

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10597-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

STEWART PAUL ARNOLD

Respondent

Before:

Miss J. Devonish (in the chair)

Mr E. Nally

Mr M. C. Baughan

Date of Hearing: 24th July 2012

Appearances

Edward Levey, counsel, of Fountain Court Chambers, instructed by Mark Pritchard, solicitor, of Finers Stephens Innocent LLP, 179 Great Portland Street, London W1W 5LS for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent were:
 - 1.1 That he acted in conveyancing transactions that had suspicious characteristics, in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007;
 - 1.2 That he failed to disclose material information to lender clients;
 - 1.3 That he failed to act in the best interests of lender clients in conveyancing transactions, in breach of Rule 1.04 Solicitors' Code of Conduct 2007.
2. In relation to allegations 1.1 and 1.2 it was alleged that the Respondent had behaved dishonestly or that his behaviour had been grossly reckless with regard to his responsibilities and duties to his lender clients.

Documents

3. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant

- Application dated 18 August 2010
- Rule 5 Statement with exhibits, dated 18 August 2010
- Schedule of costs dated 23 July 2012
- Copy letter Finers Stephens Innocent to Respondent 9 February 2012
- Copy emails between Applicant and Respondent 31 May to 23 July 2012

Respondent

- Statement dated 11 May 2011 ("the Respondent's first statement");
- Second Statement dated 30 May 2011, but believed to be dated 30 May 2012 ("the Respondent's second statement");
- Addendum to the Respondent's second statement dated 1 June 2011, but believed to be dated 1 June 2012 ("the Addendum to the Respondent's second statement");
- Points of Mitigation dated 23 July 2011, but believed to be dated 23 July 2012.

Preliminary Matter (1)

4. The Tribunal noted that the delay in reaching a substantive hearing in this matter had been due principally to the Respondent's ill-health and other difficulties. There had been: a Memorandum of Directions and Listing arising from a hearing on 27 April 2011; a Memorandum of Directions arising from a hearing on 24 August 2011; a Memorandum of Listing Directions arising from a hearing on 3 November 2011 and a Memorandum of Adjournment arising from a hearing on 15 March 2012.

Preliminary Matter (2)

5. The Tribunal was informed that the Respondent had admitted all of the allegations, including the allegation of recklessness and had consented to the Tribunal making an order against him under s47(2)(g) of the Solicitors Act 1974, as amended. As the Respondent was not currently on the Roll, the Tribunal was able only to make an order preventing his restoration to the Roll without further order, if it saw fit. In these circumstances, the Applicant did not intend to pursue the allegation of dishonesty. The Tribunal formally confirmed that dishonesty would not be pursued and considered.

Factual Background

6. The Respondent was born in 1948 and was admitted as a solicitor in 1980. At all material times the Respondent was employed by Kennard Wells solicitors (“the firm”) at 718 High Road, Leytonstone, London E11 3AJ. The Respondent had voluntarily removed his name from the Roll of Solicitors on 16 July 2009.
7. An investigation officer of the Solicitors Regulation Authority (“SRA”) began an inspection at the firm on 1 July 2009 and produced a report dated 18 September 2009 (“the report”), on which the SRA relied.
8. The books of account were in order but a number of irregularities, described as “substantial and significant” by the firm were identified to the Investigation Officer in respect of conveyancing transactions carried out by the Respondent. The irregularities identified by the firm were characterised as: double mortgages; insufficient sale proceeds; and non-registration. Following her own investigation, the Investigation Officer identified further irregularities in respect of conveyancing transactions carried out by the Respondent. Three of those transactions, representative of a number of others, were exemplified in the report.

