

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10922-2012

On 28 June 2013, Mr Moseley appealed against the Tribunal's decision on sanction. The appeal was dismissed by Mr Justice Lewis. Moseley v Solicitors Regulation Authority [2013] EWHC 2108 (Admin.)

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ROBERT LLOYD MOSELEY

Respondent

Before:

Mr A. G. Gibson (in the chair)

Mr J. Astle

Mr D. E. Marlow

Date of Hearing: 3rd July 2012

Appearances

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

The Respondent appeared in person.

JUDGMENT

Allegations

1. The Allegations against the Respondent were that:
 - 1.1 The Respondent having been the subject of a Bankruptcy Order made by the High Court of Justice on 7 June 2006 (“the Bankruptcy Order”) failed to disclose to the Official Receiver during or after the bankruptcy, his ownership of the freehold reversionary interest in a property at 29 C Road, London (“the Property”) in breach of section 353 of the Insolvency Act 1986
 - 1.2 On dates between 29 March 2010 and 14 May 2010 the Respondent held himself out, or caused or allowed himself to be held out, as capable of transferring his interest in the Property, notwithstanding that the said interest in the Property vested in the Trustee in Bankruptcy pursuant to the Bankruptcy Order
 - 1.3 The Respondent failed to repay sums paid to him in respect of the proposed transfer by the proposed purchasers regarding the freehold reversionary interest in the Property, notwithstanding that the proposed transfer had not taken effect
 - 1.4 By reason of the matters set out at allegations 1.1 to 1.3, the Respondent acted in a way likely to diminish public trust in the profession contrary to Rule 1.06 of the Solicitors Code of Conduct 2007 and failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007.

Documents

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

Applicant:

- Application dated 27 January 2012 together with attached Rule 5 Statement and all exhibits
- Statement of Costs dated 20 June 2012

Respondent:

- Letter dated 19 August 2010 from DFJ Solicitors to PE Solicitors

Factual Background

3. The Respondent was born in 1963 and was admitted to the Roll of Solicitors on 2 March 1992. The Respondent was the subject of a Bankruptcy Order dated 7 June 2006. The Bankruptcy Order was discharged on 7 June 2007. The SRA carried out an investigation and produced a report dated 13 July 2011.
4. A transfer of a freehold property at 29 C Road, London (“the Property”) under section 32 of the Housing Act 1985 was effected on 26 May 1998 into the Respondent's

name. The Respondent granted two leases of the Property dated 12 March 1999 and 5 November 1999.

5. On 7 June 2006 the Respondent was the subject of a Bankruptcy Order made by the High Court of Justice. As a result of the Bankruptcy Order the Official Receiver took control of the Respondent's assets and subsequently a Trustee in Bankruptcy was appointed and all of the Respondent's assets automatically transferred to the Trustee in Bankruptcy pursuant to section 306 of the Insolvency Act 1986. Following the Bankruptcy Order the Official Receiver sent the Respondent a letter dated 6 July 2006 requiring him to attend an interview and referring to the following documents:

- A "Guide to Bankruptcy" booklet
- A Form NTB(2) being a notice of some of the consequences of bankruptcy
- A Bankruptcy Preliminary Information Questionnaire ("PIQ") Form B40.01

6. The Respondent signed Form NTB(2) to confirm he had received the "Guide to Bankruptcy" booklet which set out the following guidance to the Respondent in respect of the bankruptcy assets:

- The bankrupt's obligation to provide the Official Receiver "with a full list of [their] assets and details of what [they] owe and to whom (your creditors)"
- The booklet stated "You [the bankrupt] will no longer control your assets"
- "When you [the bankrupt] are discharged there may still be assets that you owned, either when your bankruptcy began, or which you obtained before your discharge, which the trustee has not yet dealt with. Examples of these may be the interest in your home, an assurance policy or an inheritance. These assets are still controlled by the trustee who can deal with them at any time in the future. This may not be for a number of years after your discharge"
- The booklet also stated "You [the bankrupt] must tell the Official Receiver about assets you obtain after the trustee has finished dealing with your case but before you are discharged. These assets could be claimed to pay your creditors. You have a duty to continue to assist your trustee after you have been discharged."

