

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF COLIN THOMAS WEEDEN, solicitor (The Respondent)

Upon the application of Patrick Matthew Bosworth
on behalf of the Solicitors Regulation Authority

Mr D J Leverton (in the chair)
Mr A H B Holmes
Mr M C Baughan

Date of Hearing: 24th January 2011

FINDINGS & DECISION

Appearances

Mr Patrick Michael Bosworth, Solicitor of Russell-Cooke LLP Solicitors, 8 Bedford Row, London, WC1R 4BX, appeared on behalf of the Solicitors Regulation Authority (“SRA”).

The Respondent was not present or represented.

The application to the Tribunal, on behalf of the SRA, was made on 24 June 2010.

Allegations

The allegations against the Respondent were that:-

- (a) The service provided by him to the Executors of the estate of Mr Pateman had been so poor as to amount to professional misconduct in breach of Rules 1(c) (d) and (e) of the Solicitors Practice Rules 1990 and Rules 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007.
- (b) He had failed to properly supervise his staff in breach of Rule 13(1) of the Solicitors practice Rules 1990, Principle 3.07 on the Guide to the Professional Conduct of Solicitors 1999 (Eighth Edition) and in breach of Rules 5.01(1)(a), 5.03(1) and (3) of the Solicitors Code of Conduct 2007.

- (c) He had failed to co-operate with the SRA and the Legal Complaints Service, and had failed to comply with an Adjudicator decision dated 24 November 2008 or the expectations of an Adjudicator dated 3 December 2009 promptly or at all in breach of Rule 20.03/20.05 and Rule 1 of the Solicitors Code of Conduct 2007.
- (d) He had failed to have in place and maintain qualifying indemnity insurance for the period from 1 October 2009 in breach of Rule 5.1 of the Solicitors Indemnity Insurance Rules 2009 and Rule 5.01(1)(c) Solicitors Code of Conduct 2007.
- (e) He had failed to apply to the Assigned Risks Pool in breach of Rule 10.1 of the Solicitors Indemnity Insurance Rules 2009.
- (f) He had been in breach of an undertaking given in the name of his firm and provided to Barclays Bank Plc in the matter of transferring a legal charge to a property, 2 BW, in breach of Rules 5.01(1)(f) and 10.05 Solicitors Code of Conduct 2007.

Preliminary Matters

The Applicant informed the Tribunal that he had served the Respondent with all the documents and Civil Evidence Act Notices, the receipt of which the Respondent had acknowledged by email. The Applicant had no further contact with the Respondent after that date.

The Tribunal noted that the Applicant had confirmed by email his receipt of the hearing date. The Tribunal was satisfied that the Respondent had been properly served and was aware of the hearing which it directed should continue in his absence.

Factual Background

1. The Respondent, born in 1956, was admitted as a solicitor on 15 April 1981. His name remained on the Roll of Solicitors.
2. At all material times the Respondent had practised as a sole practitioner under the style of Weedens Solicitors, from Business and Technology Centre, Bessemer Drive, Stevenage, Hertfordshire SG1 2DX.
3. The Respondent had been instructed to deal with the administration of the estate of Mr P, deceased (date of death 31 December 2003) on 22 January 2004 by the Executors, Mr G and Mr A. The matter had at first been under the day to day control of an unadmitted employee, a Mr Gi. The Respondent had taken over the matter in November 2006. An application for probate had not been submitted until 28 June 2006 and had to be returned and re-sworn. Inheritance tax had been paid late and a penalty of over £25,000 had been incurred which had been passed to the Respondent's firm's insurers. The Grant of Probate had been made on 8 March 2007.
4. The Respondent had been made the subject of a complaint by Mr G to the Consumer complaints Service of the Law Society by letter dated 23 November 2006. That complaint had been made because of the lack of progress in relation to the estate of Mr P over a three year period.

5. On 26 June 2007 the Consumer Complaints Service had written to Mr G confirming that the Respondent had agreed to resolve the complaint by paying the penalty interest of £25,233.49 to the Inland Revenue. The Respondent had also agreed to waive any bill of costs for the professional services rendered in dealing with the estate. There had also been the offer of compensation to Mr G but that was to be quantified when the estate had been finalised. That had brought the original complaint to an end.
6. On 11 April 2008 Mr G had written to the Respondent noting that there had been no further attempt by the Respondent to complete the work on the estate of Mr P despite the matter now entering a fifth year from his death. A copy of that complaint had been copied to the Legal Complaints Service and the SRA.
7. On 25 June 2008 the Legal Complaints Service had written to the Respondent following a telephone conversation with him that day. The letter had stated:

“I strongly recommend that you prioritise this case to bring the matter to a close. This would include: updating Mr G, ensuring the estate is settled in one month unless there is an external reason that prevents you from doing so, providing Mr G with the final accounts and documentation he has requested, ensuring the Inland Revenue tax is resolved and offering a compensatory payment for distress and inconvenience in the region of £1,000”.
8. On 1 July 2008 the Respondent had written to Mr G outlining the steps that had been taken by his firm and apologising for the delay in responding to Mr G’s letter of 11 April. The Respondent had stated that:

“The outstanding steps which I am taking immediate action to complete are:

 - (i) Following up the claim with our insurers;
 - (ii) Finalisation of the estate accounts, including details of income received during the administration period;
 - (iii) The distribution of any remaining funds.

