

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10924-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JAKE PAUL CHARLES BENNETT

Respondent

Before:

Mr L. N. Gilford (in the chair)

Mr A. Ghosh

Mrs L. Barnett

Date of Hearing: 23rd July 2012

Appearances

Andrew Bullock, counsel of the Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch, Worcestershire B98 0TD for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that he:
 - 1.1 Acted without integrity and behaved in a way that was likely to diminish the trust the public placed in him and in the legal profession in breach of Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007;
 - 1.2 Withdrew client money from client account otherwise than in the circumstances permitted by Rule 22 (1) of the Solicitors' Accounts Rules 1998 in breach of that Rule;
 - 1.3 Withdrew money in relation to particular clients from general client account which exceeded the money held on behalf of those clients in all of his general client accounts otherwise than as provided for in Rule 22 (6) of the Solicitors' Accounts Rules 1998 in breach of Rule 22 (5) of those Rules;
 - 1.4 From 31 July 2010 onwards failed to keep accounting records properly written up to show his dealings with client money received, held or paid by him and, in particular, did not record all dealings with client money in either a client cash account or on the client side of a separate ledger account for each client in breach of Rules 32 (1) and (2) of the Solicitors' Accounts Rules 1998;
 - 1.5 From that same date did not, at least once every five weeks:-
 - 1.5.1 compare the balance on the client cash accounts with the statements and passbooks of all general client accounts; and
 - 1.5.2 as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients and compare the total of those balances with the balance on the client cash account; and also
 - 1.5.3 prepare a reconciliation statement

in breach of Rule 32 (7) of the Solicitors' Accounts Rules 1998.
2. In relation to allegations 1.1 and 1.2, it was also alleged that the Respondent had acted dishonestly but dishonesty was not an essential ingredient of those allegations.

Documents

3. The Tribunal reviewed all of the documents submitted on behalf of the Applicant and the First and Second Respondents, which included:

Applicant:

- Application dated 3 February 2012
- Rule 5 Statement and exhibit "AJB1" dated 3 February 2012
- Schedule of Costs undated

Respondent:

- Letter to the Tribunal dated 12 June 2012
- Correspondence – various dates

Preliminary Matter

4. The Tribunal had received correspondence from the Respondent, which included a letter dated 12 June 2012 in which he had confirmed that all of the allegations were admitted by him, which included dishonesty and he had requested that he be struck off the Roll of Solicitors.
5. It was evident that the Respondent was aware of the proceedings and of the substantive hearing date and in those circumstances, the Tribunal determined that the hearing should proceed notwithstanding the absence of the Respondent.

Factual Background

6. The Respondent was born on 27 February 1971 and had been admitted to the Roll of Solicitors on 1 December 1998. His name remained on the Roll.
7. From 11 July 2002 to 29 November 2010, the Respondent had carried on practice as a solicitor on his own account under the style of “Bennetts Solicitors” (“the firm”) from offices in Hampshire.
8. On 28 January 2011 an Investigation Officer (“IO”) in the employment of the Applicant had commenced an inspection of the books and accounts and other documents of the firm. The inspection had culminated in a Forensic Investigation (“FI”) Report dated 31 January 2011.
9. The FI Report disclosed that the firm was unable to produce any books of account. During the course of the inspection, the firm was unable to produce a list of its liabilities to its clients and no client account reconciliation had been conducted since 31 July 2010. It was accepted by the Applicant that reconciliations had been undertaken up until 31 July 2010.
10. In consequence of the matters set out in the FI Report, on 1 February 2011 a sub-committee of the Applicant’s Panel of Adjudicators had resolved to intervene in the practice of the Respondent and of the firm. The person appointed to take possession of all documents in the possession or under the control of the Respondent or the firm, KT, a solicitor and partner in the firm of LA LLP, attended at the offices of the firm on 3 February 2011 and took possession of all the documents at the premises in connection with the practice of the Respondent.
11. The documents of which KT had taken possession were subsequently reviewed for the purposes of preparing a client account reconciliation by JE, a management accountant in the employment of LA LLP and to whom KT had delegated the task of preparing the “Best List” being a summary of the balances due to each individual client of an intervened practice, used by the Applicant and its duly appointed agents for the

purposes of distribution of monies held by them upon statutory trust following an intervention.