7. Form NTB(2) provided the following information to the Respondent:

"When you are discharged, any assets which have not yet been realised, but which form part of your bankruptcy estate are not returned to you but continue to belong to your trustee"

8. The Respondent provided information regarding his assets to the Official Receiver in an interview on 20 July 2006 and also on the Bankruptcy Preliminary Information Questionnaire ("PIQ") Form B40.01. The Respondent did not disclose that he had an interest in the Property in either the PIQ form or the interview. BT, who had the day to day administration of the Respondent's insolvency confirmed to the Official Receiver on 18 March 2011 that they did not know anything about the Property. The Trustee in Bankruptcy's final report dated 5 December 2009 referred to a number of

properties in which the Respondent informed the Trustee in Bankruptcy that he held an interest. The Respondent did not disclose his interest in the Property to either the Official Receiver or the Trustee in Bankruptcy at any time.

9. In January/February 2010 Ms ZB and Ms RW made contact with the Respondent proposing to buy his freehold reversion in the Property to which the Respondent agreed. Each party instructed solicitors to carry out the transaction. Ms ZB and Ms RW were represented by DFJ Solicitors and the Respondent instructed PE Solicitors.
10. There was some correspondence between the Respondent's solicitors and the buyers themselves as to the Respondent's ability to effect the sale and in an email dated 19 March 2010, the Respondent's solicitors told the buyers that they should seek their own advice on the matter. The proposed buyers and the Respondent entered into negotiations over the purchase price of the freehold reversion from March 2010 to 14 May 2010.
11. Completion was due to take place on 14 May 2010. DFJ Solicitors transferred the sum of £12,333.98 to the Respondent's solicitors which comprised of the purchase price of £10,261, ground rent in the sum of £1,150.04 and the Respondent's solicitors legal fees in the sum of £922.94. DFJ Solicitors had undertaken a Land Registry search on 9 April 2010 at 11.15am.
12. On 15 June 2010 DFJ Solicitors sought to register the transfer of the freehold interest in the Property on behalf of Ms ZB and Ms RW. However, they were informed in a requisition dated 17 June 2010 from the Telford Land Registry that this was not possible because a bankruptcy restriction was entered on 9 April 2010 at 12.19pm by the Official Receiver's office.
13. The Official Receiver confirmed on 2 March 2010 that one of the proposed buyers of the Property had contacted the Official Receiver to enquire about purchasing the freehold reversionary interest. This was the first notice that the Official Receiver was given of the Respondent's interest in the Property. The Official Receiver applied to register a caution against the Property on 31 March 2010.
14. Correspondence and telephone attendance notes followed the attempted completion, however, the Respondent failed to repay the proceeds of the intended sale either to the purchasers or to the Official Receiver, despite being requested to do so. DFJ Solicitors contacted PE Solicitors on 22 June 2010 to request that they take steps to recover the purchase sums from the Respondent. PE Solicitors informed DFJ Solicitors in a letter dated 30 June 2010 that they had requested the Respondent return the purchase monies to their account, however the Respondent had refused to do so.
15. The Official Receiver, having been notified by DFJ Solicitors that the Respondent had received the purchase monies for the Property attempted to make contact with the Respondent several times and left messages for the Respondent to contact the Official Receiver. On 23 March 2011 the Respondent was told by the Official Receiver to submit the sum of £12,333.98 to the Official Receiver towards his bankruptcy estate. On 19 April 2011 the Respondent replied to the Official Receiver disputing the sums that he owed, claiming that he should only have to repay the freehold reversion valued at £10,261, and that the remaining sums related to his solicitors fees, disbursements

and ground rent for the property. He offered to repay the sum of £10,261 in instalments of £500 per month.

