

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10582-2010

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

DENISE ELAINE GAMMACK

Respondent

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Before:

Miss J Devonish (in the chair)

Mrs E Stanley

Mrs V Murray-Chandra

Date of Hearing: 13th January 2011

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**Appearances**

Geoffrey Hudson, solicitor (Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR) for the Applicant.

The Respondent did not appear and was not represented.

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**JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent were that she:-
  - 1.1 Failed to act with integrity, in that she misled a client about the actions taken in relation to three matters of which she had day-to-day conduct, in breach of Rule 1.02 of the Solicitors' Code of Conduct 2007 ("SCC"). This was an allegation of dishonesty.
  - 1.2 Failed to act with integrity, in that she misled her employers about the actions taken in relation to three matters of which she had day-to-day conduct, in breach of Rule 1.02 of the SCC. This was an allegation of dishonesty.
  - 1.3 Failed to provide a good standard of service to a client in breach of Rule 1.05 of the SCC.
2. The Tribunal had before it a written plea of mitigation from the Respondent in which she confirmed she admitted the charges. The Applicant advised the Tribunal that the Respondent had been consulting solicitors and that the Applicant had been in contact with those solicitors. They had received the written submissions and the Schedule of Costs. The Applicant referred the Tribunal to an email dated 12 January 2011 from Mervyn Rundle of Solicitors Title which confirmed the Respondent was aware of the hearing. The Applicant had spoken to the Respondent's solicitor several times today and had been informed that the Respondent would be attending. It was now after 2.45 pm in the afternoon and this case had been placed to the back of the list due to other cases being heard. This had given the Respondent ample opportunity to attend before the Tribunal if she so wished. Indeed the Applicant had telephoned the Respondent's solicitor to inform him that the case would not be heard before 2pm today. In all the circumstances, the Respondent was clearly aware of today's hearing, she had not arrived and the Applicant requested leave to proceed in her absence. The Tribunal granted such leave having been satisfied that the Respondent had been properly served and was aware of today's hearing.

## **Documents**

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:-

The Applicant:-

- Rule 5 Statement together with all enclosures.
- Emails dated 11 and 12 January 2011 between the Applicant and Mervyn Rundle of Solicitors Title.
- Opening Submissions on behalf of the Solicitors Regulation Authority dated 11 January 2011.
- Schedule of Costs dated 11 January 2011.

The Respondent:-

- Plea of Mitigation to the Solicitors Disciplinary Tribunal from the Respondent.

### **Factual Background**

4. The Respondent was born in 1974 and admitted to the Roll on 17 March 2003. The Respondent remained on the Roll but did not currently hold a practising certificate. Between 12 December 2007 and 17 July 2009, the Respondent was employed as an assistant solicitor by Messrs Beviss & Beckingsale of Law Chambers, High Street, Honiton, Devon EX14 1DJ.

### Allegations 1.1 and 1.3

5. Between July 2008 and July 2009, the Respondent was instructed to act for a client MPL (“the Company”) in three matters.
  - 5.1 The Company’s claims against RB and JW arising from their lease of Flat 6, M--- Court.
  - 5.2 The Company’s claims against Mr SW arising from his lease of Flat 3, Q--- Street.
  - 5.3 The Company’s claims against Mr PI arising from his lease of “I”, 40-42 H--- Road.

### RB and JW – Flat 6, M--- Court

6. In early August 2008, the Company’s director instructed the Respondent to commence proceedings on the Company’s behalf against RB and JW to recover the sum of £702.69. On 4 September 2008, the client asked the Respondent for a progress report regarding the Company’s application to court. On 29 September 2008, the Respondent advised court proceedings had not yet been commenced and agreed she would send a letter before action on 3 October 2008 and would issue proceedings on 13 October 2008 if no response had been received by then.
7. On 8 October 2008, a letter before action was sent to RB and JW claiming not only the sum of £702.69 but also accrued interest and additional service charge and advising, if payment totalling £1,845.85 was not received within seven days that, proceedings would be issued. Payment was not received by 15 October 2008, and the Respondent did not issue proceedings.
8. On 17 October 2008, the Respondent advised the Company that, not having heard from the debtors in response to the letter before action, she would draft proceedings. On 11 November 2008, RB and JW’s mortgagees paid Beviss & Beckingsale £709.97 by way of part payment of those outstanding sums. On 2 December 2008, the client enquired what sums the Company could expect to receive and the sums in respect of which judgment would be entered. The Respondent failed to advise the client that proceedings had not yet been issued.
9. On 23 December 2008, the Respondent sent to the Company a cheque for £709.97 in respect of the sums sent to them on 11 November 2008 and assured the client that she

would continue to deal with the recovery of the outstanding balance. On 7 January 2008, the client asked the Respondent to confirm the steps she had taken to recover the outstanding sums. On 21 January 2009, the client confirmed to the Respondent that he was content for the outstanding balance to be secured on the property. He had assumed that judgment had been entered against RB and JW.

