SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10913-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BOON LOW Respondent

Before:

Mr J. P. Davies (in the chair)
Mrs K. Thompson
Mr S. Howe

Date of Hearing: 13th December 2012

Appearances

Margaret Bromley, Solicitor of Bevan Brittan LLP, 1 Queen Street, Bristol BS2 0HQ for the Applicant

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent, Boon Low, made on behalf of the Solicitors Regulation Authority ("the SRA") were that:

1.1 He failed to pay the premium due for indemnity insurance for the indemnity year 2009/2010 to Capita (which manages the Assigned Risks Pool ("ARP") on behalf of the SRA) within the prescribed period for payment and was in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009 ("the First Allegation");

1.2 He failed to fulfil an undertaking he gave to WS & Co on 8 October 2009, in breach of Rule 10.05 of the Solicitors Code of Conduct 2007 ("the Code") ("the Second Allegation"); and

1.3 He failed to respond to the SRA's enquiries in respect of the First and Second Allegations in an open, prompt and cooperative way, in breach of Rule 20.05 of the Code.

Documents

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

Applicant:

- Rule 5 Statement dated 11 January 2012 with exhibit
- Photocopy of advertisement in the Law Society Gazette of 20 September 2012
- Letter dated 27 March 2012 from Finlays Bureau of Investigation Ltd to Bevan Brittan LLP
- Copy of Regis Individual Synopsis report for the Respondent dated 11 May 2011
- Solicitors Indemnity Insurance Rules 2009 (with commentary)
- Statement of costs of the Applicant dated 12 December 2012

Respondent:

- None

Preliminary Issues

3. At a hearing on 30 May 2012, the Tribunal was advised that proceedings against the Respondent sent to his last known private address had been returned by Royal Mail uncollected and process servers had subsequently been instructed to effect personal service of the papers but their attempts had also failed. The Tribunal had been shown a letter from the process servers dated 27 March 2012 which detailed their unsuccessful attempts. The Tribunal therefore directed that substituted service by the placement of an advertisement in the Law Society Gazette notifying the Respondent

of the impending proceedings be sufficient service of the application in this case. A copy of the advertisement was before this division of the Tribunal. It was noted that the advertisement did not give a precise time for the commencement of hearing but the date of the hearing was clearly shown. The hearing was commencing somewhat later than usual and the Tribunal considered that the Respondent had had ample time to attend. The Tribunal was satisfied under Rule 16(2) of The Solicitors (Disciplinary Proceedings) Rules 2007, that notice of the hearing had been served on the Respondent in accordance with the rules and exercised its power to hear and determine the application notwithstanding that the Respondent had failed to attend in person and was not represented at the hearing.

4. The Chairman also drew Ms Bromley's attention to a letter from WS & Co ("WS") to the Applicant dated 2 November 2010 which was included with the exhibit to the Rule 5 Statement prepared by her predecessor in the matter. It disclosed that the Respondent was suspended from practising in 2010 following an appearance before the Tribunal. It was the usual practice of the Tribunal under Rule 16(3) only to be informed of previous disciplinary proceedings after a finding as to whether any or all of the allegations in the application had been substantiated. Such information which might be deemed prejudicial to the Respondent should therefore be redacted from any documentation included in the Tribunal's trial bundle. Ms Bromley apologised to the Tribunal for this document not having been redacted and asked that the reference to previous proceedings be disregarded. The letter did not include any detail about the matter(s) to which the previous proceedings had related. The Tribunal determined that as it was an expert professional disciplinary tribunal, it was able to exercise its professional judgement and put this information to the back of its mind and would disregard it as requested.

5. The Tribunal had noted that in his letter to the Applicant dated 17 March 2010, the Respondent referred to himself as "Boon How a.k.a. Boon Low". Ms Bromley provided the Tribunal with a copy of the Regis Individual Synopsis Report in the name of Boon Low which showed the same private postal address as that used for the Respondent.

Factual background

6. The Respondent was born in 1963 and admitted in 2004. His name remained on the Roll. The Respondent was formerly the sole principal at Danny Low & Associates ("the firm") of London which closed on 9 February 2010.