16. The Official Receiver wrote to the Respondent on 27 April 2011 requesting the Respondent to provide evidence that the value of the freehold reversion was £10,261, rather than £12,333.98. The Respondent did not reply to that letter. The Official Receiver wrote to the Respondent on 1 June 2011 stating that the completion statement provided by the Respondent's solicitor confirmed the amount the Respondent was required to send to the Official Receiver was £12,333.98. The Official Receiver stated the Respondent could pay 50% of the monies owed up front and the remainder in instalments. The Respondent failed to reply. The Respondent failed to return the funds.

Witnesses

17. The following witnesses gave evidence:
- Gary Peter Turner (Assistant Official Receiver)
 - Adrian Howell Fletcher (previously a Partner with DFJ Solicitors)
 - The Respondent, Robert Lloyd Moseley

Findings of Fact and Law

18. The Tribunal had considered carefully all the documents provided, the evidence given and the submissions of both parties. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.
19. This matter concerned a transaction which did not occur during the course of the Respondent's legal practice. The Applicant confirmed there was no allegation of dishonesty. The Applicant's case was that the Respondent had tried to sell a property at 29 C Road ("the Property") in the clear knowledge of his bankruptcy. The Applicant submitted there had been an expectation that the Respondent, as a bankrupt, should have declared the Property.
20. The Tribunal had heard evidence from Gary Peter Turner who was employed by the Insolvency Service and worked in the Official Receiver's office. He had confirmed that he had not been directly involved in this case himself but he had reviewed the relevant files. He confirmed the Respondent had not notified the Official Receiver of his interest in the Property and that the Official Receiver's office only became aware of the Respondent's interest having been approached by the prospective purchasers of the Property.
21. Mr Turner confirmed that although a notice was sent to the Land Registry at the beginning of the bankruptcy to conduct a search of properties registered in the bankrupt's name, in circumstances where the Land Registry did not pick up a particular property, the Official Receiver relied on the bankrupt to give full disclosure, or for information to be provided by a third party. The expectation was that once a bankrupt became aware he had an interest in property, he must inform his Trustee in

Bankruptcy. In this case, the Property vested in the Trustee in Bankruptcy as the Respondent's interest had arisen before he was made bankrupt. Mr Turner confirmed that the monies paid to the Respondent by DFJ Solicitors vested in the bankruptcy and the Respondent must pay restitution to the bankruptcy estate.

22. The Tribunal then heard evidence from Mr Adrian Howell Fletcher, who was previously a partner with DFJ Solicitors. Mr Fletcher confirmed DFJ Solicitors had been instructed by Ms ZB and Ms RW to deal with the purchase of the Respondent's interest in the Property, and that he had supervised the transaction. He confirmed the Respondent did not inform his firm that he was a discharged bankrupt or that his ownership in the Property predated his bankruptcy. When the firm had obtained Office Copy entries from the Land Registry, no restriction had been registered and accordingly, £12,333.98 was transferred to the Respondent's solicitors in accordance with the completion statement. However, when the firm submitted an application to the Land Registry to transfer the title of the Property to their clients, the Land Registry replied stating a bankruptcy restriction had been entered against the title and the transfer could not be registered. Mr Fletcher confirmed Ms ZB and Ms RW had still not been repaid by the Respondent.
23. On cross-examination Mr Fletcher accepted an error had been made by the fee earner dealing with the file as he had failed to complete a further official search of the Land Register immediately prior to completion, to check no further entries had been made since the previous search. This would have allowed a priority period which would have guaranteed registration. Mr Fletcher stated he was not aware that Ms ZB or Ms RW had been aware of the Respondent's bankruptcy.
24. The Tribunal then heard evidence from the Respondent himself. The Respondent confirmed he was a criminal lawyer and provided the Tribunal with some background to his career. In 1994/1995 the Respondent had set up a practice with another partner who was a conveyancing solicitor. The two of them had purchased some properties which his partner had placed in the name of a property company. The Respondent had not been involved in any of the day to day conveyancing and nor had he paid any ground rent. He had trusted his partner completely and had not been aware that he owned or had any interest in the Property until he had been approached by Ms ZB and Ms RW. The Respondent stated that in 2006 he did not know he owned the reversion of that property or that it was still in his name. The Respondent's partner had project managed the building work when the Property was converted into flats, and although the Respondent had visited the Property maybe twice, he had not known that the reversion had not been sold.
25. When Ms ZB and Ms RW initially approached the Respondent they had informed him that they had not paid ground rent on his behalf because they had been unable to locate him. Indeed, from 2004 to 2010 the Respondent stated the rent for the Property had not been collected for or by him as nobody was aware the Property was still in the Respondent's name. Ms ZB came to the Respondent's office in January/February 2010 looking for him and informed him of his interest in the Property. The Respondent accepted he had not reverted to the Official Receiver to inform the Official Receiver of his interest in the Property and accepted that he should have obtained consent from the Official Receiver before proceeding. The Respondent now accepted he was at fault and should have checked the position. However, he informed

