SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10674-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RICHARD ASHFORD Respondent

Before:

Mr J. P. Davies (in the chair)
Mr A. Ghosh
Mr S. Marquez

Date of Hearing: 4 August 2011

Appearances

Robin Havard, Solicitor, of Morgan Cole LLP, Bradley Court, Park Place Cardiff CF10 3DP for the Applicant.

There was no appearance by the Respondent and he was not represented.

JUDGMENT

Allegation

1. The allegation against the Respondent was that, having been employed or remunerated by solicitors, but not being a solicitor, he had, in the opinion of the Solicitors' Regulation Authority ("SRA") occasioned or been party to, with or without the connivance of the solicitors by whom he was or had been employed or remunerated, acts or defaults in relation to the solicitors' 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 employed or remunerated by solicitors in connection with their practices.

Documents

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

   - Application and Rule 8 Statement dated 2 December 2010 and Schedule of Documents;
   - Statements/Affidavit of Process Server, Kevin Brook, dated 16 April 2011, 4 July 2011 and 28 July 2011 with exhibits;
   - Copy letter Robin Havard to the Respondent dated 6 July 2011;
   - Schedule of Costs.

   The Respondent did not submit any documents.

Preliminary Matter

3. The case had come before the Tribunal on 3 March 2011 and 5 July 2011, when the Respondent did not appear and was not represented. On 3 March 2011 Mr Havard informed the Tribunal of the Applicant's difficulty in tracing the Respondent in order to serve the proceedings. The Tribunal on that occasion made an order for substituted service and listed the matter for substantive hearing on 5 July 2011. The Respondent failed to appear at the substantive hearing. Mr Havard informed the Tribunal that on 16 April 2011 Kevin Brook, a process server, had personally served the Respondent with the application, Rule 8 Statement and supporting documents and a letter from his firm providing the date of the substantive hearing. Unfortunately, the hearing date was incorrectly stated in that letter as 6 rather than 5 July 2011. On 4 July the error had been noticed and the Respondent was personally served by Mr Brook with a letter confirming the correct hearing date. The Respondent told Mr Brook that he did not intend to attend the hearing on 5 July and that he was not going to dispute the case. However the Tribunal did not feel comfortable proceeding with the substantive hearing in those circumstances and, "out of an abundance of caution", adjourned the hearing to 4 August 2011.

4. Mr Havard confirmed that he wrote to the Respondent on 6 July 2011 informing him that the matter had been re-listed for substantive hearing on 4 August 2011. He enclosed a Civil Evidence Act Notice in respect of the documents attached to the Rule 8 Statement and a Schedule of Costs, and encouraged the Respondent to contact him by telephone to discuss. Mr Havard produced an Affidavit sworn by Mr Brook on 28

July 2011 confirming that the latter had personally served the 6 July 2011 letter and supporting documents on the Respondent at 26 Hunters Court, Halton, Leeds LS15 0LB. Mr Brook also confirmed that he positively identified the Respondent by asking his full name, having met with him on the previous occasions when papers were personally served. Mr Havard further informed the Tribunal that he had spoken to the Respondent on the telephone on 20 July 2011 when the Respondent confirmed that he had received the documentation from Mr Brook and was calling Mr Havard in relation to the hearing notice. He told Mr Havard that he did not consider there to be "any benefit in him defending the application". He also said that the "s.43 Order was not an issue for him".

5. Mr Havard submitted that, in spite of the Respondent's non-attendance, the Tribunal could be satisfied that the notice of the hearing had been served upon him and he therefore invited the Tribunal to proceed in his absence.

6. The Tribunal decided that it was satisfied that notice of the substantive hearing on 4 August 2011 had been properly served on the Respondent in accordance with the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"), and it would therefore proceed to hear and determine the application notwithstanding that the Respondent had failed to attend in person and was not represented (SDPR Rule 16(2)). For the avoidance of doubt the Tribunal made it clear that, when another division of the Tribunal adjourned the hearing on 5 July 2011 to 4 August 2011, it specifically had in mind SDPR Rule 12(1) when it ordered that the hearing should take place sooner than the expiry of the period of 42 days beginning with the date of service appointing the date of the hearing in accordance with that Rule.

Factual Background

7. The Respondent's date of birth was not known. His last business address was c/o Fox Hayes LLP, 118 North Street, Leeds, West Yorkshire LS2 7AN ("the Firm"), where at all relevant times he was employed as an unadmitted clerk with the job title Associate Director, specialising in conveyancing. In September 2008 his employment was terminated by the Firm. The allegation supported by particulars of acts and defaults set out in detail in the Rule 8 Statement arose from an inspection of the Firm by the SRA's Senior Investigation Officer ("SIO"). During the investigation issues relating to the conduct of the Respondent came to light. The Tribunal had before it a redacted Forensic Investigation Report ("FIR") dated 24 March 2009 and supporting Appendices in which the issues relevant to the Respondent were set out in detail.

