

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10790-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

SUSAN ELIZABETH HUDSON

Respondent

Before:

Mr K. W. Duncan (in the chair)

Mr J. P. Davies

Mr J. Jackson

Date of Hearing: 16th February 2012

Appearances

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

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that she:
 - 1.1 Conducted conveyancing transactions which bore the hallmarks of mortgage fraud and she failed to report material facts to lender clients.

Documents

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

Applicant:

- Application dated 27 July 2011
- Rule 8 Statement and exhibit bundle "DEB1" dated 27 July 2011
- Witness Statement of Process Server dated 29 November 2011
- Bill of Costs email to the Respondent dated 14 February 2012

Respondent:

- Email response to the Bill of Costs and schedule of income and expenditure dated 14 February 2012

Factual Background

3. The Respondent had been employed by HP Solicitors ("HP") to undertake domestic conveyancing between 3 September 2001 and 31 May 2006.
4. In 2007 HP reported a total of 317 conveyancing transactions conducted by the Respondent to their professional indemnity insurers. On 6 May 2008 a report had been submitted to the Applicant and on 25 November 2008 a Forensic Investigation Officer ("FIO") had commenced an investigation at the firm's Northampton office which had resulted in a Forensic Investigation ("FI") Report dated 12 January 2010.
5. The Applicant had written to the Respondent by letter dated 25 March 2010 and had requested an explanation for her conduct of the transactions specified in the report. The Respondent had replied by letter dated 20 April 2010. On 25 November 2010 an Adjudicator had decided to refer the Respondent to the Tribunal.

Plot 56 Juniper Court

6. The Respondent had acted for both herself and her mortgagee in connection with the purchase of Plot 56 Juniper Court which had completed on 15 September 2004.
7. According to documents reviewed by the FIO, the property was originally to have been purchased by Mr DM and he had exchanged contracts to do so on 15 April 2004. He had not completed the purchase. The ledger in his name recorded the receipt into client account of £12,000 on 4 April 2004 as a deposit which had been paid to S

Solicitors on the same day. That money had been credited by an inter ledger transfer from a Mr F.

8. The completion statement had recorded £12,500 as “deposit and reservation fee paid by previous purchaser”. The ledger in the Respondent’s name recorded the receipt into client account of the mortgage advance from Bank of Scotland of £254,932 on 15 September 2004 and of payment to S Solicitors of £237,558.75. On the same day £14,507.67 had been paid to Mr F and Miss JB, both of whom were related to Ms DF. Miss JB was Ms DF’s daughter. Both Miss JB and Ms DF had also featured in subsequent transactions.
9. The Respondent had paid nothing herself towards the purchase of the property and had not informed her lender that she had not provided the deposit or that she had acted for herself as buyer and lender.

Flat 1 The Church

10. The Respondent had acted for Miss JB and her mortgagee in connection with the purchase of Flat 1 The Church which had completed on 5 January 2006. The documents revealed that the Respondent had acted for seller Mr RD as well as the buyer and her lender. Two purchase files had been opened, one in the name of Miss JB and the other in the name of Ms DF. Miss JB had received a mortgage offer from GMAC RFC for £265,500 dated 21 December 2005 and the Respondent had been instructed to act for the lender.
11. The documents had revealed that 2 purchases had been conducted simultaneously. The first had been a purchase by DF Limited from Mr RD and the second had been a purchase by Miss JB from Ms DF. Ms DF had proceeded to purchase the property from Mr RD for £242,000. Exchange and completion had taken place simultaneously on 5 January 2006. On the same day, DF Limited had sold the property to Miss JB for £295,000.
12. GMAC’s mortgage advance of £265,680 had been received into client account on 4 January 2006 and credited to Miss JB’s ledger. By inter ledger transfer it had been credited to the ledger in the name of Ms DF on the same day. This had been the purchase price paid by Miss JB, not the sum of £295,000 as had been specified in the contract.
13. The FIO had seen a letter dated 23 December 2005 (incorrectly dated 2006) which had purported to tell GMAC that Miss JB was due to receive an allowance of £45,000 “in respect of the deposit” and this sum had been included in the completion statement. The completion statement had also purported to charge for fixtures and fittings of £15,680 and the contract itself had a price for chattels as being “Nil”. The letter did not fit the facts as demonstrated by the ledgers.
14. The arithmetical analysis in the FI Report showed how Miss JB had paid her mother Ms DF £262,869 to complete the purchase of the property and how Ms DF had paid £242,000 to Mr RD. The ledger had been debited with £20,613.75 with the narrative “balance due to client”.