Ms ZB and Ms RW of his bankruptcy and told them to speak to their solicitors, and stated that he would also speak to his own solicitors. It had never occurred to the Respondent that the prospective purchasers would not inform their solicitors of his bankruptcy.

26. Whilst the Respondent accepted he was at fault for not making his own enquiries, he did not accept he had acted with a lack of integrity. He had contacted his own solicitors to find out whether he was able to transfer his interest in the Property and he had told the prospective purchasers to seek independent advice. Everybody had been aware of the position.
27. The Respondent accepted he had signed documents received from the Official Receiver's office in 2006, but that had been a difficult period for him. He had not known what he was signing and at the time had been dealing with an IVA, bankruptcy proceedings, the Official Receiver's office, the closure of his firm, staff redundancies, returning money to clients, and asking the Law Society to intervene into his practice in order to return funds to clients who could not be located.
28. The Respondent had not been a conveyancer and had relied upon the fact that the transaction had been considered by two lawyers. He had been led to believe by DFJ Solicitors that this was the correct way of dealing with the matter. The Respondent confirmed that he had used the funds of £12,333.98 to pay off his debts which he had incurred on top of his bankruptcy debts. He had not known that he should keep the funds, indeed, he had been told they were his funds, and he had wanted to repay people who had helped him out. He had relied on both firms of solicitors who he believed were fully aware of his bankruptcy. The Respondent accepted that he would have to repay these funds to the Official Receiver's office. He had made offers to pay but those offers had not been accepted. During the course of his evidence the Respondent accepted on a factual basis allegations 1.1, 1.2 and 1.3 were made out but submitted that there had been a number of issues which had caused him to act in the way that he had.
29. During cross-examination the Respondent stated he had thought his interest in the Property had been sold and he had not been aware that he still owned the reversion. He stated if he had been able to recall his ownership of the Property in 2006 he would have informed the Trustee in Bankruptcy that he had bought and sold a property. He had nothing to do with the funds received from the Property as they were administered by the property company. The Respondent was asked whether he asked his own solicitors if he could sell a property that he had owned before his bankruptcy. The Respondent stated he had not, but he had told his solicitors that he was bankrupt and wanted to know whether he could deal with the Property. He had also told the potential purchasers to check the position and tell him what to do.
30. **Allegation 1.1: The Respondent having been the subject of a Bankruptcy Order made by the High Court of Justice on 7 June 2006 ("the Bankruptcy Order") failed to disclose to the Official Receiver during or after the bankruptcy, his ownership of the freehold reversionary interest in a property at 29 C Road, London ("the Property") in breach of section 353 of the Insolvency Act 1986.**