Simply Group (EU) Limited (“Simply Group”) and George Georgiou (“ Mr GG”)

9. The Respondent was instructed by Simply Group to act in the back to back purchase and sale of 83 AA, London E16 for a purchase price of £600,000 and a sale price to Mr GG of £1,200,000, for whom the Respondent also acted. Mr GG was purchasing with the assistance of a mortgage of £668,807 from Goldentree Financial Services Plc. The Respondent did not act for the lender. The purchase by Simply Group and sale to Mr GG proceeded by way of simultaneous exchange and completion on 10 March 2008.
10. An examination of the client ledger showed that Mr GG had not put any funds, other than the mortgage sum, towards the purchase. The sum transferred to Simply Group’s ledger on completion was £600,184.80, which sum was used by Simply Group to complete its purchase of the property.
11. The SRA Investigation Officer discovered that Mr GG was the sole director of Simply Group. Mr GG had purchased a property for £600,184.80 with the benefit of a mortgage of £668,807 and received £60,000 of the mortgage advance personally.

Mr Gary Kyriacos ("Mr GK")

12. The Respondent was instructed by Mr GK to act in his purchase of Flat 16, GC, Ilford for £200,000 with a mortgage of £170,000 from The Mortgage Business, for whom the Respondent also acted. Simultaneous exchange and completion took place on 13 November 2007.
13. The mortgage offer and the Certificate of Title showed a purchase price of £230,000 whilst the agreement and completion statement showed a purchase price of £200,000. The completion statement showed a 5% incentive, such that the actual purchase price was £190,000. The client ledger showed that the balance sent to the vendors to complete was £191,012.75, comprising the mortgage advance of £169,920 and £23,227.25 paid into Mr GK's account and described as "completion monies" by the vendor, Simply Group.
14. There was no evidence on the file that the lender had been informed of the actual purchase price of £190,000, or that the purchaser was not contributing to the purchase price other than through the mortgage monies, or that part of the purchase price was contributed by the vendor.

Mr George Georgiou ("Mr GG")

15. The Respondent was instructed by Mr GG to act in the sale of 35 BT, London E14 to Mr A, for whom the Respondent also acted, at a sale price of £667,000. Mr A was purchasing with the assistance of a mortgage from Bristol and West, for whom the Respondent also acted, in the sum of £350,456. Exchange and completion took place simultaneously on 13 February 2009.
16. An examination of the client ledger showed that no additional funds were received from Mr A for the purchase and the purchase appeared to have completed at £345,000, five days after the actual completion date.
17. There was no evidence on the Respondent's file to indicate that the lender had been informed of the actual purchase price: the lender made the decision to lend over £350,000 against a purported price of £667,000.

Failure to register

18. The purchase of 83 AA was completed by Mr GG on 10 March 2008. On 11 June 2008, solicitors acting for the lender wrote to the Respondent's firm, noting that their client's mortgage had not been registered, which was stated to be in direct breach of undertakings given. The charge was not registered until 12 September 2008.
19. The purchase of Flat 16, GC, was completed on 13 November 2007. On 10 April 2008, the lender wrote to the Respondent's firm to state that they had not received evidence of registration of their charge. The Respondent replied on 9 June 2008, referring to delay being due to problems with the lease. The lenders wrote again to the Respondent's firm on 1 October 2008 seeking a substantive response to their letters, failing which the firm's panel status would be suspended. Registration of the charge took place on 26 September 2008.

20. The purchase of 35 BT was completed on 13 February 2009. On 4 June 2009, the lender, Bristol and West, wrote to the Respondent's firm expressing concern that they had not received confirmation of registration, stating that the apparent delay was unacceptable and that if they did not receive the title documents within seven days the firm's panel appointment would be reviewed and external solicitors would be instructed to act on their behalf. The Respondent's firm responded on 22 June 2009 informing the lender that it had been discovered that the charge had not been registered, nor that an earlier charge registered against the property had not been redeemed. As at 9 July 2009 the property was still registered in the name of Mr GG, the vendor and a charge dated 30 November 2007 registered in favour of Bank of Scotland such that Bristol and West's position was not protected by registration.
21. The Respondent was dismissed by Kennard Wells on 19 March 2009.
22. At all relevant times, the provisions of the Solicitors Code of Conduct 2007 applied, together with The Council of Mortgage Lenders' Handbook: relevant extracts of the provisions which applied at the time of these transactions were quoted in the Rule 5 Statement.
23. An Adjudicator of the SRA had decided on 11 May 2010 to refer the conduct of the Respondent, but no-one else at the Respondent's firm, to the Tribunal.