8. The allegation centred on the Respondent's conduct when acting on behalf of purchasers buying properties from companies associated with an organisation known generically as MP. In the majority of cases the purchases were achieved using mortgage advances and the Firm also acted on behalf of the lender. Further the Respondent acted on behalf of AW and the lender in the purchase of four properties, where concerns were also identified.

<u>MP Transactions</u>

9. In mid-2005 the Firm was approached by MP, it was said via a pre-existing connection with the Respondent, to act for a number of purchasers on conveyancing

transactions where properties owned by MP were to be purchased primarily as investments from companies associated with MP. The Firm took on the work, which was undertaken in its specialist residential conveyancing department known as the "Property Transfer Company" ("PTC"). The level of work undertaken by the Firm on these transactions was extensive. The Respondent conducted the purchases under the supervision of Mr SC, a member and partner of the Firm and the partner in charge of the residential conveyancing department. Mr SC wrote to the SRA on 12 July 2009 stating that he had overall supervision of the Respondent.

10. Shortly before 26 September 2005 ("awareness day"), the Respondent became aware that the balance between the mortgage advance provided by the Firm's lender clients and the purchase price was being delivered to the Firm by MP's employees in the form of bankers' drafts which gave no clue as to the source of the funds. Internal discussions in which the Respondent and the Firm's partners, including partner Mr SC, participated took place. As a result of those discussions, MP was informed that the Firm could not act in such circumstances unless evidence was provided by their purchaser clients that they were providing the balance of the purchase monies. Following this decision some files were passed to other solicitors.

11. The SIO reviewed a number of transactions which took place prior to and after a day which became known as the "awareness day" which suggested that information which would have been important to the Firm's lender clients in reaching their decision whether or not to offer a mortgage had not been notified to them and bore the hallmarks of mortgage fraud which should and could easily have been identified by the Respondent at an earlier stage. Some of the transactions commenced as early as February 2005.

Ms B – Jackson House

12. Ms B's transaction typified the transactions exemplified in the FIR and particularised in the Rule 8 Statement. At the beginning of the transaction the Respondent was provided with a standard form document signed by Ms B and dated 12 January 2005 headed "Instruction Questionnaire". It stated that the gross purchase price was £90,610. From the gross purchase price was to be deducted a discount of £13,591, leaving a net purchase price of £77,019.

13. The Firm was also instructed by lender BM to act on its behalf on a mortgage advance to Ms B of £76,969 in accordance with the terms set out in the Council of Mortgage Lenders' Handbook ("CMLH"). The CMLH required the Respondent to ask Ms B how the balance of the purchase price was being provided and to report to BM with Ms B's agreement if he became aware that she was not providing the balance from her own funds. The CMLH also required the Respondent to inform BM if the purchase price was different from that set out in its instructions.

14. The client ledger revealed that the mortgage advance of £76,969 was paid into client account on 3 March 2005. On 4 March 2005 the sum of £13,591.50 paid by bankers' draft was credited to client account giving the appearance that the full purchase price had been paid, but the source of the bank draft was not clear. On the same day, the completion monies of £89,541.08 were paid out of client account to MP's solicitors.

15. The SIO contacted Ms B on 20 August 2007. She confirmed in writing on 21 August 2007 that the property was sold with a market value of £90,610, of which she was expected to pay only £77,019. She also confirmed that the balance of £13,591 was paid by MP as a gifted deposit. This information had not been passed on by the Respondent to lender client BM.

Mr L - Purchase of Greenway Court

16. This transaction followed the same lines as Ms B's purchase. The Instruction Questionnaire was dated 27 June 2005. The gross purchase price was stated as £114,995 and the net purchase price as £97,746. The discount had been incorrectly completed with the same figure as the net purchase price, but amounted to £17,249. The mortgage advance from the Firm's lender client, MTL, was £97,745 i.e. only £1 less than the net purchase price. The mortgage instructions required the Respondent, who was conducting the transaction, to notify MTL of any matters arising which might affect the proposed security as early as possible. The discount of £17,249.25 was paid into the Firm's client account on 13 and 16 September 2005 in two instalments. The ledger entries did not indicate the source of the funds. The SIO was told by the Firm's members that one instalment of £11,499.50 was believed to have been received from MP on 16 September 2005 as part of a larger payment. The Respondent also suggested that he had "overlooked" the content of the Instruction Questionnaire as the transaction progressed. Mr L provided a statement to the SRA dated 16 January 2009. He said that on 2 September 2005 he had received a bill of costs and completion statement from the Firm dated 31 August 2005 which recorded a balance due from him to complete of £19,005.39. He contacted the Respondent and informed him that MP would be paying the deposit on his behalf. His sole contribution towards the purchase price was the reservation fee of £2,000 and his solicitors' costs. This information had not been passed on by the Respondent to lender client MTL.

