SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10808-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NATHAN ANDREW IYER Respondent

Before:

Mr. D. J. Leverton (in the chair)
Mr. R. Hegarty
Lady Bonham Carter

Date of Hearing: 7th February 2012

Appearances

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

The Respondent appeared in person.

JUDGMENT

Allegations

1. The allegations against the Respondent, Nathan Andrew Iyer, were that:

1.1 He conducted himself in a manner which was likely to compromise or impair his duty to act with integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 and/or where such conduct relates to a period after 1st July 2007, Rule 1.02 of the Solicitors' Code of Conduct 2007.

1.2 He conducted himself in a manner which was likely to compromise or impair his duty to act in the best interest of clients contrary to Rule 1(c) of the Solicitors' Practice Rules 1990 and/or where such conduct relates to a period after 1st July 2007, Rule 1.04 of the Solicitors' Code of Conduct 2007.

1.3 He has conducted himself in a manner which was likely to compromise or impair the good repute of the solicitors' profession and in a way that was likely to diminish the trust the public placed in him contrary to Rule 1(d) of the Solicitors' Practice Rules 1990 and/or where such conduct relates to a period after 1st July 2007, Rule 1.06 of the Solicitors' Code of Conduct 2007.

1.4 He created invoices for services which he had not performed or for expenses and/or disbursements which had not been incurred, thereby fraudulently misappropriating money from Ince & Co and/or Ince & Co's clients.

1.5 He acted dishonestly.

The Respondent admitted all the allegations.

Documents

2. The Tribunal reviewed all the documents including:

Applicant:

- Rule 5 Statement dated 30 August 2011 with attachments; including Witness Statement of the Respondent dated 21 November 2010;
- Schedule of costs.

Respondent:

- Second Witness Statement of the Respondent dated 27 January 2012 with attachments;
- Statement of up to date financial position dated 6 February 2012.

Preliminary issue

3. The Respondent made an application under Rule 12 (4) of The Solicitors (Disciplinary Proceedings) Rules 2007 for the hearing of the application to be conducted in private. The Tribunal ordered that having regard to the nature of the application on the preliminary issue it should be heard in private and accordingly the details of the application are not recorded

within this judgment. Having carefully considered the application the Tribunal dismissed it, having found there to be no good reason sufficient to be considered as "exceptional" hardship or prejudice to the Respondent. The hearing then took place in public.

Background

4. The Respondent was born in 1966 and admitted to the Roll in 1991. At the material time, the Respondent was practising as a partner in Ince & Co ("the firm") of London.

5. Mr Gary Page an Investigation Officer ("IO") from the Applicant, commenced an investigation of the firm on 18 August 2010 which followed a report being received from firm regarding the conduct of one of its partners, the Respondent. At the conclusion of the investigation, a Forensic Investigation Report ("FIR"), dated 10 March 2011 was prepared.

6. In 1991, the Respondent joined the firm as a newly qualified assistant solicitor and became a partner in 1998 specialising in shipping and energy law.

7. In summary, the fraudulent scheme devised by the Respondent was as follows:

8. He set up entities which were held out as commercial organisations but which did not carry out any business activity.

9. Fictitious invoices would be raised by the Respondent in the name of one of the said entities and submitted to the firm in respect of expenses and/or disbursements which had not been incurred.

10. The amounts fraudulently claimed would then be incorporated into an invoice submitted by the firm to the firm's clients or simply be paid by the firm.

11. On payments by the clients of those invoices submitted to them, the Respondent arranged with the firm's accounts department for that part of the invoice that related to the fictitious expenses and/or disbursements to be paid to the entity.

12. The Respondent would then pay that sum out of the entity into his personal bank account.

13. The FIR referred to two entities set up by the Respondent which he confirmed did not exist as commercial enterprises, namely: Studio Legale Belleli SPA Vincenzi and Translating Services (also referred to as Translating Services Co) There was also a third entity set up for the same purpose, Vintage Services Company.