Witnesses

24. None.

Findings of Fact and Law

25. **Allegation 1.1: That he acted in conveyancing transactions that had suspicious characteristics, in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007;**
 - 25.1 This allegation was admitted by the Respondent and the Tribunal was satisfied beyond all reasonable doubt that the allegation had been proved.
 - 25.2 The three transactions exemplified were sufficient to show that the Respondent had acted in a number of transactions which had suspicious characteristics. In particular, the true purchase price and the price upon which the lender based the mortgage offer were different; purchasers did not provide any funds of their own towards the purchase price. In the transaction involving 83 AA, the mortgage advance was in excess of the price the purchaser client paid, and the purchaser received about £60,000 of the mortgage advance personally. In the transaction involving Flat 16 GC, the actual purchase price was about £40,000 less than that stated on the Certificate of Title and mortgage offer and part of the purchase price was paid by the vendor, with no funds contributed by the purchaser. In the transaction at 35 BT, the purchase price was over £325,000 less than the purported price. No funds were provided by the purchaser towards the purchase price. Five days after completion, £345,000 had been transferred from the purchaser's ledger to the vendor's client ledger account in connection with the purchase of another property.

26. **Allegation 1.2: That he failed to disclose material information to lender clients;**
- 26.1 This allegation was admitted by the Respondent and the Tribunal was satisfied beyond reasonable doubt that the allegation had been proved.
- 26.2 In two of the three transactions exemplified the Respondent had acted for the lender and had failed to disclose material facts, or cease to act, as required by the Solicitors Code of Conduct. The material facts concerned: the purchase price; the links between the vendor and purchaser; failure to notify the lender that the Respondent was acting for the vendor and purchaser as well as the lender; failure to report how the purchase price was to be provided. The Council of Mortgage Lenders' Handbook (June 2007 edition) set out a number of particular provisions at paragraphs 5.9 and 6.3, with which the Respondent had failed to comply.
27. **Allegation 1.3: That he failed to act in the best interests of lender clients in conveyancing transactions, in breach of Rule 1.04 Solicitors' Code of Conduct 2007.**
- 27.1 This allegation was admitted by the Respondent and the Tribunal was satisfied beyond reasonable doubt that the allegation had been proved.
- 27.2 The Respondent had failed promptly to ensure that his lender client's interests were protected by failing to register, or delaying in registration, of the title and charge for a considerable period after completion in relation to the two exemplified transactions concerning Flat 16, GC and 35 BT.
28. **Allegation 2: In relation to allegations 1.1 and 1.2 it was alleged that the Respondent had behaved dishonestly or that his behaviour had been grossly reckless with regard to his responsibilities and duties to his lender clients.**
- 28.1 The Respondent had admitted the allegation that he had acted recklessly, and the SRA did not pursue the allegation of dishonesty. The Tribunal was satisfied beyond reasonable doubt that the allegation that the Respondent had acted recklessly in relation to allegations 1.1. and 1.2 had been proved.
- 28.2 The Respondent's conduct of the three transactions exemplified had clearly been reckless and had fallen very far short of the standards expected of a solicitor. The Respondent had proffered in his witness statements an explanation, to the effect that he had allowed himself to be drawn into Mr GG's "frantic property dealing mess" (Respondent's second statement, paragraph 14) and that he had been "manipulated" by Mr GG (Respondent's second statement, paragraph 23). It was not acceptable for any solicitor, let alone a solicitor with experience, to become involved in transactions which had suspicious characteristics and to fail to report essential information to lender clients.