7. The Respondent was not currently practising.

First allegation (Failure to pay professional indemnity insurance)

8. The allegation arose out of the operation of a statutory scheme for professional indemnity insurance for solicitors pursuant to Section 37 of the Solicitors Act 1974 (as amended) ("the Act"). Solicitors were required by the Solicitors Indemnity Insurance Rules ("the Rules") from time to time in force, to maintain a minimum level of professional indemnity insurance on the minimum terms appended to the Rules. The Rules however recognised that some firms might be unable to obtain insurance on the open market in a particular year and the ARP existed for such firms.

It operated as a buffer providing time for firms with temporary insurance difficulties to obtain Qualifying Insurance and for those with greater difficulties to wind down their practice.

9. The costs of the ARP were partly covered by premiums paid by firms within the ARP and the balance was funded by Qualifying Insurers who passed this on to the rest of the profession in the levels of premiums charged in providing Qualifying Insurance. The ARP was not an end in itself and its scope was limited.

10. The regulatory framework made pursuant to Section 37 of the Act was contained in the Solicitors Indemnity Insurance Rules made each year. The relevant rules in this matter were the Solicitors Indemnity Insurance Rules 2009 ("SIIR09"). Appended to each set of rules were the minimum terms for insurance policies provided by Qualifying Insurers (that is Authorised Insurers who had entered into a Qualifying Insurer's Agreement with the Applicant). The Rules required all firms in private practice to take out and maintain professional indemnity insurance ("PII"). PII taken out for this purpose must be Qualifying Insurance within the meaning of the Rules, i.e. insurance on the minimum terms. Evidence of PII was a requirement for obtaining a practising certificate.

11. The commentary to Rule 4 stated that there was a continuing obligation to ensure that firms had Qualifying Insurance in place at all times. The Rules required that insurance was obtained from either a Qualifying Insurer within the meaning of the Rules or as a last resort from the ARP. Rule 5 stated that it was the responsibility of all firms to have in place and maintain Qualifying Insurance outside the ARP, and that in the case of an Eligible Firm; the firm must apply to enter the ARP. The SIIR 09 defined the meaning of Eligible Firm as being other than one which fell into any of four specified categories.

12. As set out in the commentary to Rule 5.1, the duty to ensure that Qualifying Insurance was in place rested not just on the firm as a whole but also on every principal within that firm.

13. Rule 10.3 stated that by applying to enter the ARP, the firm and any person who was the principal of that firm agreed to, and if the firm was admitted to the ARP, the firm and any person who was a principal of that firm should be jointly and severally liable to (omitting the numbering of the Rule):

> "pay the ARP premium in accordance with these Rules, together with any other sums due to the ARP Manager under the ARP Policy; and
>
> submit to such investigation and monitoring and to pay the Society's costs and expenses as referred to in Rule 11.2; and
>
> pay any costs and expenses incurred by the Society or the ARP Manager incurred as a result of any failure or delay by the Firm in complying with these rules;..."

14. Failure to pay all or any part of the premium or other sum due in respect of a policy for indemnity insurance for more than two months after the due date for payment

constituted "policy default" as set out in Rule 3.1. Rule 16 referred to the disciplinary consequences of failing to comply with the Rules and Rule 16.2 provided:

> "... it shall be a disciplinary offence for any Firm or any person who is at the relevant time a Principal in a Firm to be in Policy Default, or to fail to implement any Special Measures to the satisfaction of the Society."

Special measures were not applicable to this firm.

15. The firm entered the ARP during the indemnity year 2009/2010 with a premium for cover of £7,399.43 as quoted by Capita Insurance Services. The first payment was due on 19 December 2009. At the date of the Rule 5 Statement Capita had not received any payment.

16. On 11 May 2011, one of the Applicant's caseworkers wrote to the Respondent about the monies owed to Capita and requested an explanation of the non-payment. The letter stated:

> "Failure to pay premiums due for indemnity insurance for more than two months after the due date for payment is a policy default. Rule 16.2 of the Solicitors Indemnity Insurance Rules 2010 states that it is a disciplinary offence for a firm or any principal of a firm to be in policy default.
>
> Please let me have your explanation concerning this matter within the next 15 days, i.e. by 5 pm on 25 May 2011."

