

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10856-2011

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

WINIFRED DJABATEY

Respondent

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Before:

Miss T. Cullen (in the chair)

Mr S. Tinkler

Mrs L. McMahon-Hathway

Date of Hearing: 1st March 2012

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## Appearances

Daniel William Robert Purcell, solicitor, of Capsticks Solicitors LLP, 1 St George's Road, London SW19 4DR for the Applicant.

The Respondent did not appear and was not represented.

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## JUDGMENT

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## **Allegation**

1. The Respondent had been guilty of conduct of such a nature that in the opinion of the Law Society it would be undesirable for him to be employed by a solicitor in connection with his or her practice as a solicitor in that he:
  - (a) made or caused to be made, payments from the Client Account of his employers, Stanley Tees Solicitors, which were unauthorised, in that they purported to relate to transactions of which the Respondent had conduct, when in fact the payments were not for matters relating to those transactions, and were not authorised by clients;
  - (b) misappropriated some or all of the payments referred to above.

It was alleged the Respondent's conduct was dishonest.

## **Documents**

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

Applicant:

- Application dated 10 October 2011 together with attached Rule 8(5) Statement and all exhibits;
- Bundle of Documents Concerning Notification of Hearing;
- Emails from the Applicant to the Respondent dated 16 September 2011, 12 December 2011 and 19 January 2012;
- Statement of Costs dated 16 February 2012.

## **Preliminary Matters**

3. The Applicant referred the Tribunal to his bundle of documents relating to notification of the substantive hearing. At a hearing on 9 December 2011, the Tribunal had considered the issue of service of documents, and had been satisfied that the Applicant had done all he reasonably could to effect service upon the Respondent. The Respondent had been notified of the date of the substantive hearing by email on 19 January 2012 and 16 February 2012. He had not replied to those emails. Both the Tribunal and the Applicant had sent letters to the Respondent by ordinary post at his last known address, and that correspondence had not been returned. The Applicant had been informed by the Respondent's previous employers that it was believed he had gone to Ghana.

4. The Tribunal having considered the documentation provided was satisfied service had been effected on the Respondent and granted the Applicant leave to proceed in the Respondent's absence.

### **Factual Background**

5. The Respondent was a non-practising barrister. From 1997 to July 2010, the Respondent was an un-admitted employee of Tees Solicitors (formerly Stanley Tees), High Street, Bishops Stortford, Hertfordshire ("the firm").
6. In December 2010, the Solicitors Regulation Authority ("SRA") received notification from the firm that the Respondent had caused improper payments to be made from the firm's client account. An investigation was commenced by the SRA and a Forensic Investigation Report dated 9 May 2011 was produced.
7. The Respondent had made payments in the total sum of £74,951.45. Individual payments varied in value between the smallest payment of £250 and the largest payment of £34,000. The features of each of the payments made by the Respondent were:
  - The funds disbursed were funds which were properly due to the firm's office bank account by way of costs in respect of the individual client matter
  - The relevant client matter files did not contain written authority to make a payment to the payee
  - The firm confirmed that the payment was not in fact made in relation to the transactions or matters against which they were recorded.

Where a shortfall had arisen in client funds, this had been rectified by the firm.

8. The senior partner of the firm, David Redfern, provided a witness statement dated 30 September 2011. He confirmed the transactions had been undertaken without the authority of the firm or its clients, and explained how the unauthorised payments were detected.
9. The Respondent resigned from the firm in March 2010. In November 2010 the firm identified a substantial amount of unbilled work in progress on a matter that had been handled by the Respondent on behalf of a client, JM. On investigating the matter further, the firm discovered a number of payments had been made, one of which was of high value, which did not appear to be related to JM's instructions or the file. The firm had contacted the Respondent on his mobile and he had been unable to explain a transaction of £34,000 which had been sent to a Mr PD, who the Respondent accepted was a personal friend of his and had not been a client of the firm.
10. As a result, a thorough investigation was undertaken of all the matters handled by the Respondent during his period with the firm. The investigation identified 19 payments which were apparently unrelated to matters against which they were recorded. These included the following matters:

- (i) Two payments were made to Mr PD in the sum of £6,613.48 on 4 September 2009 and £34,000 on 3 November 2009. Neither of these were related to the matter against which they had been recorded.
  - (ii) Three payments were made to CHR, £1,051.85 on 1 June 2009, £862.50 on 6 August 2009 and £400 on 13 October 2009. None of these were related to the matters against which they had been recorded.
  - (iii) Five payments were made to WMH in the sums of £3,100 on 3 February 2009, £5,518.86 on 6 March 2009, £5,000 on 28 May 2009, £750 on 23 April 2010 and £1,617 on 27 May 2010. None of these were related to the matters against which they had been recorded.
  - (iv) Two payments were made to IC in the sums of £250 on 24 February 2010 and £2,300 on 25 February 2010. Neither of these related to the matters against which they were recorded.
  - (v) Three payments were made to BJ in the sum of £1,481.05 on 24 February 2009, £627.25 on 27 February 2009 and £968.21 on 18 February 2010. None of these payments related to the matters against which they were recorded.
  - (vi) Two payments were made to HAS in the sum of £411.25 on 21 October 2009 and £1,000 on 10 February 2010. Neither of these related to the matters against which they were recorded.
  - (vii) One payment was made to SJV in the sum of £2,000 on 1 October 2010. This was not related to the matter against which it was recorded.
11. Emails recovered from the firm's IT system demonstrated a personal relationship between the Respondent and CHR, IC and HAS.
12. The firm also identified one instance where the Respondent had made a payment legitimately due to be made by one client from funds recorded as having been held against another matter ledger. The firm was instructed on a matter by GI and the Respondent raised, but did not process through the firm, an invoice for professional fees. Having received the funds from the client, which were recorded on the relevant client ledger, the Respondent raised another smaller invoice which was processed. This gave rise to a surplus, from which a payment of £5,100 was made to GI, which was due in respect of another matter, KH. This in turn created a surplus on the KH matter, from which two improper payments of £2,000 and £3,100 were made.