Previous Disciplinary Matters

29. The Respondent had appeared before the Tribunal on four previous occasions.

30. In matter 6058/4987 of 1991, heard on 29 October 1991 the Findings and Order document was dated 12 December 1991. The Respondent had not contested the seven allegations made, which were that he:
- (a) Practised as a solicitor without there being in force a Practising Certificate in respect of the practice year commencing 1st November 1990;
 - (b) Failed to pay counsel's fees as the same fell due;
 - (c) Failed to reply to correspondent from the Solicitors Complaints Bureau either promptly or at all;
 - (d) Failed to reply to correspondent from clients either promptly or at all;
 - (e) Unreasonably delayed in the conduct of professional business and failed to keep clients informed;
 - (f) Failed to reply to correspondence from solicitors either promptly or at all;
 - (g) Failed to deliver up documents to a person entitled thereto upon proper request for delivery having been made.

The Tribunal had fined the Respondent £2,750 and ordered him to pay costs.

31. In matter 8439/2001, heard on 3 April 2003, the Findings document was dated 1 May 2003. The Respondent admitted an allegation that he had been guilty of conduct of unbecoming a solicitor in 9 respects. The Tribunal had fined the Respondent £10,000 and ordered him to pay costs.
32. In matter 9118/2004, the hearing was on 2 June 2005 and the Findings document was dated 4 July 2005. The Tribunal found the Respondent had been guilty of conduct unbecoming a solicitor in a number of respects relating primarily to his regulatory obligations. The Tribunal ordered the Respondent to take several steps by 31 July 2005, failing which he would be suspended from practice indefinitely from 1 August 2005; further, he would be fined £5,000.
33. In matter 9751/2007, heard on 24 January 2008, the Findings document was dated 13 March 2008. The Respondent was found guilty of conduct unbecoming a solicitor in that:
- (a) He failed to comply with a professional undertaking to ASL given in respect of charges incurred by ASL following instructions given by the Respondent on behalf of a client and in breach of Rule 1 of the Solicitors' Practice Rules 1990;
 - (b) Having given a cheque to ASL in respect of charges incurred following his instructions to ASL the Respondent failed to ensure that his account held sufficient funds to meet the cheque in breach of Rule 1 of the Solicitors' Practice Rules 1990.

The Respondent was suspended from practice as a solicitor for the period of 3 years to commence on 24th January 2008 and ordered the Respondent to pay the costs of the proceedings.

Mitigation

34. The Tribunal considered the Respondent's witness statements and the Points in Mitigation document of 23 July 2012.
35. The Respondent submitted that he had allowed himself to be driven by the constant demands and pressure of his client, Mr GG and his associates. The Respondent gave some examples of the calls and messages he received from his client which suggested the transactions were critical and that the client was at risk of physical harm if certain steps were not taken.
36. The Respondent had commented on the four previous matters in which he had been brought before the Tribunal. He had undergone a number of personal, family tragedies from the 1980s onwards.
37. The Respondent had accepted that he should have acted differently in the transactions on which the present case was based. He had accepted that he had behaved in a stupid way. He had not received any financial benefit or inducement from Mr GG or anyone else. The Respondent bitterly regretted his actions and apologised to the Tribunal, his former firm Kennard Wells and anyone affected by his actions and failures.
38. The Respondent had been dismissed by Kennard Wells and accepted he had lost any chance of being restored to the Roll: he accepted that an order should be made under s47(2)(g) of the Solicitors Act 1974. He had been humiliated by receiving a visit from the police in connection with these matters. No-one else had been pursued in relation to these matters, including the partners of Kennard Wells, who had been responsible for the firm.
39. In response to a question put to the Applicant by the Tribunal, the Tribunal was told that it appeared the Respondent's employment at Kennard Wells after his suspension in 2008 had been permitted by the SRA, with conditions imposed on his Practising Certificate as to supervision.

Sanction

40. The Tribunal considered carefully the facts in this matter, the mitigation document put forward by the Respondent and his witness statements.
41. The Respondent had appeared before the Tribunal on four previous occasions: 1991, 2003, 2005 and 2008. The Tribunal had read and considered the Findings in those four matters before determining sanction. On the last occasion the Respondent was suspended for three years. The Tribunal had established in the hearing that he had only able to practice after January 2008 because he was employed by Kennard Wells with the approval of the SRA.