- 30.1 During the course of his evidence, the Respondent had accepted allegation 1.1 was made out on a factual basis. The Respondent accepted he had failed to disclose his interest in the Property to the Official Receiver during or after his bankruptcy, although he claimed he had not known of this interest during his bankruptcy and had only become aware of it in January/February 2010 when he had been informed about the matter by Mrs ZB. The Respondent accepted that he should thereafter have reverted to the Official Receiver to notify his interest and to seek advice on the position. The Respondent accepted he had been at fault in his failure to do so.
- 30.2 Whilst the Tribunal accepted that the Respondent may not have been aware of his interest in the Property at the time of the bankruptcy, it was clear that this position changed in January/February 2010 when he was informed by Ms ZB of his interest. At that time the Respondent became aware of his reversionary interest in the Property and, especially as a solicitor, the Respondent had a duty to disclose his interest in this Property to the Official Receiver's office, particularly in view of the fact that he had already disclosed a number of properties to them. It was not credible for the Respondent to say that he did not address his mind to this point and indeed, the Respondent had accepted in his evidence that he should have reverted to the Official Receiver when he found out he owned the Property. The Tribunal accordingly found allegation 1.1 proved.
31. **Allegation 1.2: On dates between 29 March 2010 and 14 May 2010 the Respondent held himself out, or caused or allowed himself to be held out, as capable of transferring his interest in the Property, notwithstanding that the said interest in the Property vested in the Trustee in Bankruptcy pursuant to the Bankruptcy Order**
- 31.1 In relation to allegation 1.2, again, during the course of his evidence the Respondent accepted this allegation had been made out on a factual basis. The Tribunal was satisfied that the Respondent, by signing the Deed of Transfer dated 14 May 2010 transferring his interest in the Property, had indeed held himself out as capable of effecting the transfer, in the knowledge that he had been a bankrupt. The Tribunal found allegation 1.2 proved.
32. **Allegation 1.3: The Respondent failed to repay sums paid to him in respect of the proposed transfer by the proposed purchasers regarding the freehold reversionary interest in the Property, notwithstanding that the proposed transfer had not taken effect**
- 32.1 Again, during the course of his evidence, the Respondent had accepted allegation 1.3 had been made out on a factual basis. During his evidence the Respondent accepted he had not repaid the sums paid to him for the transfer of the Property either to the proposed purchasers, or indeed to the Official Receiver's office, even though the transfer had not been effected. He confirmed he had used the funds to pay other debts. Accordingly, the Tribunal found allegation 1.3 proved.
33. **Allegation 1.4: By reason of the matters set out at allegations 1.1 to 1.3, the Respondent acted in a way likely to diminish public trust in the profession contrary to Rule 1.06 of the Solicitors Code of Conduct 2007 and failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007.**

- 33.1 The Respondent disputed allegation 1.4 and maintained he had not acted with a lack of integrity and nor had his behaviour diminished the trust the public placed in the profession. The Tribunal rejected the Respondent's version of events and his assertions that he had not been informed by lawyers that he should not transfer his interest in the Property and therefore knew no different. The Tribunal had considered an email dated 19 March 2010 from the Respondent's solicitors, PE Solicitors to Mrs ZB, which stated:

“You raised a question about Robert Moseley's capacity to do the freehold transfer to you and you will need to ask your lawyer to advise you on this point.”