### **Witnesses**

13. No witnesses gave evidence.

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

14. The Tribunal had considered carefully all the documents provided and the submissions of the Applicant. The Tribunal confirmed that the allegation had to be

proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering the allegation.

**15. Allegation: The Respondent had been guilty of conduct of such a nature that in the opinion of the Law Society it would be undesirable for him to be employed by a solicitor in connection with his or her practice as a solicitor in that he:**

**(a) made or caused to be made, payments from the Client Account of his employers, Stanley Tees Solicitors, which were unauthorised, in that they purported to relate to transactions of which the Respondent had conduct, when in fact the payments were not for matters relating to those transactions, and were not authorised by clients;**

**(b) misappropriated some or all of the payments referred to above.**

**It was alleged the Respondent's conduct was dishonest.**

15.1 The Tribunal's attention had been drawn to a number of emails discovered on the firm's IT system. These were emails between the Respondent and some of the third parties to whom monies had been paid, and clearly demonstrated the Respondent had a personal relationship with those parties.

15.2 The Respondent had not engaged with the Tribunal or provided any submissions or explanations. It was clear from the documentation provided that a number of payments had been made from client funds, without the clients' authorisation or permission, to third parties who were not related to those client matters. The Tribunal was accordingly satisfied that the Respondent had made the payments alleged from client funds without authority to unrelated third parties.

15.3 An allegation had been made that the Respondent's conduct was dishonest. The Tribunal had considered the case of *Twinsectra Ltd v Yardley & Others* [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.

15.4 The Tribunal was satisfied that making payments from client funds to unrelated third parties, without the clients' authorisation or permission, would be regarded as dishonest by the ordinary standards of reasonable and honest people.

15.5 The Respondent had created surplus funds on files by not raising invoices and this enabled him to pay funds out to third parties where there was no connection between the payment and the matter from which it had been paid. There was however a relationship between the Respondent and the payee. The Respondent had also created surplus funds by under billing clients. The Tribunal was satisfied that the Respondent had exhibited a pattern of behaviour and that this was a deliberate, cunning, premeditated course of conduct, designed to mislead his employers as to the true nature of the payments made. In an email dated 9 December 2009 sent by the Respondent to CHR, the Respondent stated:

“The ordinary three day transfer will do. I have explained to the chaps and the chapesses so that should be fine. yes, it is a dog's life and the aim is to bale [sic] ... the issue remains whether that can be done without bitter regrets shortly thereafter.”

This email indicated the Respondent's state of mind three months prior to his voluntary resignation from the firm.

- 15.6 It was clear to the Tribunal that the Respondent was involved with a network of individuals who were receiving funds from the firm's client account and that this had been a systematic attempt to defraud a solicitor's practice. The Tribunal had no doubt that, by rendering invoices and deliberately creating surpluses on client files in order to mislead his employers, and then paying those sums to third parties with whom the Respondent had a social connection, the Respondent knew that his conduct would be regarded as dishonest by the standards of reasonable and honest people. The Tribunal found the allegation proved, including the allegation of dishonesty.

### **Previous Disciplinary Matters**

16. None.

### **Sanction**

17. The Tribunal had considered carefully the documents provided and had no doubt at all that the Respondent was a serious risk to the public and a risk to future employers within the legal profession. He had exhibited a course of conduct over a long period of time in circumstances where he had been trusted by the firm to deal with client funds. His conduct had caused clients to suffer losses and it was clear he could not be trusted with client funds. He had caused serious damage to the reputation of the profession and was not fit to be employed in any legal practice. Accordingly, the Tribunal granted the Order sought under section 43 of the Solicitors Act 1974 (as amended).

### **Costs**

18. The Applicant requested an Order for his costs in the total sum of £18,135.73. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. He accepted some reduction to the costs would be required as the hearing had taken less time than estimated on the Schedule.
19. The Tribunal had carefully considered the matter of costs and was of the view that the costs claimed should be reduced to reflect the actual time the hearing had taken. The Tribunal assessed the costs in the sum of £17,500 and Ordered the Respondent to pay this amount. In relation to enforcement of those costs, the Tribunal had particular regard to the case of *SRA v Davis & McGlinchey* [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

“If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put

before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive.”

In this case the Respondent had not communicated with the Tribunal and had not provided any evidence at all of his income, expenditure, capital or assets. Accordingly, it was difficult for the Tribunal to take a view of his financial circumstances.

### **Statement of Full Order**

20. The Tribunal Ordered that as from 1st day of March 2012 except in accordance with Law Society permission:-
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Winifred Djabatey;
  - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor’s practice the said Winifred Djabatey;
  - (iii) no recognised body shall employ or remunerate the said Winifred Djabatey;
  - (iv) no manager or employee of a recognised body shall employ or remunerate the said Winifred Djabatey in connection with the business of that body;
  - (v) no recognised body or manager or employee of such a body shall permit the said Winifred Djabatey to be a manager of the body;
  - (vi) no recognised body or manager or employee of such a body shall permit the said Winifred Djabatey to have an interest in the body;

And the Tribunal further Ordered that the said Winifred Djabatey do pay the costs of and incidental to this application and enquiry fixed in the sum of £17,500.00.

Dated this 4<sup>th</sup> day of April 2012  
On behalf of the Tribunal

Miss T. Cullen  
Chairman