14. The firm prepared two spreadsheets "Ince & Co Electronic Master.xls" and "Ince & Co sample 22. xls". The former listed more than 400 fraudulent invoices raised in the name of either Studio Legale Belleli SPA Vincenzi or Translating Services, such invoices having been paid by cheque drawn by the firm and which, on many occasions, would then have been recouped from the client. The latter spreadsheet provided a summary of 22 specimen examples of the fraudulent invoices.

15. The billing practices adopted by the Respondent had also had an effect on the firm's ability to demonstrate what had been lost and who had borne the loss as some of the disbursements were wrapped up in work in progress.

16. A letter from the firm to the Applicant dated 16 February 2011 provided information about the losses incurred. The total amount stood at £2,812,700.31 of which £2,528,951.84 had been taken from clients and £283,748.47 had been taken from the firm. The figures did not include an allowance in respect of losses (to clients and the firm) attendant upon any inappropriate expense claims, a matter which was still under investigation by the firm and the forensic accountants engaged to assist it in verifying the losses attendant upon the fraud. That investigation was ongoing at the time of the hearing. As at the date of the letter, the firm had repatriated to its clients a total of £2,583,386.80 comprising £2,202,583.45 of principal and £380,803.35 in interest. The repatriation of a further £326,368.39 in principal and interest in the region of £100,000 was in hand. Losses to clients fell to be covered under the firm's professional indemnity insurance policies, subject to the excess payable by the firm: the losses to the firm were born by the firm. The firm had also incurred costs which were then ongoing in engaging experts; solicitors to take proceedings against the Respondent and in regard to his divorce, and also accountants and computer experts. It was anticipated that recoveries would be made from the Respondent's frozen assets.

Findings of fact and law

17. **Allegation 1.1. He conducted himself in a manner which was likely to compromise or impair his duty to act with integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 and/or where such conduct relates to a period after 1st July 2007, Rule 1.02 of the Solicitors' Code of Conduct 2007.**

Allegation 1.2. He conducted himself in a manner which was likely to compromise or impair his duty to act in the best interest of clients contrary to Rule 1(c) of the Solicitors' Practice Rules 1990 and/or where such conduct relates to a period after 1st July 2007, Rule 1.04 of the Solicitors' Code of Conduct 2007.

Allegation 1.3. He has conducted himself in a manner which was likely to compromise or impair the good repute of the solicitors' profession and in a way that was likely to diminish the trust the public placed in him contrary to Rule 1(d) of the Solicitors' Practice Rules 1990 and/or where such conduct relates to a period after 1st July 2007, Rule 1.06 of the Solicitors' Code of Conduct 2007.

Allegations 1.1, 1.2 and 1.3 were considered together as they all arose out of the facts giving rise to allegations 1.4 and 1.5 below.

17.1 In support of these allegations, on behalf of the Applicant Mr Havard relied on the facts giving rise to allegations 1.4 and 1.5 below, the evidence in support of the allegations and the admissions of the Respondent in respect of them. Mr Havard referred the Tribunal to the description in the Rule 5 Statement of the extent of the Respondent's misconduct, in his fraudulent scheme. He submitted that the Respondent was an intelligent man who had breached the trust of his clients and his partners. His conduct had taken place over very many years and was particularly serious. It was submitted that he was in breach of his core duties as set out in allegations 1.1 (integrity), 1.2 (best interests of clients) and 1.3 (the good repute of the profession trust of the public) and that he had acted dishonestly (allegation 1.5). He had been a partner in a highly prestigious city firm but that had not been enough for him. It was submitted that it was difficult to conceive of a more serious case where the reputation of the profession had been brought into disrepute. The Tribunal was referred to the words of Lord Bingham in the case of Bolton to the effect that solicitors had to be trusted to the ends of the earth. It was submitted that the conduct of the Respondent was at the other end of that spectrum.

17.2 In respect of all the allegations the Respondent relied on his two witness statements of 21 November 2010 and 27 January 2012. He submitted that they set out the entirety of his account of the allegations made against him and what explanations he could give were in the first witness statement. For the purposes of the hearing before the Tribunal he confirmed that he admitted all the allegations 1.1 to 1.5 against him.