12. In the course of preparing the reconciliation, JE had identified thirty-one round sum transfers made from the client account of the firm to its office account in the period 1 January 2010 to 3 February 2011, varying in amount between £300 and £20,100 and totalling £224,000 for which no supporting documentation existed. In the case of each such transfer:
 - 12.1 In contrast to the position where transfers had properly been made from the client account to the office account in full or part settlement of the Respondent's bill, the particulars of the transfer within the client account bank statement did not contain the client name accompanied by the word "inv". The manner in which transfers had properly been made in settlement of the Respondent's bill was exemplified by the particulars of the payment of £646.25 made in respect of the matter of client F on 6 August 2010;
 - 12.2 The transfer was made on the same day as, or the working day immediately before, payments from the office account to either HM Revenue and Customs and/or employees of the firm and/or the beneficiaries of standing orders payable out of the office account, the value of which approximated to the value of the sums improperly transferred from the client account to the office account; this was exemplified by the entries recorded in bank statements, relating to the client account and the office account on 31 August 2010. Those showed:
 - 12.2.1 A debit of a payment of £20,100 by way of electronic bank payment from the client account to payee "Bennetts Solicitors";
 - 12.2.2 A corresponding credit to the office account from the payer "Bennetts Solicitors"—the credit balance of the office account immediately prior to receipt of payment had been £1946.50 only;
 - 12.2.3 The subsequent debit of thirteen payments by way of electronic bank payments, direct debits or standing orders ranging in value from £54.45 to £5000 and totalling £21,345 to either named individual payees or HM Revenue and Customs or trade creditors of Bennetts Solicitors.
13. JE had further identified twenty-four client ledgers which were overdrawn. The amount of the individual overdrawn balances varied between £0.01 and £73,363.76 and, taken together, totalled £80,266.79. However, the largest of the overdrawn balances had arisen in consequence of a debit entry in the sum of £77,000 dated 30 July 2010 against the client ledger relating to the matter of W, described in the accompanying narrative as "trfs for higher interest" for which no corresponding debit item appeared within the bank statements of the firm.
14. The overdrawn balances on client account ledgers therefore amounted to £6,903.03 only (£80,266.79 minus £73,363.76).
15. The completed reconciliation confirmed that a total of £14,431.28 had been re-credited from the office account of the firm to the client account of the firm in the period between 1 January 2010 and 31 July 2010. A total shortage of £216,871.75 had

existed upon the client account as at 3 February 2011; £224,400 plus £6903.03 minus £14,431.28.

16. JE had reported his findings to the Applicant by Memorandum dated 14 April 2011. The shortage identified by JE had remained unremedied and the consequent loss to the clients of the firm had been borne by the profession.
17. In relation to the transfer of £77,000 dated 30 July 2010, at the time of that transfer the firm had not maintained a separate deposit account into which funds could be transferred in order to earn a higher rate of interest than was being earned on the general client account. The debit item in the sum of £77,000 had been recorded against the ledger relating to the matter of W in order to balance the final bank reconciliation conducted on 31 July 2010 and to conceal withdrawals which the Respondent had made improperly from the general client account of the firm.
18. On 20 April 2011 a case worker in the employment of the Applicant had written to the Respondent seeking his explanation for those matters and on 27 May 2011 the Respondent had replied.

Witnesses

19. None.

Findings of Fact and Law

20. **Allegation 1.1: Acted without integrity and behaved in a way that was likely to diminish the trust the public placed in him and in the legal profession in breach of Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007;**

Allegation 1.2: Withdrew client money from client account otherwise than in the circumstances permitted by Rule 22 (1) of the Solicitors' Accounts Rules 1998 in breach of that Rule;

Allegation 1.3: Withdrew money in relation to particular clients from general client account which exceeded the money held on behalf of those clients in all of his general client accounts otherwise than as provided for in Rule 22 (6) of the Solicitors' Accounts Rules 1998 in breach of Rule 22 (5) of those Rules;

Allegation 1.4: From 31 July 2010 onwards failed to keep accounting records properly written up to show his dealings with client money received, held or paid by him and, in particular, did not record all dealings with client money in either a client cash account or on the client side of a separate ledger account for each client in breach of Rules 32 (1) and (2) of the Solicitors' Accounts Rules 1998;

Allegation 1.5: From that same date did not, at least once every five weeks:-

- 1.5.1 compare the balance on the client cash accounts with the statements and passbooks of all general client accounts; and

1.5 .2 as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients and compare the total of those balances with the balance on the client cash account; and also

1.5 .3 prepare a reconciliation statement

in breach of Rule 32 (7) of the Solicitors' Accounts Rules 1998.

