

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10627-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY
and

Applicant

MICHAEL DAVID MATTHEWS
and

First Respondent

MICHAEL RICKABY

Second Respondent

Before:

Mr A. N. Spooner (in the chair)
Mr R. Hegarty
Mrs L. McMahan-Hathway

Date of Hearing: 24th May 2011

Appearances

David Barton, solicitor advocate of 13-17 Lower Stone Street, Maidstone Kent ME15 6JX for the Applicant.

The First Respondent, Michael David Matthews, was not present. His solicitor, Ms Jayne Willetts of Jayne Willetts & Co, Cornwall House, 31 Lionel Street, Birmingham, B3 1AP had submitted a written request for an adjournment.

The Second Respondent, Michael Rickaby, was not present or represented but had submitted to the Tribunal a letter of 20 May 2011.

JUDGMENT

Allegations

1. The Applicant applied for an Order under s.43 of the Solicitors Act 1974 (as amended) in the following terms:
 - 1.1. That no solicitor shall employ or remunerate Michael Rickaby of 18 Jennings Orchard, Woodmancote, Cheltenham, GL52 9HL ("the Respondent") in connection with his practice as a solicitor;
 - 1.2. That no employee of a solicitor shall employ or remunerate the Respondent in connection with the solicitor's practice;
 - 1.3. That no recognised body shall employ or remunerate the Respondent;
 - 1.4. That no manager or employee of a recognised body shall employ or remunerate the Respondent in connection with the business of that body except in each case in accordance with permission granted by The Law Society;
 - 1.5. That no recognised body or manager or employee of such a body shall, except in accordance with The Law Society permission permit the Respondent to be a manager of the body;
 - 1.6. That no recognised body or manager or employee of such a body shall, except in accordance with Law Society permission, permit the Respondent to have an interest in the body.

or that such other Order might be made as the Tribunal should think right.

2. It was alleged that the Second Respondent had occasioned or been a party to acts or defaults the particulars of which are as follows:
 - 2.1. Having the conduct of conveyancing transactions in which he acted for both buyer and lender, he failed to report material facts to the firm's lender clients in accordance with the requirements of the Council of Mortgage Lenders' Handbook ("CMLH") and thereby failed to act in their best interests;
 - 2.2. He signed and submitted Certificates on Title to the firm's lender clients which included the confirmation contained in the annex to Rule 3 of the Solicitors Code of Conduct 2007 ("SCC") namely that he had complied with his lender clients' instructions whereas he had not, and that the seller had owned the property for not less than six months whereas that was not so, thereby rendering the certificates misleading;
 - 2.3. He acted in conveyancing transactions which bore the hallmarks of mortgage fraud;
 - 2.4. He failed to comply with Money Laundering Regulations.

Documents

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

Applicant:

- Application in Form 2 dated 21 September 2010;
- Statement (expressed to be pursuant to Rule 5(2)) dated 21 September 2010 with exhibit "DEB 1";
- Application in Form 1 dated 21 September 2010;
- Rule 5 Statement dated 21 September 2010 with exhibit "DEB 1".

First Respondent:

- Letter Jayne Willetts & Co to Tribunal dated 20 May 2011 with enclosures.

Second Respondent:

- Letter Second Respondent to the Applicant dated 20 May 2011.

Preliminary Matters

4. An application to adjourn the proceedings against the First Respondent was made in writing. The Tribunal read the application and heard the Applicant's comments concerning that application and determined to adjourn the hearing of the proceedings against the First Respondent and gave directions.
5. The Tribunal noted that the Second Respondent was keen that the proceedings against him should be concluded. It was clear from the correspondence that the Second Respondent was aware of the proceedings and did not intend to appear. The Tribunal determined that it would hear the case concerning the Second Respondent only, which it noted was an application for a s.43 Order.

Factual Background

6. The Second Respondent was at all material times employed or remunerated by Berkeley Domecq Solicitors, the sole principal of which was the First Respondent, of Century House, 100 London Road, Gloucester, GL1 3PL ("the firm").
7. The Second Respondent was employed by the firm as a conveyancing clerk managing or heading the firm's department titled "Just New Homes".
8. On 22 January 2009 an Investigation Officer of the Solicitors Regulation Authority ("SRA") commenced an investigation of the books of account and other documents of the firm. His Report was dated 18 June 2009 and was relied on by the Applicant.
9. Following the conclusion of the investigation the SRA wrote to the Second Respondent on 5 August 2009 to ask for his explanation of the conduct of transactions

specified in the Report. The Respondent replied on 21 August 2009. Further information was provided by the Second Respondent in his letter dated 15 September 2009. By a letter dated 9 December 2009 the First Respondent provided copies of the Certificates of Title relating to the conveyancing transactions referred to in the Report.