My estimate for completion of the outstanding matters is 31 July 2008. It is my intention to complete the work by this date, unless there is some external reason preventing me from doing so.

I confirm that when the matter is complete the final accounts and all family history documentation in my custody or control will be made available to you.

Finally, I confirm that I am willing to offer a compensatory payment for distress and inconvenience in the region of £1,000.”
9. On 17 July 2008 the Legal Complaints Service had written to the Respondent stating that if the detailed points in his letter to Mr G had not been completed by 31 July 2008 then a report would be produced and sent to an independent adjudicator to review.
10. On 1 August 2008 the Legal Complaints Service had written to the Respondent stating that no further contact had been received from him and that a report would be

compiled for an adjudicator to make a Decision and Directions.

11. On 8 December 2008 the Legal Complaints Service had written to the Respondent enclosing a copy of the formal decision of the Legal Complaints Service Adjudicator in which the Respondent's services were inadequate in that there was unreasonable failure to progress the administration of the Estate. The Respondent had been asked to comply with the directions made:
- (i) To pay Mr G £2,000 compensation (£1,000 of which having already been paid by the Respondent);
 - (ii) To make no charge against the Estate or the executors directly for their profit costs or Work in Progress;
 - (iii) There was no lien on the file;
 - (iv) To deliver to the executors the full file of the matter within a period of 7 days.

That Adjudication was not complied with by the Respondent.

12. On 18 December 2008 the Legal Complaints Service had written to the Respondent stating that:

“unless I receive evidence from you, within the next seven days, that you have complied with the decision, the matter will be referred to your professional indemnity insurers for payment without further notice”.

That letter was not responded to.

13. The Respondent had received further correspondence from the legal Complaints Service dated 2 and 11 March 2009 to which he had not responded. As a result, the Legal Complaints Service had referred his non-compliance to the SRA.
14. The SRA had written to the Respondent on 1 June 2009 and 2 July 2009 seeking information. The Respondent had failed to respond.
15. Following a further letter from the SRA on 25 August 2009, by emails dated 7 and 9 September 2009 the Respondent had responded apologising for his past conduct and the distress caused to both the Executors and the beneficiaries of the matter.
16. In his email of 9 September 2009 the Respondent had confirmed that his original supervision of the fee earner handling the matter from 2004 to 2006 had not been “rigorous enough”. He had said that he had been suffering from depression and anxiety and that he was receiving medical treatment.
17. On 14 September 2009 and 5 October 2009 the SRA had asked the Respondent for medical evidence to be supplied in relation to the issues that he had raised. He had failed to respond.
18. On 9 December 2009 the Respondent had been informed that the Adjudicator expected him to comply with the directions made by the Adjudicator on 24 November

2008, failing which the Respondent's conduct would be referred to the Solicitors Disciplinary Tribunal. However, had the Respondent complied with the Adjudicator's expectations, the Adjudicator had been minded to impose an internal sanction.

19. On 12 February 2010 the Respondent's firm was inspected, resulting in a Forensic Investigation Report (see report) dated 22 April 2010.
20. On 12 February 2010, the Respondent had informed the Forensic Investigation Officer attending, Mrs Guile, that his firm's indemnity insurance cover provided by the qualifying insurer, Zurich, had expired on 30 September 2009. Moreover, that since the expiry date he had not sought to renew cover with Zurich or make application to any other qualifying insurer. When asked why he had not renewed his insurance, the Respondent had replied: "...same reason as everything else has slid. I didn't take any steps. I just got a complete block on a lot of things." The Respondent had also stated that owing to his firm's financial difficulties he did not have sufficient funds to pay any insurance premium.
21. The Respondent said he had not applied to the Assigned Risk Pool (ARP) and that it remained "on his list of things to do".
22. The Respondent's firm had been instructed in the sale of a property on behalf of their client Mr B. The sale property, 48 W, had been subject to two legal charges, one of which had been registered in favour of Barclays Bank Plc (Barclays). The firm, via the Respondent's unadmitted Clerk, Mr Gi, had given an undertaking to act for Barclays and to transfer the legal charge to a second property, 2 BW (jointly owned by both Mr and Mrs B), upon completion. On 23 May 2007 contracts had been exchanged in connection with the sale of 48 W and the matter had been completed on 29 May 2007. On 29 May 2007 the firm had written to Barclays confirming the completion of the sale and enclosing a written undertaking with regard to the second charge of the property at 2 BW.
23. Barclays Bank Plc had contacted the Respondent's firm requesting that their legal charge be registered without delay on 8 September 2008, 9 October 2008, 29 October 2008, 2 December 2008, 20 January 2009 and 8 July 2009. There had been no evidence held on file to show that the firm had responded to any of the above letters from Barclays. An attendance note on the file, dated 12 August 2009, made by the Respondent had noted a telephone call between him and a Mr Cairns at Barclayloan, noting that the firm had attempted to lodge the charge at the Land Registry "but it had been rejected because only one of the joint owners had signed the mortgage deed".
24. On 13 August 2009 Barclays had written to the Respondent's firm enclosing a new legal charge for 2 BW in the joint names of both Mr and Mrs B. The FI Officer had noted that the legal charge form had not been signed by either Mr or Mrs B and that Barclays had again contacted the firm in writing on the following dates requesting confirmation of the charge being registered or the provision of an update. That correspondence had been sent on: 15 September 2009, 25 September 2009, 16 October 2009, 2 November 2009, 18 November 2009, 23 November 2009 and 15 December 2009.
25. On 23 December 2009, the SRA had received a complaint from Barclays detailing the

