No. 10589-2010

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JOHN GREGORY HARDMAN, solicitor (The Respondent)

Upon the application of Stephen Battersby
on behalf of the Solicitors Regulation Authority

Mr A N Spooner (in the chair)
Mrs E Stanley
Mr S Howe

Date of Hearing: 17th January 2011

FINDINGS & DECISION

Appearances

Mr Stephen John Battersby of Jameson & Hill, 72-74 Fore Street, Hertford, Hertfordshire, SG14 1BY for the Applicant.

The Respondent did not appear and was not represented.

The Application was dated 3 August 2010.

Allegations

1. The Respondent misappropriated monies belonging to clients contrary to Rules 1.02, 1.04 and 1.06 Solicitors Code of Conduct 2007.

2. The Respondent made improper inter-ledger transfers between unrelated clients, contrary to Rule 30(1) Solicitors Accounts Rules 1998.

3. The Respondent withdrew monies from client account other than as permitted by Rule 22 Solicitors Accounts Rules 1998.

4. The Respondent failed to remedy breaches of the Solicitors Accounts Rules 1998 promptly upon discovery contrary to Rule 7 of the said Rules.

5. The Respondent provided misleading information to a client contrary to Rules 1.02 and 1.06 Solicitors Code of Conduct 2007.

It was alleged that the conduct of the Respondent had been dishonest.

The Tribunal had before it a witness statement from the Respondent, dated 17 December 2010 which was unsigned. The statement confirmed the Respondent did not dispute the allegations made, he had not sought representation as he could not afford it, and he did not intend to attend the Tribunal.

Factual Background

1. The Respondent, born in 1954, was admitted to the Roll of Solicitors on 1 December 1978. At the material time he was in practice on his own account as the Hardman Partnership at 7th Floor, Blackfriars House, Parsonage, Manchester, M3 2JA. The firm was intervened on 21 December 2009.

Allegations 1 and 2

2. The Respondent acted on behalf of F Limited ("F") in respect of general commercial matters. In a letter to the Respondent dated 8 January 2009, F enclosed a cheque in the sum of £97,446, which had been received in respect of the death in service payment following the death of a company director, and which was to be held temporarily in the firm's client bank account.

3. On 9 January 2009 the F client ledger recorded a receipt of only £40,446 with the narrative description "death in service". On the same date the remaining balance of the monies received from F in the sum of £57,000 was allocated by the Respondent to three different client ledger accounts in the names of AV and DB, recorded on each client ledger with the narrative description; "costs".

4. The Respondent indicated to an Investigation Officer ("IO") of the Solicitors Regulation Authority ("SRA") that there was no connection between the clients F, AV or DB and that he had allocated the monies to these ledgers as the misappropriation of his clients' monies may have "perhaps been too obvious" if made from one client ledger.

5. There were a number of transfers recorded on the client ledgers for AV and DB from 13 January 2009 to 2 March 2009 where sums had been transferred from client to office account. The Respondent said that these transfers were not justified by the bills previously raised by him, and were not proper. He accepted some of the bills were not justified and that a transfer had been made "against the funds on the ledger" transferred from the F client ledger.

6. Client monies in the total amount of £47,075.00 that should have been held for F had been misappropriated by the Respondent who had concealed his actions by processing and recording client-to-client transfers between unconnected clients and issuing

unjustified bills. The Respondent admitted that he had made up bills to hide the fact that he was using his clients' monies and that he was "being sneaky".

Allegation 3

7. The Respondent admitted to the IO that, between January and July 2009, he had made improper transfers from client to office account in order to keep his office account in credit. There were 15 such improper transfers totalling £52,552.43.

Allegation 4

8. The total cash shortage revealed by the inspection of the IO was £102,354.22. The bulk of this shortage had been in existence for several months and had not been replaced by the Respondent. It was still in existence at the time of the intervention on 21 December 2009.

Allegation 5

9. The client F wrote to the Respondent on 18 May 2009 requesting the return of monies held on their behalf. Two weeks later, on 1 June 2009, £17,446 was returned to the client leaving an outstanding balance of £80,000. The Respondent misleadingly told his client in an email of 30 June 2009 that the outstanding monies were being held on deposit and were due to come off on 7 September 2009. This was not true and the Respondent explained to the IO that he had deliberately misled the clients as he was waiting for costs to come in on different matters which he then intended to use to repay the £80,000 due. The Respondent did make a further payment of £20,000 to F on 13 October 2009.

10. The Respondent admitted to the IO that he had been in breach of his core duties, that he had not acted with integrity or in the best interests of his clients and had behaved in a way likely to diminish the trust that the public would place in him and the profession. He did not believe that he had acted dishonestly as he had always intended to repair the situation.

11. The Tribunal reviewed all the documents submitted by the Applicant, which included:-

    (i) Rule 5 Statement together with all enclosures;

    (ii) Schedule of Costs;

    (iii) A number of emails that had passed between the Respondent and the Applicant dated from 17 December 2010 to 14 January 2011.

12. The Tribunal reviewed all the documents submitted by the Respondent which included a witness Statement of John Hardman dated 17 December 2010.

Witnesses

13. No witnesses gave oral evidence.

Findings as to Fact and Law

14. The Tribunal had considered carefully all the documents provided and the submissions of the Applicant.

15. The Respondent had confirmed in his Witness Statement dated 17 December 2010 that he did not dispute the allegations. Accordingly, the Tribunal found the allegations were proved.

