

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10546-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

DAVID SHORROCKS

Respondent

Before:

Mr D. Green (in the chair)

Mr C. Murray

Mr R. Slack

Date of Hearing: 5th July 2011

Appearances

Andrew Bullock, barrister employed by the Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch, Worcestershire, B98 0TD for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegation against the Respondent was that he:

Contained in a Rule 5 Statement dated 28 May 2010

- 1.1 Failed to deliver the Accountant's Report for the practice of Shorrocks & Co for the six month periods of 1 November 2007 to 30 April 2008 and 1 May 2008 to 31 October 2008, which were due to be delivered on or before 30 June 2008 and 30 April 2009 respectively, in breach of Section 34 of the Solicitors Act 1974.

Contained in a Rule 7 Statement dated 28 March 2011

- 1.2 Failed to act in the best interests of each client, in breach of Rule 1.04 of the Solicitors Code of Conduct 2007;
- 1.3 Behaved in a way that was likely to diminish the trust the public places in him and in the legal profession, in breach of Rule 1.06 of the Solicitors Code of Conduct 2007;
- 1.4 Failed to keep the affairs of clients and former clients confidential, in breach of Rule 4.01 of the Solicitors Code of Conduct 2007;
- 1.5 Failed to securely store archived files.

Documents

2. The Tribunal reviewed all of the documents submitted by the Applicant, which included:
 - Application dated 28 May 2010;
 - Rule 5 Statement and exhibit "CF1";
 - Rule 7 Statement and exhibit "AJB1";
 - Notice of Andrew John Bullock dated 7 June 2011, together with the following witness statements:
 - 17 February 2011 - Jill Gittus
 - 18 February 2011 - John Edward Owen
 - 21 February 2011 - Harry Sumal
 - Statement of Costs for the hearing on 5 July 2011.

The Respondent had submitted no documents.

Preliminary Matters

3. Mr Bullock told the Tribunal that he had sent correspondence with copies of the

witness statements to the Respondent on 7 June 2011 to his address at 15 Cleveland Way, Carlton, Miniott, North Yorkshire, YO7 4LN. As he had received no response by 27 June 2011 he wrote again. This second letter had been sent by Special Delivery but there was no response from the Respondent. A further chasing letter had been sent on 1 July 2011 and this letter invited the Respondent to let Mr Bullock know whether he would attend the hearing on 5 July 2011. The letter of 1 July had been signed for. It was therefore Mr Bullock's submission that the Tribunal could be confident that the Respondent was aware of today's hearing.

The Tribunal's determination on the Preliminary Matter

4. The Tribunal determined that the proceedings against the Respondent should proceed. They were satisfied that the Respondent was aware of the hearing today.

Factual Background

5. The Respondent was born in 1956 and was admitted as a solicitor in 1983. From 17 September 1993 until 1 January 2008 the Respondent practised either in partnership or on his own account as Shorrocks & Co of Wharfside Chambers, Boroughbridge Road, Ripon, North Yorkshire, HG4 1UE.
6. According to records held by the Solicitors Regulation Authority ("SRA") Shorrocks & Co ceased on 1 January 2008 at which time the Respondent was the sole principal.
7. On 1 September 2008 the SRA wrote to the Respondent concerning the Accountant's Report for the period ended 30 April 2008. The Respondent did not reply and on 18 September 2008 the caseworker in the Regulatory Investigations Unit (RIU) telephoned him to ask about the position concerning any client money he continued to hold. The Respondent stated that he would write to the SRA to confirm the position and did so the next day.
8. The caseworker telephoned the Respondent again on 16 October 2008. The telephone notes and letter from the Respondent of 19 September 2008 indicate that the Respondent continued to hold client money including some £90,000.00 in relation to a trust matter. In his letter dated 19 September 2008 the Respondent stated that he was a joint trustee and intended to transfer the funds to new solicitors to be instructed to act for him and his fellow trustee.
9. The Respondent wrote to the SRA on 6 December 2008 stating that he had asked a firm of accountants to prepare a Final Report. He wrote again on 16 January 2009 asking for the report form to be sent to him and this was done on 10 March 2009. The SRA did not receive a Final Report for Shorrocks & Co.
10. The Accountant's Report for the period 1 May 2008 to 31 October 2008 fell due to be delivered on or before 30 April 2009.
11. On 30 September 2009 an Adjudicator of the SRA resolved to require the Respondent to deliver the Accountant's Reports for the periods 1 November 2007 to 30 April 2008 and 1 May 2008 to 31 October 2008 within 28 days of the date of the letter notifying him of her decision, failing which his conduct was to be referred to the Tribunal without further notice.