- 33.2 Although Mrs ZB and the Respondent's solicitor appeared to be aware of the position, this did not allow the Respondent to abrogate complete responsibility to the lawyers regarding whether he was in a position to deal with this property, particularly in view of his knowledge that he had been declared bankrupt in the past. Any prudent solicitor would have taken steps to make their own enquiries with the Official Receiver or the Trustee in Bankruptcy before proceeding with any such transaction. The Respondent had maintained throughout his evidence that he had solicitors acting for him and that the purchasers also had solicitors acting for them and therefore there was no duty on the Respondent to disclose matters to the Official Receiver's office. The Tribunal rejected this and was satisfied that the Respondent had acted with a lack of integrity. The Respondent had not repaid the funds to either the purchasers or the Official Receiver's office despite being asked to do so. Indeed, he stated he had used the funds to pay off debts which had incurred on top of his bankruptcy debts. The Respondent had received money that he was not entitled to and he had used that money to pay unsecured creditors. In the circumstances, the Tribunal was satisfied the Respondent had acted with a lack of integrity and in a way likely to diminish public trust in the profession. The Tribunal found allegation 1.4 proved.

Previous Disciplinary Matters

34. The Respondent had appeared before the Tribunal previously on 6 June 2007.

Mitigation

35. The Respondent confirmed that when he had appeared before the Tribunal previously in June 2006 the allegations had related primarily to breaches of the Solicitors Accounts Rules for which the Tribunal had found he had not been culpable. On that occasion the Respondent had been reprimanded and his partner, who had been primarily responsible, had been struck off the Roll of Solicitors.
36. The Respondent had already provided much of his mitigation during his evidence. He was now living with relatives so that he could save money and was living as frugally as possible. He was currently working as a Consultant with a small growing practice where his work was building up. He provided the Tribunal with details of his income.

Sanction

37. The Tribunal had considered carefully the Respondent's submissions and evidence. The Tribunal had found all the allegations proved and had rejected the Respondent's version of events as these flew in the face of the facts as proved. The Tribunal was of the view that the Respondent had taken advantage of a mistake made by the purchaser's solicitors and then had disbursed the money paid to him when he should have known that he should not do so. He disregarded the written directions supplied to him immediately following the Bankruptcy Order made against him. Two years had passed since the monies had been paid to the Respondent and despite several requests for repayment, the money had not been repaid. This was disgraceful conduct.
38. The Respondent had shown a great lack of integrity. Having become aware that he had an interest in a property, he had failed to declare that interest to the Official Receiver's office, he had allowed the property to be transferred to a third party, he had accepted funds which had been paid to him, and he had then used those funds to pay off other unsecured debts, maintaining that as both parties had been represented by lawyers, there had been no duty on him to disclose matters to the Official Receiver's office and no reason for him to believe he could not use those funds. As a result of the Respondent's conduct the purchasers had lost money, and the Respondent had unlawfully benefitted.
39. The Tribunal took into account the case of *Bolton v The Law Society* [1994] CA and the comments of Sir Thomas Bingham MR who had stated:

“... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well..... In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence..... The second purpose is the most fundamental of all: to maintain the reputation of the profession as one in which every member, of whatever standing, may be trusted to the ends of the earth”

The Respondent's conduct had caused a great deal of damage to the reputation of the profession and the Tribunal was of the view that he was a risk to the public. The Tribunal decided the appropriate sanction was for the Respondent to be struck off the Roll of Solicitors.

Costs

40. The Applicant requested an Order for his costs in the total sum of £26,094.72 and he provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. The Respondent submitted the costs were high and that he had not been provided with full disclosure until proceedings had been issued at the Tribunal. He submitted he may have taken a different route had information been provided to him sooner. The Applicant stated that there had been lengthy correspondence between the Respondent and the SRA and that in any event, these proceedings had been issued in February 2012 and the Respondent had had full disclosure since then.

41. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £26,094.72. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs. The Respondent's livelihood had been removed as a result of the Tribunal's Order, and he had previously been declared bankrupt so was of limited means. In the circumstances, the Tribunal Ordered that the Order for costs was not to be enforced without leave of the Tribunal.

Statement of Full Order

42. The Tribunal Ordered that the Respondent, Robert Lloyd Moseley, 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 £26,094.72, such costs not to be enforced without leave of the Tribunal.

Dated this 20th day of August 2012
On behalf of the Tribunal

Mr A. G. Gibson
Chairman