

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10641-2010

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

AYGUN SAHIN

Respondent

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Before:

Mr I. R. Woolfe (in the chair)

Mr R. Prigg

Mr D. E. Marlow

Date of Hearing: 24th February 2011

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## Appearances

Margaret Bromley, solicitor (of Bevan Brittan LLP Kings Orchard 1 Queen Street Bristol BS2 0HQ) 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, on behalf of the Solicitors Regulation Authority (“SRA”) were that in breach of Rule 1 of the Solicitors’ Code of Conduct 2007 (“SCC”) paragraphs 1.02, 1.04 and 1.06 she had failed to act with integrity, had failed to act in the best interest of clients and had behaved in a way that was likely to diminish the trust the public placed in her or the profession in that:
  - 1.1 she misappropriated money paid by a client on account of costs;
  - 1.2 she misled her employers, Duncan Lewis, by fabricating letters to make it appear that a matter was publicly funded when it was not;
  - 1.3 she misled the client in 2009 as to the progress of his case.
2. The above allegations were put on the basis that the Respondent was dishonest or reckless but it was not necessary to prove dishonesty or recklessness for the allegations to be made out.

## **Documents**

3. The Tribunal reviewed all the documents submitted by the Applicant, which included:
  - Rule 5 Statement dated 12 October 2010 with appendix;
  - Schedule of Costs dated 17 February 2011.

The Respondent did not submit any documents.

## **Preliminary Matter**

4. The Respondent did not appear and was not represented. The Tribunal therefore considered whether it would be appropriate to proceed and hear the matter in her absence. Ms Bromley advised the Tribunal that the Respondent had been notified of the pre-listing date by letter from the Tribunal of 19 October 2010. She had also been served with notice of today’s proceedings. Ms Bromley had written to her on 17 February enclosing the costs schedule and reminding her of the hearing date. The Respondent had responded on 20 February. Ms Bromley had exchanged text messages with the Respondent on the morning of the hearing. These had been shown to the Tribunal’s Clerk and the Tribunal advised of the reasons for the Respondent’s non-attendance. In her text the Respondent had indicated that she was happy for the matter to be dealt with in her absence. The Tribunal decided that the Respondent had been properly served with proceedings in accordance with Rule 10 of the Solicitors (Disciplinary Proceedings) Rules 2007 and exercising its power under Rule 16 the Tribunal decided to proceed and determine the application notwithstanding that the Respondent had failed to attend in person and was not represented at the hearing.

## **Factual Background**

5. The Respondent was born in 1983 and was admitted in 2009 and her name remained on the Roll of Solicitors.

6. At all material times the Respondent was employed as a trainee solicitor at Duncan Lewis Solicitors. She left Duncan Lewis Solicitors on 9 June 2009 and did not hold a current Practising Certificate.
7. On 8 October 2009 an inspection of the books of account and other records of Duncan Lewis was commenced by a forensic investigation officer of the SRA. A forensic investigation (FI) report was prepared dated 28 January 2010.
8. The Respondent commenced employment with Duncan Lewis as a paralegal in the Family Department in the Hackney Office on 3 July 2006. In December 2007 the Respondent started a training contract at Duncan Lewis and her first seat was in the Family Department up to 15 August 2008.

### **Allegation 1.1**

9. On 8 January 2008 Mr M instructed the firm to act for him in connection with arranging contact with his former partner relating to their son.
10. On 8 January Mr M had a meeting with the Respondent at the offices of Duncan Lewis. At that meeting he paid her £500 in cash on account of costs. The Respondent gave him a transaction voucher as a receipt.
11. The Respondent did not pay the £500 into the firm's client account but retained it for her own use. The transaction voucher was not submitted through the firm's intranet and therefore did not create an audit trail in the financial accounting processes. When Ms Sahin retained the money it was not treated as missing because its receipt was never posted into the firm.
12. Mr M's matter was dealt with between January and April 2008 when agreement was reached about contact dates.