10. On 2 February 2009 the client asked the Respondent to confirm that she had received confirmation from the Land Registry that a charge had been registered. On 4 February 2009, the client asked the Respondent to confirm details of the judgment said to have been entered against RB and JW. The Respondent failed to give the requested details and failed also to advise the client that proceedings had not in fact been issued.
11. On 9 February 2009, the Respondent advised the client that an application for a charge had been lodged with the Land Registry at a cost of £40 but confirmation was awaited. No such application had in fact been lodged. On 19 February 2009, the Respondent advised the client that the court had acknowledged the application for a charge and that she was waiting to receive it from the court. The application had still not been lodged by that date.
12. On 29 May 2009 the client asked the Respondent for an update regarding the charging order. The Respondent failed to provide the requested update and failed also to tell the client that no application for a charging order had in fact been lodged with the court.
13. On 5 June 2009, the client relying on the information given to him by the Respondent, wrote to RB and JW's mortgagees to advise them that, following the Company's success in the court, the Company's solicitors were now instructed to register legal charges. No proceedings had in fact been issued by that date.
14. On 10 June 2009, the client requested the Respondent to provide him with a copy of the "court action". The Respondent failed to tell the client that no proceedings had been issued and that no application for a charging order had been lodged with the court. On 30 June 2009, the client expressed his concern to the Respondent that he was not receiving adequate information from her regarding the progress being achieved in the Company's claims. The Respondent told the client that the judgment against RB and JW had included court fees and interest. No judgment had in fact been obtained by that date. The client asked the Respondent to send the Company a copy of the judgment.
15. On 1 July 2009, the client requested the Respondent to make available for him to collect the following day, copies of the Judgment and Legal Charge. The Respondent failed again to advise the client that no judgment or charging order had been obtained. On 2 July 2009, the Respondent told the client that he should not attend Beviss & Beckingsale's offices that day but she would instead send him copies of the judgment and legal charge. The Respondent did not send such documents.
16. On 6 July 2009, the client wrote to the Respondent to complain about non-receipt of copies of the judgment, legal charge and Beviss & Beckingsale's letter to the mortgagees.

SW – Flat 3, Q--- Street

17. These were similar circumstances. In November 2009, the Respondent advised the client that SW had not defended the Company's proceedings when no proceedings had in fact been issued. From December 2008 to July 2009 she failed to advise the client that proceedings had not been issued, despite several requests for information from the client over this period.
18. She also failed to provide details of any judgment and on 9 February 2009, the Respondent advised the client that an application for a charge had been lodged with the Land Registry at a cost of £40 but confirmation was awaited. No such application had been lodged.
19. On 19 February 2009, the Respondent advised the client that the court had acknowledged the application for a charge and that she was waiting to receive it from the court. The application had still not been lodged by that date.
20. On 29 May 2009 the client asked the Respondent for an update regarding the charging order. The Respondent failed to provide the requested update and failed to tell the client that no application for a charging order had in fact been lodged with the court.
21. On 10 June 2009, the client requested from the Respondent a copy of the "court action." The Respondent failed to tell the client that no proceedings had in fact been issued and that no application for a charging order had been lodged with the court. On 30<sup>th</sup> June 2009, the Respondent told the client that the judgment had included court fees and interest when no judgment had in fact been obtained. When the client wished to attend the offices to collect the documents, the Respondent discouraged him and said that she would instead send him copies of the judgment and legal charge. She did not send the client copies of the judgment and legal charge.

