Berryman compiled of potential problems with various mortgage lenders consisted of 43 properties.
10. On 19 May 2009 the IOs conducted a digitally recorded interview with the Respondent at De Maids, Solicitors in Cardiff, with Mr Evendon representing the Respondent.
11. The Respondent had been advised that due to potential criminal proceedings he should maintain his right to silence and throughout the interview the Respondent refused to answer the majority of the questions put to him by the IO. During the course of the interview the Respondent was served with Notice pursuant to Section 44B of the Solicitors Act 1974 (as amended) to produce six files. On 26 May 2009 the Solicitors acting for the Respondent sent an email to the IO indicating that

“All of the documents and files which you seek will be found at the premises of Willmetts Solicitors at their Maidenhead Office. He confirms that he has not removed any of the files or documents in relation to the transactions involved and he confirms that he has notified this to Willmetts by a witness statement as part of the Civil Proceedings. He has not attended the Maidenhead office since 27 February 2009. He would ask that you ensure an exhaustive search of the premises occurs in an effort to locate the same.”

12. It was ascertained that following the Respondent’s resignation, a photograph of a file on top of two storage boxes with the name Mr ME - remortgage of Flat 3, E. Gardens, was retrieved from the firm’s IT system, the photograph having been sent by email on 25 February 2009 by the Respondent to ME. 3 E. Gardens was one of the cases on Mr Berryman’s potential problem list to the insurers.

Allegation 1

13. The Respondent acted for a seller (“EH”) in relation to the sale of plots 1-9 W. Road. Andersons Solicitors acted for the purchasers. In the “Replies to Requisitions on Title” dated 4 April 2008 from the firm to Andersons Solicitors, the firm gave the following undertakings:

“We undertake only in respect of the charge in favour of Bank of Scotland Plc dated 1 June 2007 and registered on 16 January 2008. If your official copy of register entries or search with the Land Registry reveals any other subsisting charges, please let us know immediately.”

14. Exchange of contracts and completion of Plots 1-9 W. Road took place on 11 April 2008, for a sale price of £675,000.00. After deduction of the firm’s costs and disbursements, the sum of £667,366.61 was sent direct to “EH” on 25 April 2008 by way of telegraphic transfer.
15. On 22 May 2008 Andersons Solicitors wrote to the firm requesting a DS3. The firm responded on 27 May 2008 indicating that they were chasing the bank for the form of discharge. There was a letter on the file to the Bank of Scotland stating:

“We recently completed the sale of the above property. We enclose herewith DS3 and would be grateful if you could sign on behalf of the Bank and return to us.”

16. Andersons Solicitors chased the firm regarding the DS3 by various letters and emails dated between 12 June 2008 and 3 July 2008. On 15 August 2008 the Respondent replied to an email from Andersons Solicitors dated 13 August when he said:

“Yes we have. The funds were credited to the wrong incorrect account. Is being rectified.”

In fact, the funds had already been sent direct to EH on 25 April 2008, some four months prior.

17. Mr Berryman indicated to the IO that he became aware of the problem on this particular file on 9 September 2008 because he was copied into an email from Andersons Solicitors addressed to the Respondent. Mr Berryman explained he had made enquiries with the Bank of Scotland as regards the DS3.
18. On 16 October 2008 the Respondent wrote to the Bank of Scotland suggesting there had been discussion and agreement with David Squire of the Bank and that he had provided an undertaking in reliance upon the agreement reached with Mr Squire. However, Mr Squire in a witness statement dated 8 December 2008 stated:

“I categorically deny having had any such conversation with Mr Gilbert and confirm that no such agreement was reached with me.”
19. At the meeting with the IO on 19 May 2009 the Respondent refused to answer any questions regarding the matter, indicating that he had given an interview to the Solicitors acting for the firm’s Professional Indemnity Insurers, who subsequently issued a declinature letter.

Allegations 2-4

20. The Respondent acted for the purchasers and mortgagee clients in respect of six transactions, which in total amounted to loans from the lenders in the sum of £9,237,676.00.