10. On 5 March 2010 the SRA resolved to refer the Respondent to the Tribunal.
11. The Second Respondent commenced his employment with the firm in November 2007. The firm undertook a significant amount of conveyancing work relating to the purchase of newly built properties. The SRA's Investigating Officer examined a number of files relating to transactions in which the firm acted for both buyer/borrower and mortgagee. His examination revealed the regular participation in the transactions of several organisations and individuals. The Investigating Officer found a number of transactions in which the firm's clients were end purchasers in sub-sales. In seven transactions which were examined the firm's clients were purchasing as end buyers from C Limited who had acquired the properties from the developer, Taylor Wimpey. The sub-sales and purchases were completed on the same day. In six of the transactions the mortgage advances were provided by BM, an institutional lender, for whom the firm also acted pursuant to the CMLH. None of the buyers provided any funds from their own resources. The Second Respondent did not inform the lender client of this. Funds to complete the transaction were provided by PPS Limited, a company connected with C Limited and a Mr and Mrs W who were involved in both companies.
12. The seller in each case, C Limited, had not been the registered owner of the properties for a minimum of six months. The Respondent submitted Certificates of Title prior to completion in which he certified that the properties to be purchased by the borrowers had been owned by the seller for not less than six months. Such certificate is incorporated as part of the annex to Rule 3 of the SCC.

Witnesses

13. None.

Findings of Fact and Law

14. **Allegation 2.1: Having the conduct of conveyancing transactions in which he acted for both buyer and lender, he failed to report material facts to the firm's lender clients in accordance with the requirements of the Council of Mortgage Lenders' Handbook ("CMLH") and thereby failed to act in their best interests;**

Allegation 2.2: He signed and submitted Certificates on Title to the firm's lender clients which included the confirmation contained in the annex to Rule 3 of the Solicitors Code of Conduct 2007 ("SCC") namely that he had complied with his lender clients' instructions whereas he had not, and that the seller had owned the property for not less than six months whereas that was not so, thereby rendering the certificates misleading;

Allegation 2.3: He acted in conveyancing transactions which bore the hallmarks of mortgage fraud;

Allegation 2.4: He failed to comply with Money Laundering Regulations.

- 14.1 The Tribunal had to consider whether the Second Respondent had "occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that, in the opinion of the SRA, it would be undesirable for him to be involved in a legal practice," pursuant to s43 of the Solicitors Act 1974 (as amended). The Tribunal therefore had to determine whether the Second Respondent had been engaged in the conduct alleged before determining if it was appropriate to make the Order requested by the Applicant.
- 14.2 The Tribunal had considered carefully the documentary evidence presented, in particular the Forensic Investigation Report and its annexes. The Tribunal also considered the other documents available, including the Second Respondent's response to the SRA dated 21 August 2009
- 14.3. The Second Respondent was an unadmitted person who had been engaged by the firm to head up its "Just New Homes" department. The Second Respondent had almost 30 years legal and in particular conveyancing experience.
- 14.4. The issues of concern related to property transactions which featured a number of businesses and individuals. KSFS and KSM Limited were financial advisers/mortgage brokers. Both had links to Mr NW, with the shares in the company being solely owned by him. The shares in PPS Limited were owned by Mr NW and his wife, Mrs NW. CH Limited was a property buying business which would carry out some improvement work and sell the property on. This business was owned by Mr NW, Mrs NW and two others. The shares in C Limited were owned by Mr NW and Mrs NW. Both were directors of the company. It appeared that C Limited would buy housing stock that remained unsold from the developer, Taylor Wimpey, where otherwise the quarterly sales targets would not be met. Those purchases were at a discount and the properties would then be sold on to end buyers. The Forensic Investigation Report included details of seven transactions where the firm acted for clients who were purchasing property from C Limited which had acquired the properties from Taylor Wimpey and was selling them on the same day. In all seven matters the firm also acted for their clients' mortgage provider. In six of the seven matters the mortgage provider was BM. In all seven matters the client ledger account showed that the end purchaser did not provide any funds from their own resources, but funds were received from PPS.
- 14.5. In the matter of A, purchase of 15 PM, the purchase price was £220,000, mortgage advance £186,960 and funds provided by PPS of £36,661.25. In the matter of L, purchase of 17 PM, the price was again £220,000, mortgage advance £186,960 and PPS provided funds of £36,674.25. In the matter of M, purchase of 18 PM, the purchase price was £215,000, mortgage advance £182,710 and PPS provided funds of £35,861.25. In the matter of K, purchase of 23 PM, the purchase price was £225,000, mortgage advance £191,210 and PPS provided funds of £37,461.25. In the matter of S, purchase of 24 PM, the purchase price was £225,000, mortgage advance £191,219

and PPS provided funds of £37,471.80. In the matter of McC/H, purchase of 44 CP, the purchase price was £179,000, mortgage advance £161,965 and PPS provided funds of £20,940. Finally in the matter of D, purchase of 59 C, the purchase price was £180,000, mortgage advance £152,965 and PPS provided funds of £30,261.25

