SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10706-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MARTYN SLOCOMBE Respondent

Before:

Miss J Devonish (in the chair)
Mr L N Gilford
Mr P Wyatt

Date of Hearing: 8th September 2011

Appearances

Jayne Willetts, Solicitor Advocate of Jayne Willetts & Co, Cornwall House, 31 Lionel Street, Birmingham B3 1AP for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 Accounting records were not properly written up in breach of Rule 32(1) of the Solicitors Accounts Rules 1998 ("SAR").

1.2 Monies were withdrawn from client account in excess of the amount held for the clients on whose behalf the withdrawals were made in breach of Rule 22(5) of the SAR.

1.3 He improperly transferred monies from client account to office account otherwise than in accordance with Rule 22(1) of the SAR and improperly used client monies for his own purposes contrary to Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC").

Dishonesty was alleged in relation to this allegation but the SRA's position was that it was not necessary to prove dishonesty for the allegation to be made out.

1.4 Client monies were incorrectly paid into office account in breach of Rule 15 (1) of the SAR.

1.5 He failed to rectify the breaches of the SAR promptly on discovery in breach of Rule 7 of the SAR.

1.6 He was convicted at Worcester Magistrates Court on 12 May 2010 of nine offences contrary to the Value Added Tax Act 1994 in breach of Rule 1.02 and 1.06 of the SCC.

Documents

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

Applicant:

- Application made on 9 February 2011;
- Rule 5 Statement with exhibit "JBW1" made on 9 February 2011;
- Civil Evidence Act Notice dated 24 February 2011;
- Schedule of Costs.

Respondent:

- Email to Applicant 6 September 2011;
- Letter to Tribunal 6 September 2011.

Preliminary Matters

3. The Tribunal noted that the Respondent was not present or represented. However, the Tribunal had received a letter from the Respondent dated 6 September 2011 from

which it was clear that he was aware of the hearing and would not be attending. The letter went on to indicate the Respondent's position with regard to the allegations.

4. The Tribunal was also shown an email from the Respondent to the Applicant sent on 6 September in which he stated that he would not be attending the hearing.

5. In both documents the Respondent referred to a medical condition which would make his attendance difficult. However, he made no application for an adjournment.

6. In the light of these documents the Tribunal considered if it was appropriate to proceed with the hearing in the Respondent's absence.

7. It was clear on the face of the correspondence from the Respondent that he was aware of the hearing date and had had proper notice of it. His letter contained admissions in relation to the allegations and did not suggest that the Respondent wanted the hearing to be adjourned. The Tribunal was satisfied that in these circumstances it was appropriate and proper to proceed to hear the case in the Respondent's absence.

8. The Tribunal noted that the Respondent had made admissions but determined that it would be appropriate to proceed on the basis that the SRA would have to prove its case to the highest standard. It was not clear to the Tribunal whether the Respondent admitted the allegation of dishonesty or simply the underlying facts and circumstances.

Factual Background

9. The Respondent was born in 1949 and was admitted as a solicitor in 1973. The Respondent practised on his own account as Martyn Slocombe & Company at Abbotsmead, 3 Avenue Road, Malvern, Worcestershire WR14 3AG until an intervention by the SRA on 1 October 2010.

10. An inspection was carried out at the Respondent's practice from 20 January 2010. As a result a Forensic Investigation Report ("FIR") dated 26 May 2010 was prepared. The extraction date used in the FIR for the accounts was 31 December 2009. The Respondent held one client account and one office account, and was sole signatory on both accounts.

11. The FIR detailed several ways in which the books of account were not in compliance with the SAR. In particular:-

- There were client account debit balances on client matter ledger accounts;
- There were office account credit balances on client matter ledger balances;
- Client money had been paid into office bank account;
- Breaches of the SAR had not been rectified on discovery.