17. In view of the fact that the case worker had not heard from the Respondent, a second letter was sent on 2 June 2011. The Respondent failed to reply.

Second Allegation (Failure to fulfil an undertaking)

18. On 2 November 2010, the Applicant received a letter from WS concerning the failure of the Respondent to fulfil an undertaking which he gave on 8 October 2009 to pay their costs in respect of an abortive property transaction, amounting to £2,800 plus VAT. In their letter WS provided details of the events leading to the undertaking and asked the Applicant for guidance on how to deal with the matter. The letter stated:

> "We are writing to you to receive your guidance in respect of a professional undertaking given by [the firm] and which they have failed to fulfil.
>
> The transaction in question is one relating to the [GP Restaurant]. [The firm] were acting for Mr [C] who was and indeed remains the tenant of the restaurant from our clients [R Ltd].
>
> The terms of the transaction were, briefly that Mr [C] would surrender his lease to our clients who in turn would grant a new lease to a company to whom Mr [C], in essence, was to transfer the business carried on at the restaurant.

It was an agreed term of the transaction that Mr [C] would pay our clients legal costs in connection with the matter. Quite properly [the firm] sought to cap any such undertaking and this was agreed at £2,800.00 plus VAT.
We enclose a copy of the letter of undertaking of 8 October 2009 which you will see was signed by [the Respondent].

The transaction subsequently proved abortive in May of this year and we wrote to [the firm] with our account for settlement. We enclose a copy of that letter, of 11th May 2010, and of the account in question.

To that letter no reply was received and in spite of our sending an email to the firm on 2nd July we received no response nor payment of our costs.

...

Our concern obviously is that a professional undertaking ..., has been breached, that [the Respondent] now appears to be untraceable and that our account remains unpaid.

...

For the record, neither our letter of 11th May nor our letter of 2nd July, nor the e-mails sent [the firm] since [16 March 2010] have been returned to us or otherwise appeared to be undeliverable. We must assume, therefore, that written communications will have been forwarded somewhere and that emails or otherwise readable by the Respondent] or someone on his behalf."

19. On 14 February 2011, the matter was raised with the Respondent by letter from a case worker of the Applicant. The allegation against the Respondent was he had failed to fulfil an undertaking contained in his letter dated 8 October 2009 to WS. The undertaking contained in that letter was as follows:

> "We refer to our email correspondence today and now undertake to pay your costs up to £2,800 + VAT, whether this matter proceeds to completion."

20. A second letter was sent to the Respondent on 9 March 2011 in view of the fact that the Applicant had not received a response by the suggested response date. The Respondent replied on 17 March 2011 explaining that he had not received the earlier letter from the caseworker dated 14 February 2011. He added that he had been unable to respond sooner to the caseworker's letter dated 9 March 2011 because he had been out of the country. In his letter, he asked for an additional 14 days in order to review his file on the matter and respond to the Applicant. On 15 April 2011, the caseworker wrote to the Respondent to follow up his previous request for a response to the allegations as a response not been received. The Respondent did not reply.

21. It was decided to refer these matters to the Tribunal on 21 October 2011.

Witnesses

22. There were none.

Findings of fact and law

23. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

24. **Allegation 1.1 The Respondent failed to pay the premium due for indemnity insurance for the indemnity year 2009/2010 to Capita (which manages the ARP on behalf of the SRA) within the prescribed period for payment and was in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009;**

24.1 For the Applicant, Ms Bromley referred the Tribunal to the Rule 5 Statement where the details of the PII scheme were set out along with the rationale for the Applicant's approach to non-payment. She submitted that it was in the public interest for solicitors to have PII and a scheme in place for those who could not be insured in the open market. It was also in the public interest to regulate the insurance arrangements and to take steps regarding non-payment. She referred the Tribunal to Rule 3.1 of the SIIR 2009 which gave the definition of policy default and Rule 16(2) which set out that policy default was a disciplinary offence. A copy of Capita's letter of 20 April 2011 demanding payment of the 2009/2010 premium, the first payment of which was due on 19 December 2009, was before the Tribunal. The Respondent had traded for part of the 2009/2010 indemnity year. Ms Bromley accepted that unfortunately the Applicant's letter regarding the unpaid premium, dated 11 May 2011 mistakenly referred to the SIIR 2010. It was set out in the Rule 5 Statement that the Respondent had failed to pay any money towards the significant premium of £7,399.43 that was owed to Capita. Ms Bromley submitted that in this as in two other separate areas of practice the Respondent had been in breach of his professional obligations and that these were aggravating factors in his case.