60 Balmoral Road

15. The Respondent had acted on the sale and purchase of 60 Balmoral Road by Mr K to DF Limited for £140,000 and then on the contemporaneous sale by DF Limited to Mr S on 10 January 2006.
16. The Respondent had acted for Mr S's lender GMAC RFC and on 4 January 2006 £152,970 had been credited to his ledger following its receipt into client account. Two inter ledger transfers on 10 January and 19 January 2006 had moved £139,779.50 from Mr S to Mr K. On 10 January £10,562 had been moved by inter ledger transfer to Ms DF accompanied by the narrative "bal of sale money". Mr S therefore had only paid £150,341.50 for the property.
17. Through the conduct of the Flat 1 The Church and 60 Balmoral Road transactions in January 2006, Ms DF had received in excess of £30,000 from money advanced by GMAC RFC.

Witnesses

18. None

Findings as to Fact and Law

19. **Allegation 1.1. Conducted conveyancing transactions which bore the hallmarks of mortgage fraud and she failed to report material facts to lender clients.**

Submissions on behalf of the Applicant

- 19.1 Mr Barton said that he relied upon the Rule 8 Statement and exhibits including the FI Report dated 12 January 2012. He referred the Tribunal to the relevant transactions set out in the Rule 8 Statement and FI Report.

Plot 56 Juniper Court

- 19.2 The Respondent had acted for herself and her mortgagee in connection with the purchase of that property which had completed on 15 September 2004. The FIO had reviewed documents which indicated that the property was originally to have been purchased by a Mr DM and that he had exchanged contracts to do so on 15 April 2004. He had not completed the purchase. The ledger in his name had recorded receipt into client account of £12,000 on 4 April 2004 as a deposit which had been paid to S Solicitors on the same day. That money had been credited by an inter ledger transfer from a Mr F.
- 19.3 The completion statement had recorded the adoption of £12,500 as "deposit and reservation fee paid by previous purchaser". The ledger in the Respondent's name had recorded receipt into client account of the mortgage advance from Bank of Scotland of £254,932 on 15 September 2004 and of payment to S Solicitors of £237,558.75. On the same day £14,507.67 had been paid to Mr F and Miss JB, both of whom were related to Ms DF; Ms JB was Ms DF's daughter.
- 19.4 The Respondent had paid nothing towards the purchase of the property and had not

informed her lender that she was not providing the deposit or that she was acting for both herself as the buyer and the lender.

Flat 1 The Church

- 19.5 The respondent had acted for Miss JB and her mortgagee in connection with the purchase of this property which had completed on 5 January 2006.
- 19.6 The documents revealed that the Respondent had acted for the seller Mr RD as well as the buyer and her lender. Two purchase files had been opened, one in the name of Miss JB and the other in the name of Ms DF. Miss JB had received a mortgage offer from GMAC RFC for £265,000 dated 21 December 2005 and the Respondent had been instructed to act for the lender.
- 19.7 The documents revealed that two purchases had been conducted simultaneously. The first had been a purchase by DF Limited from Mr RD and the second had been a purchase by Miss JB from Ms DF. Ms DF had then proceeded to purchase the property from Mr RD for £242,000. Exchange and completion had taken place on the same day on 5 January 2006. On the same day, DF Limited had sold the property to Miss JB for £295,000.
- 19.8 GMAC's mortgage advance of £265,680 had been received into client account on 4 January 2006 and had been credited to Miss JB's ledger. By an inter ledger transfer it had been credited to the ledger in the name of Ms DF on the same day. This had been the purchase price paid by Miss JB, not the sum of £295,000 specified in the contract.
- 19.9 The FIO had seen a letter dated 23 December 2005 (incorrectly dated 2006) which had purported to tell GMAC that Miss JB was to receive an allowance of £45,000 "in respect of the deposit" and this sum had been included in the completion statement. The completion statement had also purported to charge for fixtures and fittings at £15,680 and the contract had a price for chattels as being "Nil". The letter did not fit the facts as demonstrated by the ledgers.
- 19.10 The Respondent had conducted a back to back transaction or sub sale with a price increase which had produced a surplus which had not been reported to the lender. The ledger for Ms DF for the sale/purchase for this property had been debited with £20,613.75 with the narrative "balance due to client". The Respondent had conducted these transactions together.