ME - purchase of 44 and 46 S. Road

21. The Respondent acted for R. New Homes Ltd in the purchase of these two properties for the sum of £1,546,133.75. On 6 February 2008 the client side of the ledger was credited with £170,000.00 described as received from “R.”, and on the same day a payment of £162,720.00 was credited to Browns Solicitors who were acting for the sellers of both properties. It was not possible to ascertain to which property the deposit related.
22. On 8 August 2008 the client side of the ledger was credited with £160,000.00 described as “Open new Bridge a/c tfr from Barclays Bank”, and on the same day a second deposit of £160,000.00 was paid to Browns Solicitors.
23. RBS loaned to Mr ME and/or his company R. New Homes Ltd the sum of £2,850,000.00 for the purchase of 44 and 46 S. Road. On 6 May 2008 Mr Mitchell of Stevensdrake Solicitors sent an email to the Respondent seeking confirmation that the RBS Finance was to be utilised solely for the purchase of the properties and that the firm provide an undertaking that the loan advance was strictly held to Stevensdrake’s order and to undertake to deal with SDLT return and registration of title as soon as practicable post completion. By email dated 15 May 2008 the Respondent replied and said “confirmed” that the money would be utilised solely for the purchase of the properties and agreed to provide an undertaking.
24. On 16 May 2008 the sum of £2,850,000.00 was received from RBS. The money was subsequently disbursed, with large sums being utilised in the purchase of unrelated

properties, and the sum of £753,000.00 being paid to R. New Homes and the sum of £970,000.00 being paid to ME.

25. By email dated 26 February 2009 Mr Mitchell, the Managing Partner at Stevensdrake Solicitors wrote to RBS in relation to 46 S. Road, and made reference to the very distressed seller of 46 S. Road, who indicated that R. New Homes had not completed the purchase of the property and had not paid her the sale price even though R. New Homes managed to obtain vacate possession and had demolished the property.
26. Emails had been sent by Mr Mitchell to the Respondent chasing the matter, the last of which was dated 26 February 2009 but there was no correspondence to indicate that the Respondent replied. The Office Copy Register still showed the original sellers as the proprietors of the respective properties.

PE - purchase of 44 S. Road

27. This file could not be located. The IO was provided with limited paperwork that had been provided to the firm by the mortgagee client, Birmingham Midshires ("BM"). The purchaser was Mr PE and the Respondent was the fee earner. The firm was instructed to act for the lender as well as the purchaser. BM agreed to lend the sum of £585,757.00 based on a purchase price of £1,100,000. The sum of £585,757.00 was received on 13 October 2008 and a copy of the completion statement indicated £585,033.00 was used on 24 October 2008 as "mortgage redemption RBS". However, the address on the completion statement was different to that on the client ledger.
28. A debit slip dated 23 October 2008 was provided to the IO which detailed the payment of £585,033.00 to the Royal Bank of Scotland on 24 October 2008. The ledger recorded that the payment was mortgage redemption of RBS. However the details section of the debit slip read: "Quote E. A/c -----". The mortgage redemption to the RBS did not relate to the purchase of 44 S. Road and it appeared to be an unrelated mortgage redemption concerning Mr ME.

PE - purchase of 46 S. Road

29. This file could not be located. Based on the limited paperwork available to the IO it was ascertained that the purchaser was Mr PE and the Respondent had conduct of the file. A mortgage was obtained from BM and the firm was instructed on behalf of the lender. BM agreed to lend the sum of £699,419.00 based on a purchase price of £1,300,000.00.
30. The sum of £699,419.00 was received on 13 October 2008 and a copy of the completion statement stated "Balance due to Mortgagee £698,585". However the completion statement referred to the remortgage of another property.
31. A debit slip dated 23 October 2008 detailed the payment of £698,585 to RBS and read "Quote E. A.c-----". The mortgage redemption to the RBS did not relate to the purchase of 46 S. Road and appeared to be an unrelated mortgage redemption concerning Mr ME.

32. Mr Berryman indicated that he believed PE & ME were brothers. Mr Berryman indicated that to prevent the accounts department becoming suspicious the Respondent had provided false addresses of properties or used plot numbers which were not appropriate or stated that transactions were remortgages when that was not appropriate and/or misspelt addresses and clients' names.

