

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10938-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

SARFRAZ SADIQ

Respondent

Before:

Miss T. Cullen (in the chair)

Mr A. Ghosh

Mrs L. Barnett

Date of Hearing: 2nd July 2012

Appearances

Jonathan Goodwin, Solicitor Advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegation

1. The Allegation against the Respondent was:
 - 1.1 Contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007 (“SCC”) the Respondent misappropriated monies belonging to his former employer, Injury Specialists Solicitors Ltd (“ISS”). It was alleged the Respondent had acted dishonestly.

Documents

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

Applicant:

- Application dated 24 February 2012 together with attached Rule 8 Statement and all exhibits
- Two emails both dated 1 April 2012 from the Respondent, Sarfraz Sadiq, to Mr Jonathan Goodwin.
- Statement of Costs dated 2 July 2012

Preliminary Matters

3. The Respondent was not present. The Applicant referred the Tribunal to an email from the Respondent dated 1 April 2012. In this email the Respondent had confirmed he had received the ring binder containing the relevant documents. There was also a second email from the Respondent dated 1 April 2012 in which he stated he disputed the allegations. The Applicant had sent emails to the Respondent on 25 April 2012 and 20 June 2012 confirming the date of the substantive hearing. The Applicant had spoken to the Respondent on the telephone on 22 March 2012 when the Respondent had informed him he intended to instruct Counsel to represent him at the substantive hearing. The Applicant had expected the Respondent to attend today and had tried to contact the Respondent by telephone this morning but there had been no reply. The Applicant had left messages for the Respondent to return his call but had heard nothing. The Applicant requested leave to proceed in the Respondent’s absence.
4. The Tribunal having considered the emails from the Respondent both dated 1 April 2012, and the submissions of the Applicant, was satisfied the Respondent was aware of the date of the substantive hearing and had chosen not to attend. Accordingly, the Tribunal granted the Applicant leave to proceed in the Respondent’s absence.

Factual Background

5. The Respondent, who was not a solicitor, was employed as a paralegal and book keeper/accounts assistant by Injury Specialists Solicitors Ltd (“ISS”) of Sheraton House, 2 Rockingham Road, Uxbridge, UB8 2UB from 1 August 2007 to 4 October

2010. The Respondent was dismissed on 4 October 2010 on the ground of theft from his employer.
6. The SRA carried out an inspection of ISS in August 2010 and produced a report dated 29 June 2011. The report detailed the misappropriation of office money totalling £74,654.53 by the Respondent by the encashment of office bank account cheques through a third party, namely cheque cashing agents.
 7. On 15 September 2010, Mr Jason Arthur Fenney, the sole Director of ISS made a statement in support of his firm's application to the High Court of Justice for a freezing injunction against the Respondent. On 9 September 2010 the Respondent was interviewed by Mr Fenney. Mr Fenney stated that during that interview the Respondent confirmed:
 - Over a period of four to five months the Respondent had taken cheques totalling in the region of £40,000 to £50,000;
 - The Respondent had cashed the stolen cheques at a cashing agents in Luton;
 - The Respondent still had approximately 75 per cent of the stolen money in his possession.
 8. Mr Fenney reported the matter to Uxbridge Police Station on 11 September 2010. On 14 September 2010 the Respondent provided Mr Fenney with a typed list of the office bank account cheques he had taken from the firm and cashed. The list included details of 29 individual cheques totalling £31,380.89.
 9. Mr Fenney established that the Respondent had intercepted nine cheques payable to ISS Ltd which had been received into the firm by post from third party insurers. These cheques were for reimbursement of costs incurred by the firm in acting for clients in successful personal injury claims. Four of the nine cheques had been cashed but the funds had not been credited to any of the firm's bank accounts. Three of the missing cheques had not been presented for payment and were all subsequently stopped and reissued to the firm. It was not clear whether the remaining two cheques had been cashed.
 10. A costs cheque in the sum of £5,215.52 had been received by the firm in the name of Mr ARM. This had been paid into client bank account and cleared on 23 August 2010. However Mr Fenney stated on the same day the Respondent reversed the ledger account posting of the costs cheque, and instead credited the cheque payment to an unconnected client ledger, ASD, from which he then raised a client bank account cheque for £5,200. This was debited from the ASD ledger on 3 September 2010 and cleared the client bank account on 6 September 2010. The funds were not received into the office bank account.
 11. Mr Fenney identified that the Respondent had issued numerous office account cheques made payable to legitimate third parties in payment of genuine disbursements properly incurred, but which had previously been paid. These cheques were in effect duplicate payments but they were not entered in the appropriate ledger, otherwise there would have been a double entry for that particular disbursement which would

have been readily identifiable. On 7 October 2010 Mr Fenney provided the SRA with copies of the bogus duplicated office account cheques, which he had obtained from his bank. 43 of these cheques had been cashed at a cashing agent's office in Luton, at the request of the Respondent. None of the cheques were made payable to the Respondent.

Witnesses

12. The following witness gave evidence:

- Clare Elizabeth Guile (Forensic Investigation Officer with the SRA).

Findings of Fact and Law

13. The Tribunal had carefully considered all the documents provided, the evidence given, and the submissions of the Applicant. The Respondent had not attended and had not engaged with the Tribunal or made any representations. 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 the allegation.