17.3 The Tribunal had carefully considered the evidence, the submissions on behalf of the Applicant and the witness statements of the Respondent. The Respondent had admitted allegations 1.1, 1.2 and 1.3 and the Tribunal found them to have been proved on the evidence to the usual higher standard of proof in that it was sure beyond reasonable doubt.

18. **Allegation 1.4. He created invoices for services which he had not performed or for expenses and/or disbursements which had not been incurred, thereby fraudulently misappropriating money from Ince & Co and/or Ince & Co's clients.**

18.1 It was submitted on behalf of the Applicant that despite gaining a partnership in a highly prestigious and reputable city firm, the rewards were not sufficient for the Respondent and he had set out on a fraudulent scheme to appropriate monies from the firm and its clients. Most of the fraudulent activity had centred on two of the entities. The Respondent had deceived his own accounts department. In respect of the 400 fraudulent invoices set out on the firm's spreadsheet no such expenses had been incurred. The FIR set out the varying methods used by the Respondent as follows:

- The bill to the client showed fees and separately disbursements, the false disbursements being included amongst the latter.

- A lump sum bill where the amount charged was the product of the addition of the value of the firm's time as recorded and any disbursements recorded (including the false one).

- A lump sum bill where the sum charged was in respect of fees alone but the fees had been inflated to cover, wholly or in part, the amount of any disbursements (including the false one).

- A hybrid of the second and third methods described above: proper disbursements were separately listed on the face of the firm's bill whilst the false disbursement (either alone or with others) was encompassed within the sum claimed to be in respect of fees. This latter sum was either the product of the addition of fees as recorded and the false disbursement(s) as in the second method or it was included in an inflated fee as in the third method.

18.2 Mr Havard emphasised that the Applicant had had the benefit of a very high level of cooperation from the firm. The Tribunal was invited to consider the amount of time taken for the senior partner and others to unravel what had gone on over so many years and the burden of approaching the firm's clients. The Tribunal's attention was directed to the letter from the firm of 16 February 2011 which post dated the FIR, and asked to bear in mind the content of the letter setting out the extent of the fraudulent claims, the steps taken by the firm to rectify them and the considerable expense to which the firm had been put as a consequence of what had been going on.

18.3 The Respondent had admitted this allegation and the Tribunal found it to have been proved on the evidence to the usual high standard of proof in that it was sure beyond reasonable doubt.

19. **Allegation 1.5. He acted dishonestly.**

19.1 On behalf of the Applicant, the Tribunal's attention was drawn to the Rule 5 Statement where submissions about what was alleged to be the dishonest conduct of the Respondent were set out. It was submitted that the conduct of the Respondent:

- Was carefully devised, systematic and deliberate;
- Defrauded clients of the firm and the firm itself of substantial sums of money;
- Displayed a very serious breach of trust that clients had placed in the Respondent to the extent that they assumed such charges were legitimate;
- Had taken place over a period of many years; and
- Led to the fraudulent gain being derived over a period when, as a partner at the firm, he would have been receiving a substantial income in any event.

19.2 The Tribunal's attention was also drawn to the firm's letter of 30 March 2011 which had confirmed what the Respondent had said in his statement of 24 November 2010, in particular:

- that it was when he was an assistant solicitor in 1995 that he first used the device of a fraudulent third-party invoice; and,
- the Respondent utilised a third fictitious entity, namely Vintage Services Company, which led to two fraudulent payments in 2005 totalling £55,100.11, such sum being included in the figure quoted in the firm's letter of 16 February 2011 of £2,812,700.31.

19.3 It was submitted that the Respondent's misconduct had started in earnest after his promotion to partnership. On behalf of the Applicant, the Tribunal's attention was drawn to the case of Twinsectra Ltd v Yardley [2002] UK HL 12 which set out the two limbs of the test for dishonesty before the Tribunal. It was reminded that the Respondent had made no attempt to deny the allegations. The Applicant relied on the evidence and the Respondent's own admissions.

19.4 The Tribunal had carefully considered the evidence and the submissions on behalf of the Applicant it had also had regard to the witness statements and admissions of the Respondent. The Respondent's conduct was dishonest by the standards of ordinary persons and he clearly knew that he was being dishonest at the time. The Tribunal found this allegation to have been proved on the evidence to the usual high standard of proof in that it was sure beyond reasonable doubt that the two limbs of the test for dishonesty in the case of Twinsectra had been satisfied.