12. The Respondent was convicted at Worcester Magistrates Court on 12 May 2010 of nine offences of supplying services without giving security contrary to the Value Added Tax Act 1994. He had previously been served with a Notice dated 30 June 2009 by HMRC requiring him to pay security of £49,547 to HMRC before supplying

any further services chargeable to VAT. The Respondent failed to make payment and therefore failed to comply with that Notice. 76 other offences were taken into consideration. The Respondent was fined £2,500 and ordered to pay compensation of £7,870.88 and costs of £200 plus a victim surcharge of £15.00, being a total of £10,585.88.

13. A copy of the FIR was forwarded to the Respondent by letter dated 1 July 2010. The Respondent was asked to provide his comments and explanations for the issues raised in the report. The Respondent replied by letter dated 13 July 2010 setting out his initial comments and requesting an extension of time. The SRA caseworker by letter dated 15 July 2010 requested further information and allowed an extension until 30 July 2010. The Respondent provided a further response by letter dated 31 July 2010. On 29 September 2010 the conduct of the Respondent was referred to the Tribunal.

Witnesses

14. None.

Findings of Fact and Law

15. **Allegation 1.1. Accounting records were not properly written up in breach of Rule 32(1) of the Solicitors Accounts Rules 1998 ("SAR").**

15.1 This allegation was admitted by the Respondent.

15.2 The Tribunal noted and accepted the evidence contained in the FIR on this issue. The report identified 23 client account debit balances ranging from £0.01 to £32,776.58 and totalling £93,578.77. Further, there were 74 office account credit balances ranging from £0.01 to £18,200 and totalling £67,170.47.

15.3 The Tribunal accepted that as a result of these discrepancies it was not possible to compute the firm's total liabilities to clients. There were numerous discrepancies, some of significant amounts, on both client and office account. Accordingly, the Tribunal was satisfied so that it was sure that the allegation that the books of account had not been properly written up, contrary to Rule 32(1) of the SAR, had been proved.

16. **Allegation 1.2. Monies were withdrawn from client account in excess of the amount held for the clients on whose behalf the withdrawals were made in breach of Rule 22(5) of the SAR.**

16.1 This allegation was admitted by the Respondent.

16.2 The Tribunal accepted the finding in the FIR that it was not possible to compute the firm's total liabilities to clients because of the fact the books of account were not properly written up. However, it was satisfied that in respect of six client matters which were identified there was a minimum cash shortage on client account of £88,463.18.

16.3 The Tribunal noted that the client matters referred to in the report related to conveyancing, probate and other matters where payments had been made from client

account when there were insufficient funds available on the account to make those payments.

16.4 Accordingly, the Tribunal was satisfied so that it was sure that this allegation had been proved.

17. **Allegation 1.3. He improperly transferred monies from client account to office account otherwise than in accordance with Rule 22(1) of the SAR and improperly used client monies for his own purposes contrary to Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC").**

Dishonesty was alleged in relation to this allegation but the SRA's position was that it was not necessary to prove dishonesty for the allegation to be made out.

17.1 This allegation was admitted by the Respondent. The Respondent had not, however, specifically admitted the allegation of dishonesty. The Tribunal noted that his position throughout the investigation had been that his behaviour was not dishonest and therefore determined to consider the matter as if the allegation of dishonesty were denied.

17.2 The allegation related to the payment of £33,425.11 from the client account on the client ledger for the matter of HAT Ltd.

17.3 As of 17 January 2008 £645.83 was held in client account on this ledger. The Respondent made a payment of £33,425.11 from client account thus creating a debit balance of £32,776.58 on this ledger. The client bank account statement showed a payment to HMRC of £33,245.11 on 17 January 2008.

17.4 The Tribunal noted that the Respondent had admitted to the Forensic Investigation Officer ("FIO") that the payment of £33,425.11 was in respect of a personal tax payment for himself. The Respondent had said that the payment had been made in error from client account and should have been made from office account.