Ms A - Greenway Court

17. Again this transaction followed the same pattern. The Instruction Questionnaire was dated 9 August 2005 and recorded a discount of £17,549 and a net purchase price of £99,446. The Firm's lender client, PHLL, stipulated that the maximum amount that could be borrowed against the security of the property was 85% of its property value. The mortgage advance was £99,650, which was more than the discounted purchase price and over 100% of the property value. The instructions required the Respondent to notify his lender client in compliance with the CMLH if anyone other than the Ms A was to provide the balance of the purchase monies. The client ledger revealed that the balance of the purchase monies i.e. the discount, was received in client account on 9 and 16 September 2005 but with no indication of the source of the funds. On completion the gross purchase price of £116,995 was paid to MP. Ms A confirmed to the SIO that she had received a 15% discount off the gross purchase price. This information had not been passed on to the Firm's lender client by the Respondent.

Mr and Mrs O - Greenway Court

18. The discount in this case was £17,549. The Firm acted for the lender in accordance with the CMLH. The property was valued for the purposes of the mortgage offer at

£116,995. Once the discount was taken into account the net purchase price was £99,446. The mortgage advance was £99,375, almost equivalent to the net purchase price. The balance of the purchase price i.e. the discount was received by way of two bankers' drafts from separate banks on 16 September 2005 but the source of the funds was unknown. Mr and Mrs O later confirmed to the SIO that they had received a discount of 15% off the gross purchase price. The Respondent did not inform the Firm's lender client of the discount.

Mr and Mrs M - Greenway Court

19. This transaction completed on 28 September 2005 i.e. two days after "awareness day". The Instruction Questionnaire dated 6 September 2005 confirmed that the discount on the purchase price was £17,399 (15%). The lender, ME, instructed the Firm to act on its behalf in accordance with the CMLH. ME's mortgage offer stated the purchase price to be £115,995 and made reference to "loan to value: you will be borrowing 85% of the purchase price of the property". ME's instructions to the Firm stipulated that ME should be told if the balance of the purchase funds was being provided by anyone other than Mr and Mrs M and that any price variations or cash-back should also be notified. The mortgage advance was £98,595, which was £1 less than the net purchase price after discount of £98,596. On 28 September 2005 £19,580.72 was credited to the Firm's client account by means of telegraphic transfer with the narrative "Morgan" in the client ledger. This information was not passed on by the Respondent to the Firm's lender client.

AW Transactions at Sackville Street

20. The Respondent acted for AW on the purchase from R of four properties at Sackville Street, which completed between 16 and 22 May 2008 approximately 20 months after the Firm had ceased work on the MP transactions. The Respondent had previously acted on R's behalf when he originally purchased the properties in 2005. The purchases were part-funded by mortgage advances from BM for whom the Respondent also acted subject to the CMLH requirements. Paragraph 6.3 of the CMLH specified that BM must be told if the purchase price was ultimately different to that contained in its instructions.

21. The mortgage offers in relation to two of the properties referred to the purchase price as £225,000 and the offers in relation to the other two properties stated the purchase price to be £245,000. The Respondent told the SIO that he had not noticed that two of the mortgage offers recorded the price as £245,000 and that they should have read £225,000, namely the same as the other two properties. He said that the Certificate of Title would have informed the lender that the price was £225,000. When the SIO examined the Certificates of Title they had been printed by lender client BM with the narrative "Price stated in transfer; £245,000". The Respondent told the SIO that he had not noticed this.

22. On 15 May 2008 the vendor's solicitors G wrote to the Respondent stating that they were no longer acting and would have no further involvement in the proposed transactions. The Respondent said that he spoke to the fee earner at G the same day and asked for the reasons for their withdrawal but these were not forthcoming. The vendor R had reduced the sale prices to £225,000 but the Respondent had not notified

the lender of that reduction in relation to two of the properties. With consent of the Respondent's supervising partner SC, the SIO obtained a copy of correspondence from G. The documents revealed that the Respondent spoke to G's fee earner on 9 May 2008 to say that the contract showed a price of £190,000 but that the Respondent had a mortgage offer for his clients of £225,000 per property. An email from the fee earner to the Respondent dated 12 May 2008 referred to an amendment to the purchase price to £225,000 per property rather than a change on two of the properties down from £245,000 to £225,000. When asked about this by SC, the Respondent said that he believed that another party had been going to purchase the properties from R at £190,000 per property and that R's then solicitors has erroneously sent contracts at that price to the Firm. The Respondent said that he had realised the prices were incorrect and had therefore disregarded those versions of the contracts. The Respondent further said that, following receipt of four mortgage offers, he received instructions from the client that the sale price of each of the four properties had been revised from £245,000 to £225,000.