PB - purchase of M. House

33. The file could not be located. On 13 January 2009 Eversheds LLP wrote to the firm on behalf of their client Northern Rock ("NR"), regarding concerns on the part of the lender that their charge had not been registered. The letter was sent to the Maidenhead office where the Respondent was a supervising partner. NR had provided mortgage money totalling £3,562,500.00 to PB for the purchase of a property.
34. On 27 November 2007 the client side of the ledger was credited with £3,562,500.00 from NR. The money was disbursed for purposes other than the purchase of the property and there was a letter of authority dated 15 December 2007 from Mr PB authorising £200,000.00 to be transferred to Mr ME "Coutts" bank account.
35. The official copy register of title dated 24 March 2009 showed ME as the registered proprietor and the price stated to have been paid on 7 April 2005 was in the sum of £1,460,000.00. Mr Berryman confirmed that Mr PB was a business associate of ME.

S. Brothers Ltd - Purchase of 9 P. Street

36. The file could not be located. It was ascertained that Mr ME was a Director of S. Brothers Ltd. By letter dated 16 April 2009, Cobbetts LLP wrote to the firm on behalf of their client NatWest Bank ("NWB") setting out the concerns of the bank that their charge had not been registered with the Land Registry. On 2 April 2008 the sum of £1,540,00.00 was received, the payee being described as "S. Brothers Ltd". However the loan of £1,540,00.00 was provided by NWB and not S. Brothers.
37. The sum of £1,039,377.25 was paid to ME on 2 April 2008 with the sum of £500,000.00 being shown as "Mortgage redemption Cheval" on 2 April 2008.
38. It was noted from the official copy register of title that Mr ME was registered as the proprietor and the price stated to have been paid on 3 January 2008 was £1,990,000.00, and that "NWB" charge had not been registered.
39. The Tribunal reviewed all the documents submitted by the Applicant which included:
- (i) Rule 5 Statement together with all enclosures;
 - (ii) Witness statement of Melvin Berryman dated 23 July 2010;
 - (iii) Applicant's Statement of Costs dated 18 November 2010.
40. The Tribunal reviewed all the documents submitted by the Respondent which included:

- Respondent's Response to Rule 5 Statement;

Witnesses

41. The following persons gave oral evidence:-

- Sarah Jane Taylor (Forensic Investigation Officer with the Solicitors Regulation Authority)

Findings as to Fact and Law

42. The Tribunal had considered carefully the submissions of both parties and all the documents provided.
43. The Tribunal found allegations 1 to 4 proved. These were admitted by the Respondent in one way or another in relation to some of the transactions. The Applicant had confirmed that the Tribunal was not required to make findings on those facts which were disputed. However, the Respondent did not admit dishonesty and the Tribunal was required to make a finding on this issue.
44. The Respondent had been advised not to give evidence as there were ongoing criminal proceedings and the Tribunal had been referred to his detailed written Response to the Rule 5 Statement. The Respondent submitted that at no time did he intend to misappropriate mortgage funds or facilitate their misappropriation by any third party and he submitted there was no evidence that he himself had benefitted in any way. Mr Garlick QC, on behalf of the Respondent, submitted this was very important in considering whether dishonesty was established. The Respondent had been a party to ancillary relief proceedings and his assets had been investigated. There had been applications for freezing orders and he had been subject to bankruptcy proceedings. The police had searched the Respondent's property in March 2010 and seized his laptop, and there had been no evidence throughout that he had gained any benefit from the funds.
45. The Applicant had referred the Tribunal to the case of Bolton -v- The Law Society [1994] 512, in which Sir Thomas Bingham MR had stated:

“It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness any solicitor who is shown to have disregarded his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious includes proven dishonesty, whether or not leading to criminal proceedings and criminal penalties If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have

the opportunity to repeat the offence. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending reinvestment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

46. The Applicant had also referred the Tribunal to the case of Weston v The Law Society [1998] in which Lord Bingham of Cornhill LCJ had further stated:

"It is important to appreciate that in speaking of "trustworthiness" in that passage, the court had in mind, of course, honesty, but also had in mind the duty of anyone holding anyone else's money to exercise a proper stewardship in relation to it. That is violated if one solicitor with a duty to see that the rules are observed failed to do so."