Submissions on behalf of the Applicant

- 20.1 Mr Bullock referred the Tribunal to the Rule 5 Statement and the exhibited documents upon which he relied.
- 20.2 He informed the Tribunal that the allegations against the Respondent included breaches of the core duties under Rules 1.02 and 1.06 and that dishonesty was alleged in relation to those breaches.
- 20.3 The Tribunal confirmed that it had read all of the documents and that it had seen the Respondent's correspondence including his letter dated 12 June 2012 in which he had admitted all of the allegations.
- 20.4 Mr Bullock said that from 11 July 2002 until 29 November 2010, the Respondent had carried on practice on his own account. Following an inspection on 28 January 2011 by an IO of the Applicant, an FI Report had been produced dated 31 January 2011 which had identified, inter alia, that:
- 20.4.1 The firm had been unable to produce any books of account during the course of the inspection;
- 20.4.2 The firm had been unable to produce a list of liabilities to its clients; and
- 20.4.3 No client account reconciliations had been conducted since 31 July 2010. The Applicant accepted that reconciliations had been undertaken up until 31 July 2010.
- 20.5 As a result of the matters identified by the FI Report, Mr Bullock said that there had been a resolution to intervene into the Respondent's firm dated 1 February 2011 and the intervention had been affected by service of the notice upon the Respondent on 2 February 2011.
- 20.6 Mr Bullock told the Tribunal that the documents which had been seized in the intervention had then been reviewed by JE, a Management Accountant employed by the intervention agents, LA LLP and he had prepared a "Best List" which was a summary of balances due to each individual client used by the Applicant and its appointed agents to distribute monies held by them, following the intervention.
- 20.7 Mr Bullock said that JE had identified thirty-one round sum transfers from the firm's client account to its office account in the period 1 January 2010 to 3 February 2011, which had varied in amount from £300 to £20,100 and totalled £224,000, for which no supporting documentation had existed. He said that in the case of each such transfer:

- 20.7.1 there had been no supporting documentation;
- 20.7.2 none of the transfers had been identified in the bank statements as having been legitimate bills; and
- 20.7.3 they had been timed to coincide with dates when major payments had been required from the firm, such as to HM Revenue and Customs and payment of salaries.
- 20.8 He said that JE had further identified twenty-four client ledgers which were overdrawn and the amounts had varied between £0.01 and £73,363.76 which totalled £80,266.79. The largest of the overdrawn balances had arisen from a debit entry in the sum of £77,000 dated 30 July 2010 for client matter W, which Mr Bullock said the narrative had described as “trfs for higher interest” for which no corresponding debit had appeared within the bank statements of the firm.
- 20.9 Mr Bullock said that the Applicant’s case was that the overdrawn balances on the firm’s client account amounted to £6,903.03 only (£80,266.79 minus £73,363.76).
- 20.10 Mr Bullock said that the completed reconciliation had confirmed that £14,431.28 had been re-credited from the firm’s office account to the client account between 1 January 2010 and 31 July 2012. He said that a total shortage of £216,871.75 (£224,000 plus £6,903.03 minus £14,431.28) had existed on the client account as at 3 February 2011.
- 20.11 Mr Bullock told the Tribunal that as at the date of the Rule 5 Statement (3 February 2012) the shortage remained unremedied and the consequent loss to the firm’s clients had to be borne by the profession.
- 20.12 In relation to dishonesty which was alleged for both allegations 1.1 and 1.2, Mr Bullock said that at the time of the transfer of the £77,000 on 30 July 2010 against client W, the firm had not maintained a separate deposit account into which funds could have been transferred in order to earn a higher rate of interest than on the general client account. As a result, Mr Bullock said that it was alleged that the debit item of £77,000 had been recorded on the W ledger in order to balance the final bank reconciliation on 31 July 2010 and to have concealed withdrawals which the Respondent had made improperly from the firm’s general client account.
- 20.13 Mr Bullock said that the Applicant submitted that even if the W ledger had not been written up by the Respondent, it had nevertheless been written up with his knowledge and acquiescence.
- 20.14 Mr Bullock said that the size, number and regularity of the round sum transfers made by the Respondent from the firm’s client account coupled with the fact that they had coincided with the making of payments in similar sums from the firm’s office account, were such as to have given rise to an irresistible inference that the Respondent had realised at the material time that by the ordinary standards of reasonable and honest people his conduct had been dishonest and that both the objective and subjective limbs of the combined test for dishonesty set out in Lord

Hutton's judgement in Twinsectra Limited v Yardley and others [2002] UKHL 12 were therefore satisfied.

- 20.15 Mr Bullock acknowledged that the Respondent had suffered personal problems but he reminded the Tribunal of the consequences of dishonesty and the requirement of "exceptional circumstances" and referred the Tribunal to the Judgment of the Divisional Court in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). He submitted that notwithstanding the difficult background to the case, there had not been exceptional circumstances and he asked the Tribunal to take into account the length of the Respondent's misconduct and the substantial sums which had been misappropriated.

Submissions of the Respondent

- 20.16 The Respondent had not produced a statement but he had written to the Tribunal and to the Applicant and the Tribunal took care to read his correspondence.

- 20.17 In his letter to the Tribunal dated 12 June 2012, the Respondent had stated:

"...

I have admitted the allegations from the very outset...