24.2 The Tribunal considered the evidence and Ms Bromley's submissions. The Respondent had not engaged with the Tribunal process and had made no submissions. The Tribunal noted the error in referring to the SIIR 2010 in the Applicant's letter dated 11 May 2011 but also that the correct SIIR 2009 had been referred to in the Rule 5 Statement. The Tribunal found allegation 1.1 to have been proved on the evidence.

25. **Allegation 1.2 the Respondent failed to fulfil an undertaking he gave to WS & Co on 8 October 2009, in breach of Rule 10.05 of the Solicitors Code of Conduct 2007 ("the Code");**

25.1 For the Applicant, Ms Bromley referred the Tribunal to the Respondent's letter to WS dated 8 October 2009 which contained the undertaking. She referred the Tribunal to the history of the matter and submitted that it was the intention of the client, Mr C to remain in occupation of the restaurant but to transfer the lease from his own name to that of a corporate vehicle with which he had some connection but the matter had not proceeded. The undertaking given by the Respondent was effective whether or not the matter completed. In May 2010 WS informed the Respondent that they were treating

the transaction as abortive and sent him an account in the sum of £2,800 plus VAT. The invoice was made out to WS's clients but payable by the firm's client Mr C care of the firm's address. When it was not paid, WS complained to the Applicant. It was set out in the Rule 5 Statement that the guidance to Rule 10.05 of the Code stated that failure to fulfil an undertaking might result in disciplinary action. The Respondent failed to fulfil the undertaking given to WS on 8 October 2009. Ms Bromley submitted that undertakings were an important area of professional life. They were referred to as the bedrock of the conveyancing system and many areas of practice could not proceed without reliance on undertakings.

25.2 The Tribunal considered the evidence and Ms Bromley's submissions. The Respondent had not engaged with the Tribunal process and had made no submissions. The Tribunal noted that the wording of the undertaking included "whether this matter proceeds to completion" and words such as "or not" were omitted but it found that the meaning of the undertaking was quite clear and it was intended to be effective if the transaction completed or proved abortive. It also noted that WS's letter enclosing the invoice was sent to the firm's address after it was understood to have closed but the Respondent remained liable on the undertaking and had never fulfilled it. The Tribunal found allegation 1.2 to have been proved on the evidence.

26. **Allegation 1.3: The Respondent failed to respond to the SRA's enquiries in respect of the First and Second Allegations in an open, prompt and cooperative way, in breach of Rule 20.05 of the Code.**

26.1 For the Applicant, Ms Bromley relied on the history of the Respondent's lack of responsiveness to the Applicant in respect of the subject matter of both the First and Second Allegations. It was set out in the Rule 5 Statement that Rule 20.05(1) provided that there was a duty to co-operate with the Applicant and the Legal Complaints Service in an open, prompt and cooperative way. The Respondent failed to respond to the Applicant's letters dated 11 May 2011 and 2 June 2011 in respect of the First Allegation. In respect of the Second Allegation, the Respondent had not replied to the Applicant's letter of 14 February 2011 but on 17 March 2011 [the letter was dated 2010 but referred to the Applicant's letter of 9 March 2011 and was stamped dated 21 March 2011] he responded asking for 14 days to retrieve the file. He failed to reply to the Applicant's letter dated 15 April 2011. Ms Bromley submitted that failure to respond to one's professional body was an important area of professional life.

26.2 The Tribunal considered the evidence and Ms Bromley's submissions. The Respondent had not engaged with the Tribunal process and had made no submissions. The Tribunal found allegation 1.3 to have been proved on the evidence.

Previous disciplinary matters

27. The Respondent had been before the Tribunal on two previous occasions. In case number 9882/2008 he had admitted three allegations as follows:

> "In breach of Rule 32 [he] had failed to maintain a client cashbook at either office of the firm, had failed to prepare forms of reconciliation between client liabilities and cash for either office and had failed to ensure that the books of

account were written up in a proper manner as required by the Rule until June 2006.