47. The Applicant also referred the Tribunal to the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 in which Lord Hutton stated:

"Thirdly, there is a standard which combines an objective test and a subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest. I will term this "the combined test"."

48. Finally, the Applicant referred the Tribunal to the case of Bultitude v The Law Society [2004] EWCA Civ 1853 in which the court had been satisfied that both legs of the Twinsectra test had been met in a case where the solicitor had transferred client funds to his office account without any supporting documents and thus, it was inferred, without knowing or caring whether his firm was entitled to be paid those funds.

49. The Tribunal had considered carefully all of these authorities and was satisfied that, by the ordinary standards of reasonable and honest people, the payment and utilisation of funds received from mortgagee clients for purposes for which they were not intended would be regarded as dishonest by the ordinary standards of reasonable and honest people.

50. In relation to the subjective part of the test, whilst the Tribunal accepted no evidence had been provided that the Respondent benefitted personally from the funds, it was not necessary for this to be proved. The Respondent was a solicitor and he must have known that the failure to use funds for the purpose for which they were intended would be regarded as dishonest by the ordinary standards of reasonable and honest people. Further, the Tribunal found the Respondent's lengthy written Response was generally unhelpful and in some places it was misleading. On ME's purchase of 44

and 46 S Road he claimed it had subsequently been agreed with RNHP's relationship management team at RBS that the funds could be applied to the Company's wider portfolio, but he had failed to provide the Tribunal with any evidence of this. In all the circumstances, the Tribunal was satisfied beyond reasonable doubt that the Respondent had acted dishonestly.

Mitigation

51. Counsel for the Respondent confirmed the Respondent accepted and recognised the seriousness of his position and accepted he would be struck off the Roll of Solicitors. The Respondent was now bankrupt with a restriction for 15 years. He had lost his only means of earning a living and his professional life was now at an end. He relied on his wife's income and was responsible for looking after his two young children.

Costs Application

52. The Applicant provided the Tribunal with a Schedule of Costs and confirmed these had been agreed with the Respondent in the sum of £43,347.48.

Previous disciplinary sanctions by the Tribunal

53. None.

Sanction and Reasons

54. The Tribunal had considered the submissions of the Respondent and all the documents provided. The Respondent's conduct was a fundamental departure from the standard expected of a solicitor and was wholly unacceptable. He himself accepted he had improperly paid away funds held on behalf of lenders and it appeared that the losses were likely to be around £50 million. He had not only caused clients to suffer, but also members of the public, his fellow partners and work colleagues, and he had severely damaged the reputation of the profession. This was without a doubt one of the worst cases that had come before the Tribunal and it was quite clear that the Respondent could not be trusted and that the public needed to be protected from him. He had shown a blatant disregard of the basic core duties required of a solicitor and it was right that he should no longer be permitted to practise in the legal profession. The Tribunal ordered his name be struck off the Roll of Solicitors.

Decision as to Costs

55. The Tribunal Ordered the Respondent pay the Applicant's costs in the sum of £43,347.48, as agreed between the parties.
56. However, the Tribunal was mindful that the Respondent was bankrupt and appeared to have no source of income. He had also now been struck off the Roll of Solicitors and had therefore been deprived of his livelihood. The Tribunal took into account the Respondent's financial circumstances and 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). It was unlikely the Respondent would be able to pay the costs ordered in the foreseeable future and,

accordingly, the Tribunal Ordered that the Order for costs was not to be enforced without leave of the Tribunal.

Order

57. The Tribunal Ordered that the Respondent, Jonathan Martin Gilbert of 5 Meliden Road, Penarth, South Wales, CF64 3UG, 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 £43,347.48, such costs not to be enforced without leave of the Tribunal.

Dated this 25th day of February 2011

On behalf of the Tribunal

A H B Holmes
Chairman