Mr PI - "I", 40-42 H--- Road

22. These were similar circumstances. The Respondent was instructed to commence bankruptcy proceedings against Mr I. On 9 February 2009, the Respondent advised the client that a Bankruptcy Notice had been served on Mr I on 28 January 2009. On 20 April 2009, the Respondent advised the client that a hearing for the bankruptcy petition against Mr I had been fixed for 10.30am on Wednesday 29 April 2009. No petition for bankruptcy against Mr I had in fact been issued by the Respondent and no bankruptcy petitions were listed for hearing in Yeovil County Court on 29 April 2009. The Respondent failed to advise the client that no bankruptcy order had been made when he requested a copy.
23. On 14 May 2009, the client sent the Respondent the draft of a letter to Mr I for the Respondent to approve. The draft letter made reference to the fact that the Company had been successful in its application for bankruptcy. Between 14 and 18 May 2009, the Respondent approved the draft letter which was duly sent off to Mr I on 18 May 2009.

24. Between May and July 2009, the Respondent failed to advise the client that no bankruptcy proceedings had in fact been issued, and no bankruptcy order had been made.

#### Allegation 1.2

25. A director of the Company arranged to see the Respondent's supervising partner Mrs G on 6 July 2009. Before the meeting took place, Mrs G asked the Respondent if there was a problem. The Respondent replied that there was no problem but that the client was asking for copies of various documents which she had not been able to provide as they had been mislaid. These documents were judgments and charging orders in relation to RB, JW and SW, and a bankruptcy order against Mr I.
26. When the client met Mrs G, he explained his concerns that he had hardly received any correspondence and he had been given to understand that judgments had been obtained and that charges had been registered with the Land Registry, yet he had not been provided with copies despite repeated requests. He was concerned that a bankruptcy order might not have been obtained on 29 April 2009 as his son had spoken to the court, and they had told him that they had no record of any order and the Respondent had not provided him with a copy.
27. Mrs G told the client that the Respondent had specifically assured her that a bankruptcy order had been made and that attempts were being made to obtain a copy from the court.
28. Mrs G spoke to the Respondent after the meeting with the client and told the Respondent that she had, following the meeting, checked the firm's systems and could find no evidence of applications having been sent to the court or judgments received from the court.
29. The Respondent said in response:
- She had made the applications and received the judgments.
  - She had lost the pleadings and had no record of the case numbers.
  - When she had spoken to the court, they had been unable to assist her without case numbers.
30. When Mrs G told the Respondent her understanding which was that applications had not been made to the Land Registry, the Respondent accepted that they had not been made, explaining that they had not been made due to the fact that the respective mortgagees had agreed to pay to the Company the outstanding sums.
31. The Respondent, at Mrs G's request, agreed to telephone the court again, giving the parties' names.
32. Regarding the matter concerning Mr I, Mrs G told the Respondent that she was concerned to find nothing on the firm's system to show any documents or letters to the court and wished to know how the Respondent knew that a bankruptcy order had

been made on 29 April 2009. The Respondent said in response that she knew an order had been made as she had received it from the court. Mrs G concluded the discussion by asking the Respondent again if she had made the various applications to the court and received the judgments and orders and the Respondent confirmed that she had done so.

33. By 8 July 2009 enquiries of Yeovil County Court revealed that:
- They had no record of proceedings having been issued on behalf of the Company against RB, JW, SW or Mr I.
  - No bankruptcy orders had been made by Yeovil Country Court on 29 April 2009, as that day had been allocated as a family hearing day.
34. On receipt of the information from the court regarding 29 April 2009 as having been a family hearing day, Mrs G asked the Respondent about the bankruptcy hearing she said had taken place on that date. The Respondent replied that the bankruptcy petition had been dealt with by telephone.
35. On 9 July 2009, the Respondent was suspended pending the outcome of the disciplinary proceedings concerning the following allegations:
- that she had misled a client as to the progress on files relating to obtaining court orders;
  - that she had misled Beviss and Beckingsale as to the progress on those files, in particular after the client had raised concerns about them;
  - that she had brought Beviss & Beckingsale's integrity and reputation into disrepute;
  - Dishonesty.
36. On 17 July 2009, during the course of a disciplinary hearing, the Respondent said she thought she had obtained the various orders and made the various applications but accepted that they had not been obtained or applied for. The Respondent explained that she had made mistakes and had not deliberately misled the client or Beviss & Beckingsale.
37. Following the disciplinary hearing, the Respondent's employment with Beviss & Beckingsale was terminated.

### **Witnesses**

38. No witnesses gave evidence.

### **Findings as to Fact and Law**

39. The Tribunal had carefully considered the submissions of the Applicant and all the documents provided. The Respondent had admitted the allegations and accordingly the Tribunal found those allegations were proved.