14. **Allegation 1.1: Contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC") the Respondent misappropriated monies belonging to his former employer, Injury Specialists Solicitors Ltd ("ISS"). It was alleged the Respondent had acted dishonestly.**

14.1 The Applicant's case was that the Respondent had dishonestly misappropriated money belonging to his former employer and as such, he had failed to act with integrity and had acted in a manner likely to diminish the trust the public placed in the profession. The Tribunal had been referred to a witness statement from Mr Fenney dated 15 September 2010 which had been prepared for the purposes of High Court proceedings. The Tribunal had also been referred to an email from the Respondent to Mr Goodwin dated 1 April 2012 in which the Respondent had stated:

"I can confirm that the cheques were cashed by me. The rest of the allegations are in dispute."

14.2 At a meeting on 3 September 2010 with Mr Fenney, the Respondent had informed Mr Fenney that he had intercepted a cheque for £2,680.93 from a third party insurer, and a friend of his had cashed it and handed him £2,680. At that meeting the Respondent had handed £2,680 in cash to Mr Fenney by way of repayment. At a further meeting on 9 September 2010 the Respondent had admitted to Mr Fenney that the cheque for £2,680.93 had not been a one-off incident and that he had taken cheques totalling £40,000 to £50,000 over a period of the last four to five months which he had cashed at a cashing agent's office in Luton. It was clear from the email dated 1 April 2012 and the Respondent's meetings with Mr Fenney on 3 September 2010 and 9 September 2010 that the Respondent had admitted cashing the cheques. The Tribunal therefore found the Respondent had indeed misappropriated money belonging to his employer.

- 14.3 In relation to the question of dishonesty, the Tribunal applied the combined test of dishonesty set out in the Judgment of Lord Hutton in *Twinsectra Ltd v Yardley & Others* [2002] UKHL 12. Firstly, the Tribunal considered whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal considered whether the Respondent himself realised that by those standards his conduct was dishonest.
- 14.4 The Tribunal was satisfied that taking cheques made payable to ISS Ltd and cashing them with a cashing agent without authority from the owner of ISS Ltd would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Tribunal was satisfied the Respondent knew that the cheques belonged to ISS Ltd, and that the money did not belong to him. He had taken the cheques to a cashing agent in Luton without Mr Fenney's knowledge or consent. By cashing them at a cashing agent's office in Luton, instead of cashing them through the office bank account, the Respondent had concealed what he was doing from Mr Fenney. He knew Mr Fenney was unlikely to find out, and he knew each time that he cashed those cheques they did not belong to him. The Tribunal was satisfied the Respondent himself realised that by those standards his conduct was dishonest.
- 14.5 The Tribunal was also satisfied that by issuing cheques payable to legitimate third parties in payment of genuine disbursements, when those third parties had already been paid, would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Respondent, who also had duties as a book keeper/accounts assistant, had not entered details of the duplicate payments in the appropriate ledgers as, if he had done so, a double entry for disbursements paid twice would have been identified. The Tribunal was satisfied the Respondent had taken steps to conceal the duplicate payments and thereby attempted to avoid discovery. Accordingly, the Tribunal was satisfied the Respondent himself knew that by those standards his conduct was dishonest. The Tribunal was satisfied the Respondent had acted dishonestly.

Previous Disciplinary Matters

15. None.

Sanction

16. The Respondent had not made any submissions or provided any mitigation. The Tribunal had found the Respondent had dishonestly misappropriated the total sum of £74,654.53 from his employer. The Respondent had acted with a complete lack of integrity and his conduct had caused serious damage to the reputation of the profession. The Applicant sought an Order pursuant to section 43(2) of the Solicitors Act 1974 (as amended). Such an Order was a regulatory provision designed to afford safeguards and exercise control where appropriate. It was clear to the Tribunal that the Respondent could not be trusted, that he was a risk to the public and to the reputation of the profession, to which he had already caused serious damage. Accordingly, the Tribunal had no hesitation in granting the Order sought.

Costs

17. The Applicant requested an Order for his costs which were in the total amount of £13,951.43. He provided the Tribunal with a Statement of Costs in this amount dated 2 July 2012. The Applicant confirmed the Statement of Costs had not been served on the Respondent. The Applicant had no information regarding the Respondent's current finances.
18. The Tribunal noted the Statement of Costs had not been served on the Respondent and therefore he had not had an opportunity to make any representations or submissions regarding the costs. In the circumstances, the Tribunal Ordered the Respondent pay the Applicant's costs to be subject to detailed assessment if not agreed.
19. In relation to enforcement of those costs, the Tribunal had particular regard for the case of *Davis v 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.”
20. In this case the Respondent had not engaged with the Tribunal at all and therefore the Tribunal did not have any information or evidence of his current income, expenditure, capital or assets. In the absence of these, it was impossible for the Tribunal to take a view of his financial circumstances.

Statement of Full Order

21. The Tribunal Ordered that as from 2nd day of July 2012 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Sarfraz Sadiq;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Sarfraz Sadiq;
 - (iii) no recognised body shall employ or remunerate the said Sarfraz Sadiq;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Sarfraz Sadiq in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Sarfraz Sadiq to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Sarfraz Sadiq to have an interest in the body;

And the Tribunal further Ordered that the said Sarfraz Sadiq do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

Dated this 17th day of August 2012
On behalf of the Tribunal

Miss T. Cullen
Chairman