17.5 The Tribunal was satisfied, so that it was sure, that the allegation had been proved to the highest standard. Using client monies for his own purposes was clearly contrary to Rule 1.02 and Rule 1.06 of the SCC.

17.6 The Tribunal went on to consider whether the Respondent had acted dishonestly. The Tribunal accepted that as at the date of this transfer the Respondent's office account was overdrawn by over £77,000. The Respondent had admitted to the FIO in interview that he may not have been in any position, since the date of the transfer, to replace the monies.

17.7 The Tribunal noted the Respondent's explanation that making the payment from client account had been an error, and that it should have come from office account. However, the transaction had been recorded against a particular client ledger, not simply drawn from the general client account. Also, the office account was, at the relevant date, over-drawn above the level of overdraft authorised by the Respondent's bank.

17.8 In considering the allegation of dishonesty, the Tribunal applied the test set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12.

17.9 The Tribunal was satisfied to the highest standard that in using monies from client account, to which he had no entitlement, to pay a personal tax bill the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal noted that the Respondent was a very experienced solicitor and knew the fundamental rule that a solicitor cannot use client monies for their own purposes. The Respondent's office account was overdrawn such that he could not have paid his tax bill from office account, and the Respondent had not replaced the monies since the transfer. The Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he could use client money for his own purposes. Further, recording the transaction on a client ledger negated any argument that the transaction had happened without his knowledge. It was therefore clear to the Tribunal that the Respondent knew that what he was doing was dishonest by the standards of reasonable and honest people. The allegation, including the allegation of dishonesty, had been proved to the highest standard.

18. **Allegation 1.4. Client monies were incorrectly paid into office account in breach of Rule 15 (1) of the SAR.**

18.1 This allegation was admitted by the Respondent.

18.2 On 15 September 2006 the Respondent paid a cheque for £18,200 representing a deposit paid on exchange of contracts into office account instead of client account. This created a client account debit balance and an office credit balance.

18.3 The Tribunal noted that in a discussion with the FIO on 1 March 2010 the Respondent had confirmed that the monies had not been replaced as he could not afford to do so. The office account therefore had the benefit of client monies for a considerable period.

18.4 The Tribunal was satisfied so that it was sure that this allegation had been proved.

19. **Allegation 1.5. He failed to rectify the breaches of the SAR promptly on discovery in breach of Rule 7 of the SAR.**

19.1 This allegation was admitted by the Respondent.

19.2 The Tribunal noted the deficiencies in the accounts set out in the FIR. It also noted that in the reporting accountant's reports over several years shortages had been identified: in 2007 there was a shortage of £24,427.00; in 2008 £59,514 and in 2009 £79,591. It could not be suggested that the Respondent was unaware of the shortages and it was incumbent on him to put them right. The Respondent had failed to do so and by the date of the intervention into his practice, in October 2010, the shortage was found to be £94,593.02.

19.3 The SAR requires that any breaches of the SAR should be remedied promptly on discovery. Here, the Respondent had been aware for several years of deficiencies in his accounts and, in particular, client account shortages, but had failed to rectify these

promptly or at all. Accordingly, the Tribunal was satisfied so that it was sure that this allegation had been proved.

20. **Allegation 1.6. He was convicted at Worcester Magistrates Court on 12 May 2010 of nine offences contrary to the Value Added Tax Act 1994 in breach of Rule 1.02 and 1.06 of the SCC.**

20.1 This allegation was admitted by the Respondent.

20.2 The Tribunal noted the Certificate of Conviction which related to nine offences under the VAT Act 1994. The Respondent had failed to pay a deposit required by HMRC before continuing to issue invoices for services chargeable to VAT. He had been prosecuted and fined, with the total financial penalty being a little over £10,500. The seriousness of the offence was increased as the conviction was linked to the Respondent's professional practice. He had continued to carry out work and submit invoices when he had failed to comply with a requirement of the taxation authorities. Dishonesty was not alleged in relation to this allegation, but the Tribunal found that the circumstances were such that the Respondent had failed to act with integrity and his conduct was such as would diminish the trust the public places in the Respondent or the profession. Accordingly, the Tribunal found this allegation to have been proved.