### **Previous Disciplinary Matters**

40. None.

### **Mitigation**

41. The Respondent in her written Plea of Mitigation to the Tribunal confirmed she had not benefited either personally or financially from her actions and reminded the Tribunal that no client monies were involved. She had found herself under increasing pressure at work and at the same time had been required to deal with a demanding client who had a high expectation of what could be achieved and, in the Respondent's view a client who found it difficult to understand that sometimes it was not possible to meet those expectations. She submitted the client's style was almost to cross-examine her on every point and then drive her towards the answer he required and wished for.
42. The Respondent accepted she had given the client a completely unrealistic expectation of what she could achieve and she realised, looking back, that she was out of her depth from the outset. She said she had absolutely no intention to deceive the client or to be less than honest but she now realised that by allowing him an unrealistic expectation, she was creating for herself a dilemma which would at the very least be difficult to escape from. She accepted that there came a point when she realised matters of extreme importance to the client had not been dealt with. This mutated into a statement that she had dealt with them. She was taken from an honest position to one where she was misleading her client and from then on as the client persisted more, her fear of owning up (and the consequences) became greater and the hole that she had dug herself into became deeper.
43. The Respondent accepted she had been given every opportunity to come clean when challenged by her employer and could not explain why she did not do so, save that she thought she had begun to believe her own story and she feared the consequences of owning up. She was paralysed by weakness.
44. The Respondent confirmed that she would never allow this to happen again and had now learnt strategies to prevent herself from being put in a similar situation and also to be able to recognise the type of situation where her personal weaknesses might come into play. These were an increased workload and a demanding client.
45. The Respondent confirmed there were conditions attached to her practising certificate and that she had managed to obtain employment since her employment with Beviss & Beckingsale was terminated. She was currently working full time on a temporary clerking job earning £7.00 per hour until the end of November 2011.
46. The Respondent stated she had lost everything; her job, her reputation and her self esteem and she was also conscious of the effect her behaviour had had on the client.

She would welcome a continuation of the present conditions on her practising certificate. She asked the Tribunal to allow her to resume her career and to re-establish her reputation.

### **Sanction**

47. The Tribunal had considered carefully the Respondent's Plea of Mitigation and the other documents before the Tribunal. The Respondent herself accepted she had behaved dishonestly and accepted that integrity and honesty were the keystones of the profession and that she had fallen short of these. Whilst the Respondent may not have benefited either personally or financially from her actions, her conduct had caused a great deal of damage to the reputation of the profession and one client in particular had suffered immensely as a result of her misleading statements and a failure to provide a good standard of service to that client over a period from July 2008 until July 2009. Furthermore, the Respondent had compounded her position by misleading her employers and making dishonest statements to them.

48. The Tribunal was mindful of the case of Bolton -v- The Law Society [1994] CA in which Sir Thomas Bingham MR had stated:-

“Any solicitor who is shown to have discharged 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... The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.”

49. Taking into account all the circumstances of this case, the Tribunal was of the view that the only appropriate sanction was to strike off the Respondent from the Roll of Solicitors.

### **Costs**

50. The Applicant requested an Order for his costs and provided the Tribunal with a Schedule of Costs confirming the costs came to a total of £10,669.54. The Respondent had maintained her defence until a late stage and it was not until 8 October 2010 that she had first indicated she might admit part of the allegations. On 12 October 2006 she indicated through her solicitor that there would be admissions. The Applicant had perused conveyancing files to extract the information required and one of these in particular was fairly substantial.

51. The Respondent in her Plea of Mitigation to the Tribunal had confirmed she now had a full time temporary clerking job until the end of November 2011 earning £7.00 per hour. She also confirmed she owned her own home with her husband and she asked the Tribunal to take into account, when assessing costs, that she had chosen to admit the charges and avoid the costs involved in a full hearing.

52. In relation to the question of costs, the Respondent had provided very limited information concerning her financial means. She had failed to attend before the

Tribunal today to make any representations. However it appeared, from her Plea of Mitigation, that she did own her own home with her husband. Accordingly, the Tribunal Ordered the Respondent pay the Applicant's costs in the sum of £10,669.54.

**Statement of Full Order**

53. The Tribunal Ordered that the Respondent Denise Elaine Gammack, 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 sum of £10,669.54.

Dated this 22<sup>nd</sup> day of March 2011

On behalf of the Tribunal

Miss J Devonish  
Chairman