- 14.6 It was clear on the evidence that the Second Respondent had failed to inform the lenders, in all of the matters set out above, that the balance of the purchase money was received from PPS and not the purchaser. Further, he had not informed the lender client that the transactions were all in the nature of sub-sales or “back to back” transactions.
- 14.7. There was no evidence that the purchaser client had provided funds to PPS. There was no evidence found by the Investigating Officer which showed that the lender clients had been informed that the balance of the purchase money was being provided by a third party and not by the purchaser/borrower.
- 14.8. The Tribunal found that such information would be material and should have been reported to the lender client in accordance with the CMLH. In failing to report such a material matter the Second Respondent had failed to act in the best interests of the firm's lender clients.
- 14.9. The Tribunal was similarly satisfied that the Second Respondent had failed to report material facts to a lender client in the matter of Mr JB and Mr DB in their purchase of 100 BP. In that matter the purchase price was £250,000, the mortgage advance from TMB was £212,500 and the balance of the purchase price (together with funds to cover stamp duty, legal costs, etc) of £28,867.50 was provided by PPS. Further, in relation to this transaction the Second Respondent failed to report to the lender client that the borrowers' declared income of £109,850 per annum was not supported by the bank statements provided by Mr JB and Mr DB, nor did the Second Respondent make further enquiries.
- 14.10. The Second Respondent acted for Mr K and Ms F in the purchase of Plot 101 TR. The mortgage from TMB, was arranged through KS (one of the companies linked to Mr NW). The mortgage offer was based upon a self-certificated income of £227,280. In this matter the developer, Taylor Wimpey, contracted to sell the property to CH Limited on 30 April 2008. The price said to be paid by CH Limited for the property was £200,000. Mr K and Ms F's purchase from CH Limited completed on the same day when the mortgage advance of £208,250 was used inter alia, to pay to the developer £199,176.25. There was no evidence that the lender had been informed by the Second Respondent that the property had been purchased by CH Limited for £200,000 on the day of completion. Further, CH Limited received a benefit, being a payment of £45,000 from the mortgage advance. Mr .NW was the beneficial owner of both KS and CH Limited. The fact that this was an assignment purchase was not disclosed by the Second Respondent to the lender client. The amount of the mortgage advanced to the purchaser clients was greater than the amount required by CH Limited to purchase the property from the builder. The mortgage funds were used in part to pay CH Limited, a third party, in circumstances where the lender was not made aware that this would be the case. The firm did not make the lender client aware that the mortgage arranger, KS and CH Limited, which benefited from the mortgage

advance, were connected parties. Funds were received from PPS to enable completion without informing the firm's lender client.

- 14.11. Further, the Tribunal found that the Second Respondent had acted for Mr and Mrs NW in the purchase of Plots 7 and 9 V, Plymouth. As with the transactions noted above, funds required to complete the purchase were received from a third party, namely PPS, and the clients did not contribute any funds of their own to complete the purchase. The price stated in the mortgage offer for Plot 7 was £172,408 but the price for each property was reduced by the developer to £150,000. The Second Respondent did not inform the lender client of the reduction in the purchase price. Further, the Second Respondent did not inform the lender that Mr and Mrs NW made a direct payment to the developer in respect of each property.
- 14.12. In all of the above transactions the Second Respondent, who had conduct of these transactions, had failed to report material facts. Those facts included funds to enable completion being provided by third parties, a reduction in the purchase price and that documents submitted by the purchaser clients did not support the self-certificated income. The Tribunal was thus satisfied that the conduct alleged under allegation 2.1 had been proved to the highest standard
- 14.13. The Tribunal noted the Certificates of Title concerning the purchases of 100 BP, and in relation to the clients, M, S, K, K and F, D and McC/H had been signed by the Second Respondent. As set out above, in each of these matters the transaction proceeded by way of a sub-sale. The Certificates of Title incorporated an undertaking to the effect that the lender client must be informed if the seller had owned the property for less than six months. Each of the transactions by way of a sub-sale occurred where the property had not been owned by the intermediate vendor for more than six months: indeed, completion occurred on the same date in each matter. Accordingly, the Certificates of Title in these matters were misleading. The conduct alleged under allegation 2.2 had therefore been proved to the highest standard.
- 14.14. A number of the transactions exemplified above bore the hallmarks of mortgage fraud. The Tribunal noted that the mere fact that a transaction proceeds by way of sub-sale does not in itself suggest mortgage fraud may be taking place. However, it is often one of the features of cases of mortgage fraud. In this case the transactions also involved in most cases the introduction of funds by a third party, and the provision of no funds towards completion by the purchaser. Further, in one instance the documentation provided by the purchaser clients did not support the self-certificated income. In the matter of Mr and Mrs NW, the failure to report a direct payment apparently made by the purchasers to the developer was also suggestive of some unusual aspects to the transaction. Further in this instance, there was a reduction in the purchase price which was not reported to the lender client. A reduction in price is not inherently suggestive of fraud, but the lender clients were not informed of this material fact, which would affect the lending to value ratio.
- 14.15. The Tribunal did not have to find that there had in fact been mortgage fraud. It was satisfied that there were a number of conveyancing transactions which bore some of the hallmarks of mortgage fraud and that the Second Respondent had acted in those matters.