Previous Disciplinary Matters

21. None.

Mitigation

22. The Tribunal noted that in his letter of 6 September 2007 the Respondent had expressed his regret and shame at facing the Tribunal and, in his words, "the inevitability of being struck off". The Respondent expressed remorse that he had let people down and expressed concern for those who had been affected by his actions and failures. He offered his sincere apologies.

23. The Tribunal noted that the Respondent had explained that the various breaches occurred during a difficult financial period. The Respondent had wanted to keep his staff employed and continued in practice with the aim that the practice would survive. The Respondent's bank had withdrawn certain facilities which had added to the pressures of running a sole practitioner business.

Sanction

24. The Tribunal took into account the Respondent's apology to the profession and others and his expressions of remorse. It also noted that he had had no previous disciplinary matters before the Tribunal.

25. However, the Tribunal had found that his conduct in paying a personal tax bill from client account was dishonest. Save in the most exceptional circumstances, none of which were present in this instance, a finding of dishonesty would lead to a solicitor being struck off the Roll.

26. The Tribunal further noted the other serious allegations which had been made and proved, in particular in relation to the significant shortages on client account and the conviction for offences under the VAT Act 1994.

27. In all of the circumstances, the proportionate and appropriate sanction was that the Respondent should be struck off the Roll.

Costs

28. The Applicant asked for an order for costs in the sum of £16,682.55. This figure included forensic investigation costs of £11,319.92. The costs schedule had originally been calculated at a higher figure on the assumption that the hearing would take five hours, but in fact the hearing was rather shorter and Ms Willetts made appropriate deductions from the original schedule to arrive at the figure of £16,682.55.

29. It was noted that the Respondent referred to being bankrupt. On behalf of the Applicant the Tribunal was urged not to make a "football pools order". Where such orders are made, unless the SRA finds that a Respondent has come into means, it could not return to the Tribunal to enforce the order for costs and there was no opportunity simply to request an update as to financial circumstances from the Respondent. Were the Tribunal to make no order for costs the entire cost of the investigation and proceedings would fall on the solicitors' profession.

30. The Tribunal was told that where a costs order is made the SRA can obtain financial information and assess whether, and to what degree, the costs order should be enforced.

31. The Tribunal was informed that any order for costs it made at this hearing would not fall into the bankruptcy. The SRA has appointed a trustee in bankruptcy in relation to recovery of the intervention costs which stand at over £42,900. It was noted that there is also an outstanding claim on the Compensation Fund of over £425,000.

32. The Tribunal noted the Respondent's bankruptcy and that the Respondent is likely to come out of bankruptcy in about a year.

33. The Tribunal noted that under the principles set out in the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin) the Tribunal should consider a Respondent's financial circumstances when determining a costs order. However, the case of Davis & McGlinchy [2011] EWHC 232 (Admin) , made it clear that it is for a solicitor who alleges he is impecunious to provide evidence of this.

34. In striking off the Respondent the Tribunal had determined that the Respondent should not work as a solicitor. However, there was no information to suggest he would not be able to obtain other work. Also, the position as to his assets was not clear, nor the level of debt (save for the intervention costs). The Respondent's prospects of coming into an inheritance were also unknown.

35. It was not sufficient for the Respondent simply to assert that he was bankrupt and the Tribunal determined that it was appropriate to make an order that he should pay the costs of the proceedings.

36. The Tribunal considered the schedule of costs submitted and determined that the costs claimed were reasonable in amount. The Respondent would therefore be ordered to pay costs of £16,682.55.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, MARTYN SLOCOMBE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,682.55 all inclusive.

Dated this 27th day of October 2011
On behalf of the Tribunal

J Devonish
Chairman