23. On 14 April 2010 the Respondent's conduct was referred to the Tribunal for consideration of the making of an Order under Section 43(2) of the Solicitors' Act 1974 (as amended). The Rule 8 Statement was received by the Tribunal on 3 December 2010.

Witnesses

24. None.

Findings of Fact and Law

25. **The allegation against the Respondent was that, having been employed or remunerated by solicitors, but not being a solicitor, he had, in the opinion of the Solicitor's Regulation Authority ("SRA") occasioned or been party to, with or without the connivance of the solicitors by whom he was or had been employed or remunerated, acts or defaults in relation to the solicitors' 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 employed or remunerated by solicitors in connection with their practices.**

25.1 The Tribunal read all of the papers in advance of the hearing. It noted that the Respondent had not engaged with the proceedings in any way and had not attended before the Tribunal at the substantive hearing in order to provide any explanation or mitigation for his conduct. The Tribunal was satisfied that the Respondent had been served with notice of the hearing and had decided to proceed in his absence. Further, in his conversation with Mr Havard on 20 July 2011 the Respondent had indicated that he did not intend to defend the application and that the Section 43 Order was not an issue for him. However, the Tribunal had proceeded on the basis that the Applicant should in any event be required to prove its case to the standard required. After hearing Mr Havard's submissions and reading the papers, the Tribunal had decided that the Applicant had made out its case and that an Order under Section 43(2) of the Solicitors' Act 1974 (as amended) should be made.

25.2 The Tribunal made clear that a Section 43 Order was not intended to be punitive in nature; it was a regulatory rather than a disciplinary order. A Section 43 Order did not preclude the Respondent from working for a solicitor, but in order to do so he must first obtain permission in advance from the SRA.

Costs

26. The Applicant claimed costs totalling £11,983.14. Mr Havard had very properly provided the Respondent with a Schedule of Costs with his letter dated 6 July 2011. He had not included any costs relating to the abortive hearing on 5 July 2011. The Respondent had been informed that he was being asked to pay only 10% of the total SRA investigation costs on the basis that this was a realistic apportionment of those costs relating to the issues which concerned him. Mr Havard had informed the Respondent that if he wished to indicate that he was unable financially to pay all or part of the costs he would need to provide an affidavit of means to the SRA and the Tribunal to include all income and assets and documents in support. Mr Havard had told the Respondent that he would invite the Tribunal to conclude that he was in a position to pay any award of costs in the absence of such an affidavit. During the telephone conversation with Mr Havard on 20 July 2011 the Respondent indicated that he did not have any funds. Mr Havard told him again that he should prepare and submit an affidavit of means. The Respondent asked for further information about swearing an affidavit and where it should be sent once sworn. Mr Havard told him to send it to the Tribunal and, if possible, to Mr Havard.

27. The Tribunal confirmed with its Clerk that no affidavit had been received from the Respondent. The Tribunal therefore concluded that the Respondent had had ample opportunity in which to provide details of his means, but had chosen not to do so. The Tribunal had in any event analysed the schedule carefully. It accepted that the apportionment of costs had been done on a rough and ready basis but, having considered the FIR exhibited to the Rule 8 Statement, it had concluded that the assessment of 10% of the SRA investigation costs was realistic. Further the costs claimed by the SRA and their solicitors were reasonable and properly claimed. The Tribunal therefore summarily assessed costs at £11,983.14 and ordered the Respondent to pay the same fixed in that amount.

Statement of Full Order

28. The Tribunal Ordered that as from 4th day of August 2011 except in accordance with Law Society permission:

(i) no solicitor shall employ or remunerate in connection with his practice as a solicitor Richard Ashford of 26 Hunters Court, Halton, Leeds LS15 0LB;

(ii) no employee of a solicitor shall employ or remunerate in connection with the solicitor's practice the said Richard Ashford;

(iii) no recognised body shall employ or remunerate the said Richard Ashford;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Richard Ashford in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Richard Ashford to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Richard Ashford to have an interest in the body;

and the Tribunal further Ordered that the said Richard Ashford do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,983.14.

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

J.P. Davies
Chairman