### **Allegation 1.2**

13. Ms Sahin completed a Legal Help Form on behalf of Mr M even though he was a private paying client. Mr M had confirmed that the signature on the Legal Help Form was not his.
14. Ms Sahin wrote a client care letter to Mr M dated 9 January 2008. In that letter she referred under the heading "Costs" to the fact that the firm were advising him under the Legal Help Scheme. This was untrue as the matter was privately funded, but created the impression to the firm that the matter was a legally aided one.
15. On 22 February 2008 the Respondent created a letter to Mr M stating:

"We have now closed your file as you have failed to provide us with your proof of benefits. We did state at our initial interview that we are unable to carry out any further work until you provide us with your proof of benefits."

Mr M had confirmed that he never received this letter. The file was submitted by the firm for Legal Aid billing in April 2008. After that time the file was closed on the firm's systems and archived.

16. The firm received a credit from the Legal Services Commission (“LSC”) in respect of the fixed fee based on the codes given “FAMD/FOTH/FA/FB”. The credit in this case was £93.

### **Allegation 1.3**

17. Mr M instructed the firm again in October/November 2008 when further problems arose over contact. Mr M instructed the Respondent to make an application to Court.
18. Mr M had a further meeting with the Respondent on 24 November 2008 when she told him that the firm held sufficient funds to make the application without needing more money from him.
19. The Respondent wrote various letters to Mr M and to the solicitors on the other side dated 31 October 2008, 14 November 2008 and 24 November 2008. Although these letters appeared to have been sent, the documentation produced by the Respondent was prepared in the absence of any client file on the firm’s systems and outside the scope of any supervision. The reference number on the letters did not correlate with the file reference opened for Mr M in January 2008.
20. In the 2009 Mr M chased the Respondent as to the progress of the application and she told him that the Court had mislaid the paperwork. She repeated this when Mr M chased her again some time later.
21. Mr M chased her again on a third occasion and on this occasion she said that the application to Court had been issued and that she was going to send him the correspondence and paperwork. She told Mr M that there was a Court date of 29 June 2009 and that she would send the paperwork to him before the end of May. This was untrue as no court proceedings had been issued and there was no hearing date.
22. Mr M did not receive anything and contacted the Respondent again in the first week of June. She said she was putting the paperwork in the post. It did not arrive. This was on a Tuesday. Mr M contacted her again the following Thursday and the Respondent told him a colleague would contact him on the following day, Friday.
23. Mr M heard nothing and the next time he tried to make contact with the Respondent he was told that she had left Duncan Lewis.
24. Mr M complained to the firm in about July 2009 and he met with VA, the Respondent’s supervisor, and showed him a transaction voucher confirming the payment of £500 in January 2008. In August the firm obtained a signed statement from Mr M.
25. In response to the firm’s requests for an explanation the Respondent wrote on 12 October 2009. In that letter she admitted that:

“I retained the £500 paid by Mr M. However I paid this back via G [another staff member], so that it is returned back to the client. I am at the moment, though not at the time, aware that this is a breach of the Solicitors Accounts Rules and would amount to me being struck off the Solicitors Roll. I do not

know what I can do or say to show my regret and hope that this is not reported to the SRA.”

In October 2009 the firm reported the matter to the SRA.

26. On 16 February 2010 the SRA wrote to the Respondent enclosing a copy of the FI Report. The Respondent did not reply and the SRA wrote again on 4 May 2010.
27. On 9 May 2010 the Respondent replied by email to the SRA. She said that she had not received the letter dated 16 February 2010. She stated:

“I do not know how I could show my regret or what explanation I could give for my unprofessional conduct, I am aware that this could not be forgiven .... during my 3 year employment at Duncan Lewis this was the only mistake I have done. I have dealt with money(sic) cases that involved money handling and have not thought of taking the monies myself. At that period (Mr M’s matter) I was both emotionally and financially in a very terrible state, and for other personal reasons that I cannot explain I did such a mistake at the time.”

28. On 18 May 2010 the SRA wrote again to the Respondent seeking her explanation regarding misleading Mr M as to the progress of his matter and trying to seek costs from the LSC in a private client matter. The Respondent replied by email on 1 June 2010. She denied misleading Mr M and trying to seek costs from the LSC. She stated

“I did not mislead him. I updated him in regard to the progress of his matter however I did inform him that I will be making an application ASAP however due to the heavy workload, I was not able to get through to this.”