16. In relation to the issue of dishonesty, as the Respondent had indicated in his Witness Statement of 17 December 2010 that he did not dispute the allegations, it appeared he was accepting the allegation of dishonesty. Nevertheless, the Tribunal did consider the issue of dishonesty and was satisfied dishonesty had been proved. The Respondent in his email dated 14 January 2011 to the Applicant confirmed he had no issue with the evidence of Mr Hair, the Forensic Investigation Officer from the Solicitors Regulation Authority. It was clear that the Respondent had made a number of admissions to Mr Hair and indeed confirmed that bills he had raised on the client files of AV and DB were not justified, and that the transfers made by him were not proper. He accepted he had made up bills to hide the fact that he was using his clients' money and that he was "being sneaky". Furthermore, the Respondent informed Mr Hair that he had deliberately misled clients who had requested the return of monies held on their behalf, as the Respondent had been waiting for costs to come in on different matters which he intended to use to repay client funds. The Tribunal had considered the case of Twinsectra Ltd -v- Yardley and Others [2002] UKHL 12 in relation to the question of dishonesty. The Tribunal was satisfied that the Respondent's conduct would be regarded as dishonest by the reasonable standards of ordinary and honest people. Furthermore, the Tribunal was satisfied that the Respondent's admissions that he was "being sneaky", that he had deliberately misled clients, and that he had made improper transfers from client to office account, made it clear that the Respondent himself realised that by those standards his conduct was dishonest. The Tribunal found dishonesty was proved.

Mitigation

17. The Respondent, in his witness statement of 17 December 2010, had provided the Tribunal with a detailed background explaining the financial demise of his firm. He had stated that he could not come to terms with the shame of an intervention and that his shame and sorrow were immeasurable.

18. In his email of 14 January 2011 to the Applicant, the Respondent had attached a copy of a Bankruptcy Order confirming he had been adjudged bankrupt on 22 December 2010.

Costs Application

19. The Applicant requested an order for his costs which came to a total of £10,285.46. The Schedule had been served on the Respondent on Friday 14 January 2011 at approximately 3 pm. The Applicant had not received any response from the Respondent and the Applicant accepted that the Schedule had been served rather late in the day. He had been awaiting details of the costs from the Authority, which he

had only received on Friday 14 January 2011. The Applicant had pressed the Authority for details of their costs on Wednesday 12 January 2011 and accepted that he could and should have asked the Authority to provide details of their costs earlier. The Applicant had wanted to ensure details of his own costs were accurate and often it was difficult to give an accurate indication of what the costs were likely to be until quite late in the case, when it became clear how much time needed to be spent on preparation and on the hearing.

20. The Applicant also accepted that, as the Respondent had been adjudged bankrupt on 22 December 2010, the Tribunal were bound by 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) in relation to the Respondent's means. He accepted that the Tribunal was likely to make an Order that any Order for costs should not be enforced without leave of the Tribunal. The Applicant invited the Tribunal to agree the costs as claimed, but he accepted that if the Tribunal was unable to Order the costs as claimed, they would need to be assessed if not agreed with the Respondent.

Previous Disciplinary Sanctions before the Tribunal

21. None.

Sanction and Reasons

22. The Tribunal had considered carefully the documents provided and noted the Respondent had been admitted in 1978 and had previously had an unblemished record. This was a sad case where the Respondent's firm had found itself in financial difficulties which had spiralled and had led to the Respondent's conduct. Nevertheless, financial difficulties were no excuse for the misappropriation of client funds or for the Respondent providing misleading information to his client. There had been improper transfers totalling just over £52,500 and the total cash shortage revealed was in excess of £102,300, and which was still in existence at the time of the intervention on 21 December 2009.

23. The Respondent himself had accepted he had been in breach of the core duties of a solicitor, that he had not acted with integrity or in the best interests of his clients, and that he had behaved in a way likely to diminish the trust that the public would place in him and in the profession.

24. The Respondent's conduct had caused serious damage to the reputation of the profession and clients had suffered as a result. It was clear to the Tribunal that the Respondent was a risk to the public and could not be trusted to safeguard and protect client funds. The Tribunal was satisfied that the Respondent was not fit to be a member of the profession and should be struck off the Roll of solicitors.

Decision as to Costs

25. The Applicant had confirmed that the SRA did not provide details of their costs to the Applicant until Friday 14 January 2011. The Applicant had sent these to the Respondent on the same day at 3 pm. However, sending a Schedule of Costs at 3 pm

on a Friday when the substantive hearing was due to take place on Monday morning did not allow the Respondent much time to consider those costs. Furthermore, the Tribunal noted that the substantive hearing on this case was originally due to be heard on 21 December 2010 but was adjourned on that date due to the adverse weather conditions. Having looked at the Schedule of Costs, it appeared to the Tribunal that the SRA's work had been completed by 21 December 2010 and that no further work had been done by the SRA since then. Accordingly, there was no reason for the Authority's costs to have been provided so late. The Tribunal also noted that the Applicant had very fairly accepted some of the blame for not requesting details of the Authority's costs sooner.

26. In all the circumstances the Tribunal Ordered that the Respondent should pay the Applicant's costs, to be subject to a detailed assessment unless agreed between the parties.

27. The Tribunal also noted that the Respondent had been adjudged bankrupt on 22 December 2010. The Respondent had also been struck off the Roll of Solicitors, thereby deprived of his livelihood, and was therefore unlikely to be able to pay any costs. The Tribunal took into account the guidance provided by Merrick -v- the Law Society and D'Souza -v- The Law Society and in the circumstances, ordered that the Order for costs was not to be enforced without leave of the Tribunal.

Order

28. The Tribunal Ordered that the Respondent, John Gregory Hardman, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that costs to be subject to a detailed assessment unless agreed between the parties to include the costs of Investigation Accountant of the Law Society, costs not to be enforced without leave of the Tribunal.

Dated this 16th day of February 2011
On behalf of the Tribunal

A N Spooner
Chairman