I enclose a copy of my letter to the SRA dated 20th January 2011 asking for an intervention.

All of the allegations are admitted and I am so very sorry for bringing my profession into disrepute and for the devastation that must have been caused to my clients...

...

I have been before the Tribunal once before at a hearing of case number 10129-2008 heard on the 4th, 8th and 11th to 15th October 2010.

In those proceedings I had admitted all of the allegations from the very outset of the investigation save for dishonesty. That allegation against me of dishonesty was only withdrawn on the first day of the hearing despite my full co-operation with the SRA and the Applicant.

...

That investigation commenced in 2000 and took ten years to bring before the Tribunal and affected my mental health enormously.

I enclose copy letter confirming treatment for depression from August 2007...

...

As well as affecting clients and those around me and close to me, my life has also been ruined by my actions.

I am not employed, have no job, have no money, have no bank account, savings or assets. I live in social housing with my wife who works to feed me and support our children".

The Tribunal's Findings

21. The Tribunal applied its usual standard of proof namely beyond reasonable doubt.
22. The Tribunal found all of the allegations proved including that of dishonesty. The Tribunal noted that the Respondent had admitted all of the allegations.
23. The Tribunal found that the Respondent had diminished the trust the public placed in the profession by his dishonest conduct.
24. As a result of his conduct, the Tribunal found that the Respondent had breached Rules 22 (1), 22 (5), 22(6), 32 (1), 32 (2) and 32 (7) of the Solicitors' Accounts Rules 1998.
25. The Tribunal was mindful of the fact that the total shortage as at 3 February 2011 was £216,871.75 and as at the date of the Rule 5 Statement (3 February 2012), that total had remained unremedied and would have to be borne by the profession.
26. The Tribunal held in relation to allegations 1.1 and 1.2, that the Respondent had dishonestly sought to conceal the improper withdrawals he had made from the firm's client account and that, even if he had not written up the W ledger, he must have allowed it to be done with his knowledge and acquiescence. The Tribunal further found that the round sum transfers made by the Respondent had coincided with payments of similar sums from the firm's office account and that the Respondent must have known that his actions, by the ordinary standards of reasonable and honest people, had been dishonest; the Tribunal was satisfied in accordance with the combined objective and subjective tests of dishonesty in the Judgment of Lord Hutton in Twinsectra Limited v Yardley and others [2002] UKHL 12 that the Respondent had been dishonest.

Previous Disciplinary Matters

27. The Respondent had previously appeared before the Tribunal in October 2010 under case number 10129-2008 when the Tribunal had ordered that he pay a fine of £5,000 and a contribution towards the costs of the case in the sum of £5,000.

Mitigation

28. In correspondence dated 17 May 2011 addressed to the case worker, the Respondent had stated that he had no recollection of the detail which led to the circumstances and matters set out in the FI Report. He informed the case worker that he had been suffering from anxiety and depression which had stemmed from the "prolonged investigation" into his former firm/partner and the events which had followed.
29. The Respondent had told the case worker that he was unable to recount the circumstances outlined in the FI Report to enable him to provide "any sort of explanation but I do admit the allegations".
30. The Respondent's letter to the case worker had concluded:

"I am so very sorry that I caused such a mess and ask that you strike me off the roll immediately".

Sanction

31. The Tribunal had noted the Respondent's personal difficulties and health issues which he appeared to have suffered over a number of years and whilst the Tribunal acknowledged that the Respondent had admitted all of the allegations at an early stage and had himself requested that he be removed from the Roll, none of that could detract from the Respondent's dishonesty and the seriousness of the Respondent's conduct.
32. The Tribunal was extremely concerned that the loss resulting from the Respondent's conduct, namely the total shortage of £216,871.75 remained unremedied at least to the date of the Rule 5 Statement in February 2012 and that the loss to the Respondent's clients would have to be borne by the profession.
33. The Tribunal ordered that the Respondent be struck off the Roll of Solicitors.

Costs

34. Mr Bullock referred the Tribunal to the Applicant's Schedule of Costs and requested that the Tribunal make an order for costs in favour of the Applicant in the sum claimed, albeit with a slight reduction to apportion the costs of his attendance at the hearing since he was attending on another case before the Tribunal and he had over-estimated the time required for his attendance.
35. The Tribunal summarily assessed the costs and ordered that the Respondent pay costs in the sum of £3,750 inclusive of VAT and disbursements, such order not to be enforced without the permission of the Tribunal. The Tribunal had taken into consideration that the Respondent had stated in his written evidence that he was not employed and that he had no assets.

Statement of Full Order

36. The Tribunal Ordered that the Respondent, Jake Paul Charles Bennett, 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 £3,750.00 inclusive of VAT and disbursements, such payment not to be enforced without permission of the Tribunal.

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

L. N. Gilford
Chairman