firm's breach of undertaking and that "Weedens have persistently ignored our attempts to agree an assignment of our customer's debt".

26. In relation to the Respondent's non-supervision of unadmitted member of staff, on 12 February 2010 the FI Officers attending the firm had been greeted by the unadmitted member of staff who had stated that he had not seen the Respondent at the firm since 27 January 2010. Mr Gi had said that he thought the Respondent may have been attending the firm either in the evenings or at weekends as only the Respondent had a key to the post box in which the firm's post was received. Mr Gi had also said that he had tried "repeatedly and unsuccessfully to contact Mr Weeden by mobile phone". He had also said that some of the firm's clients had also complained to him that the Respondent was not responding to their messages.
27. During the investigation the Respondent had agreed that he did not conduct a formal file review, but that he had held regular meetings with Mr Gi but those had "petered out", and that when asked about managing Mr Gi had stated "managing T has not been easy. He doesn't like to be managed. He is not very amenable to being managed. I guess something had to give in the end." When asked if he thought he had adequately supervised Mr Gi, the Respondent had replied: "I don't honestly think I can say that, given what's happened. With hindsight I should have had a more robust system".

Documentary Evidence before the Tribunal

28. The Tribunal reviewed the Rule 5(2) Statement, dated 16 March 2009, together with its documentary exhibits including the Forensic Investigation Report dated 22 April 2010.

The Tribunal's Findings as to Fact and Law

29. Having considered all the evidence and submissions, the Tribunal found all the six allegations against the Respondent fully substantiated on the facts as presented by the Applicant. The Tribunal noted that the Respondent had not made any response to the allegations against him.

Application for Costs

30. The Applicant referred the Tribunal to his schedule and sought an order for costs totalling £5,120.25. He confirmed that he had sent a copy of that schedule to the Respondent but had not received any comments on the costs claimed.
31. In response to a question from the Tribunal, the Applicant explained that he had no information as to the means of the Respondent. He was aware that the Respondent did not have a current practising certificate and that his firm had been wound up with its files passed on to other firms.

Sanction and Reasons

32. Although there was no mitigation from the Respondent, the Tribunal noted that during the investigation he had spoken of his ill health. Unfortunately, no evidence of any health issues had been made available to assist the Tribunal.

33. The Tribunal was extremely concerned that the Respondent had abrogated all responsibility for his firm and for his clients; in effect he had just walked away. In the view of the Tribunal such conduct reflected very badly upon the whole Profession. The Respondent had failed to engage in the regulatory process and had provided no explanation for his failure.
34. Moreover, the Tribunal noted that the allegations found proved were very serious resulting as they had in losses and distress to clients, complaints and claims on the firm's indemnity insurers. Inter alia, an estate had taken some five years to administer resulting in a penalty of over £25,000 for the late payment of inheritance tax. The failure to register a charge had resulted in large losses to the firm's lender client.
35. In all the circumstances and given the absence of any involvement in the proceedings by the Respondent and concerns about his health, the Tribunal determined that it was appropriate that the Respondent be suspended indefinitely from practice as a solicitor and it so ordered.

The Tribunal's Decision as to Costs

36. The Tribunal was satisfied that the proceedings had been properly brought and that an order for costs should be made in the sum claimed of £5,120.25.

The Orders of the Tribunal

37. The Tribunal Ordered that the respondent, Colin Thomas Weeden of 62 Connifer Walk, Stevenage, Hertfordshire, SG2 7QS, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 24th day of January 2011 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,120.25

Dated this 10th day of February 2011
On behalf of the Tribunal

D J Leverton
Chairman