Previous appearances before the Tribunal

20. None

Mitigation

21. In his second witness statement the Respondent had said that since resigning from the firm in July 2010 he had cooperated fully with the Applicant's investigation and had done everything that he reasonably could to repay to the firm and its clients, monies that he had misappropriated, to protect the reputation of the firm with affected clients and generally, and to limit its and its underwriters' costs. From the outset he had agreed to hand over to the firm control of all his assets and assisted in selling those assets as quickly as possible. That included his homes and all of his possessions. He had cooperated fully with the firm of solicitors appointed by the firm and with others engaged by them. He submitted beyond the scope of the freezing order which the firm had obtained against his assets in July 2010. He submitted that he had repaid a very large proportion of the amounts misappropriated to the full extent that he was capable of doing and he expected the amount realised from his assets after settlement with his former wife to be in the region of £2,425,781.85. In his statement he referred the Tribunal to letters written to all clients from whom he had misappropriated money explaining that he was wholly to blame, that the firm and its employees were entirely blameless and apologising for the damage that he had caused. He had also written to the firm apologising wholeheartedly for his wrongdoing and the damage he had caused. He realised that such letters would not repair the damage. He accepted that he would be struck off by the Tribunal. He apologised to his former partners and clients, to the profession and his family for his actions.

22. As to the Respondent's finances, his second statement set out that he was now unemployed and had been made bankrupt on 29 September 2011 by HMRC in respect of unpaid income tax. There were no assets in his bankrupt estate. His wife had divorced him in March 2011. He had a two-year-old son. The Respondent submitted that he was practically destitute.

Sanction

23. The Tribunal had had regard to the Respondent's two witness statements and the statement about his finances handed in at the hearing. The Rule 5 Statement set out clearly the allegations against the Respondent and showed how his fraudulent activity was set up and operated. Clients of the firm were defrauded by the Respondent over a considerable period of time and extremely large sums were involved. It was in fact as bad a case of fraud as this Tribunal had seen. He had been found guilty of dishonesty. He had apologised for his behaviour but in line with the matters referred to in the case of Bolton there could only be one sanction which the Tribunal could impose on the Respondent and that was for him to be struck off the Roll.

Costs

24. On behalf of the Applicant, Mr Havard informed the Tribunal that he had sent a schedule of costs to the Respondent totalling £11,671.32. Mr Havard understood that the Respondent was bankrupt and referred to the Tribunal to the substantial amount of information about his financial circumstances in his various statements. He invited the Tribunal to consider the reasonableness of the costs schedule as a first stage and then submitted that the Tribunal should put the Applicant in the same position as all those other creditors of the Respondent and allow it to take its place as a creditor and be able to discuss the position regarding costs

with his trustee in bankruptcy or the Official Receiver as appropriate, as opposed to an order for costs being made not to be enforced without leave of the Tribunal. Mr Havard submitted that there had been only one example of the Applicant coming back to the Tribunal to seek enforcement of such an order. If an enforceable order were not made against the Respondent it would be the profession which picked up the costs of his misconduct and not the person who caused it. The Applicant wished to be in a position to take what steps it could to recover costs.

25. The Respondent submitted that he was bankrupt, with no assets, no income and no benefits. [As set out in his statement] all his assets had been realised by the firm. The Respondent submitted that he did not resist a costs order but he was not in a position to meet it.

26. The Tribunal had listened carefully to what had been said on behalf of the Applicant and by the Respondent and read the statement of his up to date financial position. While noting that the Respondent was bankrupt, the Tribunal felt it appropriate to make an enforceable order for costs against him. It had summarily assessed the Applicant's costs as requested and found them to be reasonable. Costs were therefore ordered against the Respondent in the sum of £11,671.32.

Statement of Full Order

27. The Tribunal Ordered that the Respondent, Nathan Andrew Iyer, 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 £11,671.32.

Dated this 9th day of March 2012
On behalf of the Tribunal

D. J. Leverton
Chairman