- 14.16. The Tribunal also noted that the firm's money laundering procedures made no provision for customer due diligence, either simplified or enhanced.
- 14.17. In the matter of Mr JB and Mr DB the firm accepted passports as proof of identities together with bank statements as proof of address. There was no evidence that the Second Respondent or anyone else at the firm had met Mr JB and/or Mr DB to verify their identity, or that such verification had taken place by a third party closer to where the clients lived. In respect of Mr DB's bank statement it was noted that there had been a credit entry on 19 December 2007 for £20,909.21, prior to which the account had been overdrawn. On 20 December 2007 the account was debited with £20,909.21, following which the account was again overdrawn. There was no evidence that the Second Respondent had made any attempt to establish whether the receipt and payment made through Mr DB's bank account was legitimate.
- 14.18. The Tribunal noted that the money laundering regulations were applicable to all solicitors' practices and compliance was important. In this case it was clear that the Second Respondent had not complied with the money laundering regulations.
- 14.19. The Tribunal found all of the matters of conduct alleged the Second Respondent to have been proved.

Previous Disciplinary Matters

15. None.

Mitigation

16. The Tribunal noted the Second Respondent's letter of 20 May 2011. In the letter it was stated that he had suffered a near fatal heart attack on 18 December 2010. He had found the stress and strain of the investigation and proceedings almost unbearable.
17. The Second Respondent had continued to work as a conveyancing clerk after the closure of the firm in September 2009. In the period since then, he submitted, he had handled around 300 conveyancing transactions involving something in the region of £30m of mortgage advances. The Second Respondent was confident that all of these had been handled correctly. In short, there was no further cause for concern. The Second Respondent submitted that he was a decent and honest person and that he had not acted in any way dishonestly. No complaints had been made, so far as the Second Respondent was aware, by any of the mortgage lenders involved.

Sanction

18. The Tribunal noted that its powers to make Orders under s.43 of the Solicitors Act 1974 (as amended) were regulatory rather than disciplinary powers. It was not necessary for there to be any finding of dishonesty. Indeed, the authorities (in particular Ojelade v Law Society [2006] EWHC 2210 (Admin) and Gregory v Law Society [2007] EWHC 1724 (Admin)) suggested that foolishness, recklessness or errors of judgment could be sufficient to justify the making of a s.43 Order. Such an Order would not prevent an individual from working within the legal profession but would require that individual to have permission.

19. The Tribunal had in this case found proved a number of serious conduct matters. Accordingly, it was appropriate and proportionate that the Order should be made under s.43.

Costs

20. The Tribunal was told by Mr Barton that the Second Respondent had agreed to pay the Applicant's costs of the proceedings of £1,200 plus VAT. Having calculated the appropriate sum in the light of changing VAT rates, the Tribunal noted that the sum agreed would be £1,417.50. The Tribunal was satisfied that the costs sought were reasonable and appropriate and Ordered the Second Respondent to pay those costs.

Statement of Full Order

21. The Tribunal Ordered that as from 24th day of May 2011 except in accordance with Law Society permission:

- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Michael Rickaby of 18 Jennings Orchard, Woodmancote, Cheltenham, GL52 9HL;
- (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Michael Rickaby;
- (iii) no recognised body shall employ or remunerate the said Michael Rickaby;
- (iv) no manager or employee of a recognised body shall employ or remunerate the said Michael Rickaby in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit the said Michael Rickaby to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said Michael Rickaby to have an interest in the body.

And the Tribunal further Orders that the said Michael Rickaby do pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £1,417.50.

Dated this 7th day of July 2011

On behalf of the Tribunal

A N Spooner
Chairman