### **Witnesses**

29. There were no witnesses.

### **Findings of Fact and Law**

30. **Allegation 1.1. The Respondent misappropriated money paid by a client on account of costs.**
- 30.1 Ms Bromley advised the Tribunal that she had served a Civil Evidence Act Notice and Notice to Admit on the Respondent to both her former and current addresses. She had provided an explanation to the Respondent at her request of the meaning of both notices in December 2010. She had not received a substantive reply. The Respondent had always admitted that she had taken the client’s money.
- 30.2 The Tribunal found this allegation to have been proved.
31. **Allegation 1.2. That the Respondent misled her employers, Duncan Lewis, by fabricating letters to make it appear that a matter was publicly funded when it was not;**
- 31.1 Ms Bromley reminded the Tribunal that even though Mr M was a private paying

client the Respondent had completed Legal Help forms. Mr Martin had stated that he had not signed those forms. Neither had he received the client care letter which Ms Bromley submitted that the Respondent had created in order to support her version of events. The Respondent had denied trying to seek costs from the LSC and falsifying Mr M's signature. No allegations had been made in these respects in these proceedings.

31.2 The Tribunal found this allegation to have been proved.

32. **Allegation 3. That the Respondent misled the client in 2009 as to the progress of his case.**

32.1 Ms Bromley referred the Tribunal to Mr M's statement dated 26 August 2009 in which he had described the course of events following his contacting the firm again in October/November 2008. He had instructed the Respondent to make an application to the Court. No Court proceedings had been issued but the Respondent had advised Mr M that there was a Court date of 29 June 2009. Ms Bromley submitted that this was a deliberate attempt to mislead the client. The Tribunal rejected the Respondent's claim that she had not misled the client. There was no indication that she had intended to make an application to the Court on his behalf and the Court date she advised to him was a fiction.

32.2 The Tribunal found this allegation to have been proved.

33. Ms Bromley submitted that the allegation of dishonesty was a very serious matter. Having regard to the two limbs of the test for dishonesty as set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12, there could be no doubt that any member of the public would regard as dishonest taking money from a client, misleading the firm (notwithstanding that no allegation was made in respect of the falsified signature on the client care letter) and misleading the client. Thus the objective test in Twinsectra was, Ms Bromley submitted, satisfied. As to the subjective test Ms Bromley submitted that it was inconceivable that the Respondent did not realise that what she had done was dishonest. She knew that the money the client paid to her was on account of costs and it was not hers to take. She then took deliberate steps to conceal that the money had been paid to her.

34. Having carefully considered the evidence and the Applicant's submissions, it was clear that the Respondent had misappropriated client money and deliberately misled her firm and her client. Those actions and her subsequent conduct satisfied the objective test for dishonesty. The Respondent's efforts to conceal her actions clearly indicated that she did know that she had been dishonest, satisfying the subjective test. Accordingly the Tribunal found dishonesty to have been proved in respect of all three allegations.

### **Previous Disciplinary Matters**

35. None

### **Mitigation**

36. The Respondent was not present and had not submitted any mitigation.

**Sanction**

37. The Tribunal noted that at the time of her misconduct the Respondent was a trainee solicitor and under personal financial pressure. However, having regard to the requirement that a solicitor should be able to be trusted to the ends of the earth, that the Respondent had only repaid the money when her actions had come to light, and that her conduct had extended over a period of time, the Tribunal found that there were no exceptional circumstances and accordingly ordered that she be struck off the Roll of Solicitors.

**Costs**

38. Ms Bromley informed the Tribunal that the Respondent had agreed costs in the amounts of £11,252.96. The Tribunal made an order for costs fixed in that amount.

**Statement of Full Order**

39. The Tribunal Ordered that the Respondent, Aygun Sahin, 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 £11,252.96.

Dated this 16<sup>th</sup> day of March 2011

On behalf of the Tribunal

I. R. Woolfe  
Chairman