60 Balmoral Road (Sale and Purchase)

- 19.11 The Respondent had acted on the sale and purchase of this property by Mr K to DF Limited for £140,000 and then on the contemporaneous sale by DF Limited to Mr S on 10 January 2006; it was a sub sale or back to back transaction.
- 19.12 The Respondent acted for Mr S' lender GMAC RFC and on 4 January 2006 £152,970 had been credited to his ledger following its receipt into client account. Two inter ledger transfers on 10 and 19 January 2006 had moved £139,779.50 from Mr S to Mr K. On 10 January 2006, £10,562 had been moved by inter ledger transfer to Ms DF, accompanied by the narrative "bal of sale money". Mr S had only paid £150,341.50 for the property.

- 19.13 Through conduct of the Flat 1 The Church and 60 Balmoral Road transactions in January 2006, Ms DF had received over £30,000 from money advanced by GMAC RFC.
- 19.14 Mr Barton informed the Tribunal that he had assisted the Respondent with procedural matters and had confirmed to her that he would present the facts to the Tribunal and request that the Section 43 Order be made; he said that he had explained that a Section 43 Order was a regulatory provision, designed to afford safeguards and exercise control when in any given case that was considered appropriate. Mr Barton said that he had explained to the Respondent that it was not a punishment and should not be viewed as such.
- 19.15 In response to a question from the Tribunal Mr Barton acknowledged that the FI Report had referred to another employee but he said that he was not aware of proceedings before the Tribunal against anyone else in connection with these matters. He said that the Applicant had taken the view it had and had made its application in relation to the Respondent accordingly.

Submissions on behalf of the Respondent

- 19.16 None.

The Tribunal's Findings

- 19.17 The Tribunal applied its usual standard of proof, namely the higher standard, beyond reasonable doubt.
- 19.18 The Tribunal found the allegation proved on its facts and on its documents and was satisfied so that it was sure that in relation to all of the transactions, which bore the hallmarks of mortgage fraud, the Respondent had conducted the transactions and had failed to report material facts to lender clients.

Previous Disciplinary Matters

20. None.

Mitigation

21. None.

Sanction

22. The Tribunal had considered very carefully all of the evidence before it, including all of the documentation produced and relied upon by the Applicant. It noted that the Respondent had not attended before the Tribunal at the substantive hearing in order to provide any explanation or mitigation for her conduct.
23. The Tribunal had found the allegation proved.
24. In all the circumstances, the Tribunal decided that it was appropriate for a Section 43 Order to be made against the Respondent. The Tribunal made clear that the 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 she would first have to obtain permission in advance from the Applicant.

Costs

25. Mr Barton referred the Tribunal to his email correspondence with the Respondent dated 14 February 2012. He said that he had set out his Bill of Costs in full and the Respondent had replied with a schedule of income and expenditure which had also been sent to the Tribunal.
26. Mr Barton confirmed that the costs were the total costs of the investigation. He said that the FI Report had substantially focused on the transactions before the Tribunal. Mr Barton informed the Tribunal that his instructions had related solely to the Respondent. He accepted that his time at the hearing had been less than he had estimated as the Respondent had not attended.
27. The Tribunal was satisfied that the proceedings had been properly brought by the Applicant. The Tribunal summarily assessed the costs in the sum of £6500 but ordered the costs not to be enforced without permission of the Tribunal in view of the Respondent's lack of financial resources.

Statement of Full Order

28. The Tribunal Ordered that as from 16th day of February 2012 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Susan Elizabeth Hudson;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Susan Elizabeth Hudson;
 - (iii) no recognised body shall employ or remunerate the said Susan Elizabeth Hudson;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Susan Elizabeth Hudson in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Susan Elizabeth Hudson to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Susan Elizabeth Hudson to have an interest in the body;

And the Tribunal further Ordered that the said Susan Elizabeth Hudson do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,500.00 not to be enforced without leave of the Tribunal.

Dated this 19th day of March 2012

On behalf of the Tribunal

Mr K. W. Duncan
Chairman