12. On 23 October 2009 the SRA wrote to the Respondent to notify him of the Adjudicator's decision dated 30 September 2009. The 28 day period in which to fulfil the Adjudicator's requirement therefore expired on 30 October 2009.
13. The Accountant's Report for the period 1 November 2008 to 31 October 2009 fell due to be delivered on or before 31 December 2009.
14. On 3 February 2010 the SRA wrote to the Respondent asking him about the position concerning any client money he continued to hold. In the event that he no longer held client money, the Respondent was asked to provide details as to whom it had been sent, together with documentary evidence to confirm its receipt by the payee(s) and copy bank statements to show that the client account was closed. The Respondent did not reply.
15. The Respondent failed to comply with the Adjudicator's expectation to deliver the Accountant's Report for the periods 1 November 2007 to 30 April 2008 and 1 May 2008 to 31 October 2008 by 31 December 2009, or at all. The Accountant's Report for the period 1 November 2008 to 31 October 2009 has not been received by the SRA. No Final Report for Shorrocks & Co has been received by the SRA.
16. On 8 April 2010 Mr Richard Roe and Mr Anthony Spencer of Eddisons, Pennine House, Russell Street, Leeds, LS1 5RN, acting by their agent and employee Ms Jill Gittus, took possession of the offices of Shorrocks & Co as Receivers appointed by Barclays Bank plc in exercise of the powers conferred on the bank by the provisions of the Law of Property Act 1925 on 26 March 2010.
17. Due notice of the Receiver's intention to take possession was given to the Respondent by Ms Gittus by letter dated 6 April 2010. That letter included a request by Ms Gittus that the Respondent should contact her to discuss the removal of goods from the premises but the Respondent did not do so.
18. As at 8 April 2010, the Respondent had vacated the offices of Shorrocks & Co but had left some of the office computers, an estimated 1,200 closed client matter files unsecured in the attic and elsewhere, and all of the furniture.
19. In addition, 38 sets of deeds of which the Respondent had custody were also left unsecured within those offices.
20. On 23 June 2010 Ms Gittus again contacted the Respondent inviting him to contact her to discuss the removal of his goods (in particular, his client matter files) from the former offices of Shorrocks & Co but the Respondent again failed to do so.
21. On 13 August 2010 the SRA intervened into the practice of Shorrocks & Co (pursuant to a resolution dated 11 August 2010) on which date the SRA took possession of the various deeds and the closed client matter files.

Witnesses

22. None present. The statements of Jill Gittus, John Edward Owen and Harry Sumal were put before the Tribunal by the Applicant.

Findings of Fact and Law

23. Allegation 1.1: Failed to deliver the Accountant's Report for the practice of Shorrocks & Co for the six month periods of 1 November 2007 to 30 April 2008 and 1 May 2008 to 31 October 2008, which were due to be delivered on or before 30 June 2008 and 30 April 2009 respectively, in breach of Section 34 of the Solicitors Act 1974.

23.1 Mr Bullock told the Tribunal that the Accountant's Reports were still outstanding. The Respondent had initially cooperated with the Applicant as was indicated in exhibit bundle CF1. On 19 September 2008 he had written to the SRA indicating that there were still two estates where he had been waiting for directions on disposal, a suspense account and a small balance on a client account, which meant that his final accounts could not be finalised. He had again written to the SRA on 6 December 2008 indicating that he had asked his accountants to prepare the Report as soon as they were able to in 2009, by which time the remaining funds would have been remitted. He indicated that in a trust matter which had a balance of approximately £90,000, a new trustee was to be appointed. In early January 2009 the Respondent asked the SRA for accountant's report forms which he would need for completing the closure of the practice. In October 2009 a caseworker at the SRA wrote to Mr Shorrocks informing him that the Adjudicator had made a decision in the matter. Since no reply was received from Mr Shorrocks on 3 February 2010 the legal department at the SRA wrote to the Respondent informing him of the decision to refer the matter to the Solicitors Disciplinary Tribunal. There had been no further contact with Mr Shorrocks since 13 January 2009.

23.2 As well as the two sets of accounts that remained outstanding there was at least £91,000 of client money, the whereabouts of which was unknown.

23.3 The Tribunal found the allegation substantiated on the facts and the documents before it. There was cogent evidence that neither set of accounts had been filed as required.

24. Allegation 1.2: Failed to act in the best interests of each client in breach of Rule 1.04 of the Solicitors Code of Conduct 2007;

Allegation 1.3: Behaved in a way that was likely to diminish the trust the public places in him and in the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007;

Allegation 1.4: Failed to keep the affairs of clients and former clients confidential, in breach of Rule 4.01 of the Solicitors Code of Conduct 2007;

Allegation 1.5: Failed to securely store archived files.