42. For the purposes of this hearing, the Respondent admitted all the allegations, including recklessness in relation to allegations 1.1 and 1.2. The SRA chose not to pursue the allegation of dishonesty which had been pleaded in the alternative.
43. The Respondent had in the present case shown a total disregard of the requirements of the Solicitors' Code of Conduct and the Council of Mortgage Lenders' Handbook.
44. The Tribunal found it astonishing that the Respondent had been allowed to continue to practice after his suspension in 2008 in any form in the legal profession given the catalogue of previous misconduct, which was compounded by the misconduct set out in the present case. The Respondent had circumvented the procedures which had been put in place concerning his supervision.
45. The Respondent's expressions of remorse set out in his mitigation appeared to follow a pattern seen in the previous Findings, whereby he apologised and explained his difficult personal circumstances.
46. The current allegations were simply put, but were of a serious nature. The Respondent had acted in conveyancing transactions that had suspicious characteristics in breach of the Solicitors Code of Conduct Rule 1.04 and 1.06, had failed to report material matters to his lender clients and had failed to act in the best interests of lender clients by failing to ensure prompt registration of their interests. He had behaved in a way which clearly diminished the trust the public would place in him and in the profession.
47. The Tribunal had no hesitation in applying its powers under s47(2)(g) of the Solicitors Act 1974, prohibiting the restoration of his name to the Roll except by order of the Tribunal. The Tribunal noted from the Respondent's e-mail of 23 July 2012 that the Respondent expressly agreed to the imposition of such a sanction.
48. Had the Respondent not voluntarily removed his name from the Roll on 16 July 2009, prior to the commencement of these proceedings, the Tribunal would have had no hesitation in striking him off the Roll. The catalogue of previous disciplinary matters, together with the serious allegations in the current case and the clear recklessness displayed by the Respondent would have made such an outcome all but inevitable. Whilst this Tribunal could not fetter the discretion of any Tribunal which might in future be asked to consider an application from the Respondent for restoration to the Roll, it would in this Tribunal's opinion be extraordinary if the Respondent were restored. There was a catalogue of serious professional misconduct over a long period, some of which misconduct bore disturbing similarities to the current defaults.
49. The Tribunal considered whether in addition to the s47(2)(g) order it should impose a fine on the Respondent. However, it considered that such an order would be punitive in the light of the Respondent's submissions on his financial circumstances. The primary purposes of sanction were to prevent re-offending, protect the public and protect the reputation of the profession: the order under s47(2)(g) would on this occasion be sufficient to achieve those objectives and was the reasonable and proportionate order.

Costs

50. The Applicant applied for the costs of the proceedings and submitted a schedule of costs totalling £34,966.19, including forensic investigation costs of £16,344.50. A copy of the schedule had been served on the Respondent.
51. Mr Levey told the Tribunal that prior to the hearing listed on 15 March 2012 (which had been adjourned), the SRA's costs had been estimated at just under £30,000. The Applicant had written to the Respondent on 9 February 2012 giving that costs estimate and setting out the steps the Respondent should take if he contended he was impecunious and unable to meet a costs order, in accordance with the judgment in SRA v Davis & McGlinchey [2011] EWHC 232 (Admin) ("Davis & McGlinchey").
52. The Tribunal considered that the costs claimed by the SRA were somewhat high, in particular with regard to the work done on documents and the costs of the forensic investigation report. The Tribunal assessed the reasonable costs of the proceedings at £30,000.
53. The Tribunal noted that the Respondent asserted that he had no means. However, he had failed to provide any substantive information in support of this assertion, despite having notice of the requirements on this point in Davis & McGlinchey. Accordingly, it was right for the Respondent to be ordered to pay the costs of the proceedings as assessed by the Tribunal.

Statement of Full Order

54. The Tribunal Ordered that the Respondent, Stewart Paul Arnold, former solicitor, be prohibited from having his name restored to the Roll of Solicitors except by Order of the Tribunal and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £30,000.00 all inclusive.

Dated this 10th day of September 2012

On behalf of the Tribunal

Miss J. Devonish
Chairman