In breach of Rule 22 had allowed a shortage on client account in the sum of £1,971.70 to exist.

...he had been guilty of conduct unbefitting a Solicitor in that:
(He) had undertaken practice as a solicitor in England in breach of the requirements of the Home Office."

The Respondent was fined £1,500 with costs of £7,000.

28. In case number 10329/2009 the Respondent had admitted all of the eight following allegations that he had:

"Failed to comply with Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007.

Failed to comply with Rules 2.02, 2.03 and 2.05 [of the Code].

Failed to comply with Rule 5.01 [of the Code].

Failed to comply with Rule 7.01 and 7.07 [of the Code].

Failed to comply with Rule 20.05 [of the Code].

Failed to comply with Rule 32 Solicitors' Accounts Rules 1998 ("SAR").

Failed to comply with Rule 15 SAR 1998.

Maintained debit balances and used one client's monies for another client contrary to Rule 22 SAR 1998."

The Tribunal had imposed a penalty of suspension for a period of six months and awarded costs to the Applicant in the sum of £10,225.11 such costs not be enforced without the permission of the Tribunal.

Mitigation

29. The Respondent was not present and no mitigation was offered.

Sanction

30. The Tribunal noted that, including this hearing, the Respondent had now been before it on three separate occasions. It also noted that the events which were the subject of the allegations at this hearing, in part, predated those which had been considered in case number 10329/2009. The Tribunal took into account its Guidance Note on Sanctions. Having regard to assessing the seriousness of the allegations which had been found proved, the Tribunal considered that the Respondent was fully culpable for his conduct; he had direct control or responsibility for the circumstances giving rise to it in that he had not paid his PII premium, had breached an undertaking and had failed to co-operate with his regulator the Applicant. In terms of the harm which he had caused, he had left the profession to bear the additional burden of the premium that he had not paid and potentially complicated matters for anyone who wished to

claim against his former firm. He had damaged the reputation of the profession by breaching his undertaking. The Tribunal regarded it as an aggravating factor that the matter of concern to the Tribunal expressed at the last proceedings, the Respondent's persistent failure to correct matters brought to his attention by his regulator and an untruth to his regulator ranged wider than the earlier Tribunal had been aware. The Tribunal was concerned to protect the public and considered that the Respondent's conduct was serious enough to interfere with his ability to practice. It was apparent that the Respondent had not learned from his first appearance and would have been aware when he appeared on the second occasion that he had an outstanding ARP premium to pay as Capita's letter was sent to him in December 2009 and the premium remained unpaid when he was before the Tribunal on 9 February 2010. As to the undertaking, WS's letter of 11 May 2010 recorded that they had written to a member of his firm on 22 January 2010 again before his second appearance and copied that letter to the Respondent, receiving no reply. After the second appearance, the Respondent then went on to leave the undertaking unfulfilled and to fail to co-operate with the Applicant. The Tribunal noted that the Respondent was recorded in the judgment of his second appearance as saying that he did not wish to continue in practice but he remained bound by his obligations. In all the circumstances and having regard to the Respondent's history of misconduct and the seriousness of these allegations, the Tribunal determined that for the protection of the public he should be struck off the Roll of Solicitors.

Costs

31. Ms Bromley applied for costs in the amount of £5,092.28. The Tribunal considered that the amount claimed for the Applicant's investigation was somewhat high but considered that the amount attributable to Ms Bromley's firm was reasonable. It summarily assessed costs in the amount of £4,000. As the Respondent had not engaged or participated in the proceedings and the Tribunal had no information about his present financial circumstances but bearing in mind that by its decision the Tribunal had deprived him of the ability to work in the legal profession and taking into account the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin), the Tribunal ordered that costs should not be enforceable without leave of the Tribunal.

Statement of full order

32. The Tribunal Ordered that the Respondent Boon Low, 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 £4,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 4th day of January 2013
on behalf of the Tribunal

Findings filed with
The Law Society on

08 JAN 2013

J.P. Davies
Chairman