24.1 All of these allegations related to the period during which the Receivers took possession of the offices of Shorrocks & Co. Mr Bullock led the Tribunal through the three witness statements, all of which gave details of the quantity of client files, deeds and computers that had been left in his former offices by Mr Shorrocks. Despite attempts by the witnesses to persuade Mr Shorrocks to remove the items for safe keeping, he had not done so. Mr Owen had said that a total of 38 deeds, 226 boxes of "closed" documents or nearly 1,200 closed client matter files had been retrieved from the premises.

- 24.2 The Tribunal found that the Respondent had failed to cooperate with the SRA and had left closed client files and deeds in an unsecured manner. He had failed to act in the best interests of each of his clients in so doing and had behaved in a way that was likely to diminish the trust the public places in him and in the profession. Since he had not securely stored the files he had accordingly failed to keep the affairs of clients and former clients confidential. The Tribunal therefore found these four allegations substantiated on the facts, the witness statements and the documents placed before it.

Previous Disciplinary Matters

25. The Tribunal was told that the Respondent had had two previous matters before the Tribunal, one in 1995 and one, number 9621-2006 on 8 November 2007. The allegation on that occasion was that he had been guilty of conduct unbecoming a solicitor in that he:

- “1. Withdrew money from a client account which exceeded the money held on behalf of that client, contrary to Rule 22(5) Solicitors Accounts Rules 1998.
2. Failed to maintain properly written books of account, contrary to Rule 32 of the Solicitors Accounts Rules 1998.
3. Failed to remedy promptly upon discovery a breach of the Solicitors Accounts Rules 1998, namely, a client account shortfall of £24,113.74, contrary to Rule 7 of the Solicitors Accounts Rules 1998.
4. Failed to properly account for client funds.
5. Failed to properly investigate office account credits and account appropriately for the monies.
6. Failed to promptly and substantively deal with correspondence from The Law Society.
7. Practised uncertificated between 5th January 2007 and 28th March 2007.
8. Failed to deliver Accountant’s Reports for Taylors Solicitors for the six month periods from 1st April 2006 to 30th September 2006 and from 1st October 2006 to 31st March 2007.
9. Has been guilty of conduct unbecoming a solicitor in that he has failed to deliver an Accountant’s Report for his firm Shorrocks and Co Solicitors for the six month period ending 30th April 2007.”

26. On that occasion the Tribunal Ordered that:

“The Respondent, DAVID SHORROCKS of Wharfside Chambers, Boroughbridge Road, Ripon, North Yorkshire, HG4 1UE, solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed

assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

IN ADDITION unless the Respondent lodges with The Law Society the outstanding Accountant's Reports both for the firms of Taylors and Shorrocks by 31st December 2007 he shall be suspended indefinitely from practice as a solicitor with effect from 1st January 2008.

AND IN ADDITION unless he lodges with the Tribunal written confirmation from the Law Society that he has complied with all requirements in relation to his ceasing to hold clients' money by 31st March 2008 he shall be suspended indefinitely from 1st April 2008."

27. In its reasons given on 11 January 2008 the Tribunal had said:

"51. The Tribunal was dismayed to find the Respondent appearing before it again in 2007 having had broadly similar allegations substantiated against him in 1995. He was well aware, following that earlier hearing, of his obligations and it had been made clear to him that the Tribunal would be unlikely to be lenient should he appear before it again."

28. Mr Bullock told the Tribunal that as a result of his continuing breach of the terms of the Order made on 8 November 2007 the Respondent remained indefinitely suspended from his practice as a solicitor. The SRA had no knowledge of the Respondent's current employment, if any.

Mitigation

29. The Respondent had not submitted any mitigation to the Tribunal.

Sanction

30. The Tribunal found the allegations to be very serious, and they had to be put in the context of the Respondent's pattern of serious breaches which had culminated in a breach of the Tribunal's previous Order in 2007. There was clear evidence that the Respondent had been dealt with fairly and reasonably on previous occasions before the Tribunal, and indeed he had had a number of opportunities to put matters right, but he had chosen not to do so. Whilst there was no allegation of dishonesty before the Tribunal, these were serious matters which exposed the public to significant risk and undermined the public's confidence in the reputation of the profession. Despite previous warnings in very clear terms and despite the previous orders of the Tribunal, the Respondent had continued to be in breach of the Tribunal's Order since 2007.

31. In all the circumstances the Tribunal decided, after careful consideration, that it was reasonable and proportionate to strike off the Respondent.

Costs

32. Mr Bullock submitted a claim for costs in the sum of £2,881.87. The Tribunal considered that this claim represented a fair claim for costs in the matter and having heard from Mr Bullock that the Costs Schedule had been served on the Respondent, together with the letter of 1 July 2011, ordered that the costs be paid in full.

Statement of Full Order

33. The Tribunal Ordered that the Respondent, David Shorrocks of Cleveland Way, Carlton, Miniott, North Yorkshire, YO7 4LN, 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 £2,881.87.

Dated this 19th day of August 2011
On behalf of the Tribunal

D Green
Chairman