

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10963-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

PHILIP ANDREW STEWART DAVIES

Respondent

Before:

Mr J. A. Astle (in the chair)

Mr A. G. Gibson

Mrs L. Barnett

Date of Hearing: 7 May 2014

Appearances

Mr David Barton, solicitor advocate, of Flagstones, High Halden Road, Biddenden, Ashford, Kent TN27 8JG, for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT
FIRST RESPONDENT, PHILIP ANDREW STEWART DAVIES
ONLY

Allegations

1. The allegations against the Respondent, Mr Philip Andrew Stewart Davies, contained in a Rule 5 Statement dated 21 March 2012 were that he failed to ensure that his practice was supervised and managed so as to provide for:
 - 1.1 proper supervision over Mr Nicholas John Jones (“Mr Jones”);
 - 1.2 adequate supervision and direction of client matters.
2. As set out below, under Preliminary Matter (1), the Rule 5 Statement and a Rule 7 Statement dated 11 October 2013 had contained allegations against Mr Jones. The proceedings against Mr Jones were concluded on 28 October 2013.

Documents

3. The Tribunal reviewed all of the documents submitted to it, which included:

Applicant:-

- Application dated 21 March 2012
- Rule 5 Statement with exhibit “DEB1” dated 21 March 2012
- Rule 7 Statement (concerning Mr Jones only) dated 11 October 2013
- Judgment and Order in relation to Mr Jones and Memorandum of Case Management Hearing in relation to the Respondent, 28 October 2013
- Copy advertisements of hearing date
- Schedule of costs dated 7 May 2014

Respondent:

- The Respondent had not taken part in the proceedings and had produced no documents.

Preliminary Matter (1) – Disposal of proceedings against Mr Jones

4. The application and Rule 5 Statement made on 21 March 2012 contained allegations against Mr Jones in addition to the allegations against the Respondent, Mr Davies. Mr Davies was named in the proceedings as the First respondent and Mr Jones as the Second Respondent. In this document, Mr Davies will be referred to as “the Respondent” (as the proceedings against the Respondent had already concluded) and Mr Nicholas John Jones will be referred to as “Mr Jones”. The allegations against Mr Jones related to his conduct of a number of conveyancing transactions, in particular that he had acted in or facilitated conveyancing transactions which bore the hallmarks of mortgage fraud. The allegations against the Respondent related to the Respondent’s failure to supervise Mr Jones adequately. On 11 October 2013 a Rule 7 Statement was made which alleged that Mr Jones had breached Principles 1, 2 and 6 of the SRA Principles 2011 as a consequence of his conviction at Mold Crown Court

on 7 June 2013 of conspiracy to defraud, as a result of which he was on 6 September 2013 sentenced to four years imprisonment.

5. A Case Management Hearing was listed to take place on 28 October 2013; Mr Jones was represented by counsel at that hearing but the Respondent did not appear and was not represented. The Tribunal gave permission for the Rule 7 Statement to be issued (it being over a year since the issue of the Rule 5 Statement), with the consent of Mr Jones through his counsel. As Mr Jones had removed himself from the Roll of Solicitors before the proceedings began, the only possible order the Tribunal could make against him was a direction that he should not be re-admitted to the Roll without the permission of the Tribunal. Mr Jones' counsel agreed that, in the light of the conviction, such an order was appropriate. With the consent of Mr Jones, the Tribunal made such an order, on the basis of the conviction, and thereby disposed of the proceedings against Mr Jones.

Preliminary Matter (2) – Proceeding in the absence of the Respondent

6. At the hearing on 28 October 2013 the Tribunal dealt with a concern that the Respondent may not have been served with the proceedings. The Applicant did not have a current address for the Respondent, who was believed to live in Thailand, but had an email address which had apparently been effective in 2012. Having considered all of the relevant issues, the Tribunal directed that: the substantive hearing against the Respondent should be listed with a time estimate of half a day; notice of the hearing should be given by advertisement in an English-language newspaper in Thailand and the North Wales Daily Post, being a newspaper in the area of the Respondent's last known address.
7. The hearing was listed to take place on 7 May 2014. The hearing was originally listed to begin not before 2pm but had been changed to not before 12 noon.
8. Mr Barton for the Applicant provided the Tribunal with copies of the advertisements which had been placed in The Bangkok Post on 1 April 2014 and The North Wales Daily Post on the same date. Both advertisements used the same form of words, referred to the application and statement made on 21 March 2012 and to the hearing, due to take place on 7 May 2014 at 2pm.
9. The Tribunal, having dealt with matters listed earlier in the day, was ready to proceed with the hearing shortly after 12 noon and the case was called. It was noted that the advertisements had referred to the hearing commencing at 2pm. The Tribunal noted that there had been no contact from the Respondent prior to the hearing. To avoid wasting too much time, the Tribunal determined that it would begin to hear the application, but if the Respondent or anyone representing him were to appear, the position would be reviewed and, if necessary, the hearing would restart. The Tribunal would not make any decision until after 2pm, in case the Respondent chose to attend, send a representative or send written representations.
10. Mr Barton referred the Tribunal to the advertisements, which had been placed in the light of the Tribunal's order of 28 October 2013. The Tribunal was satisfied that those advertisements complied with the Tribunal's direction and that the Respondent had been properly served by way of the advertisements and that it should hear the

application, subject to the proviso that the matter may need to be re-opened if the Respondent were to appear. The Tribunal noted that the Respondent had taken no part in the proceedings, but the email address used to contact him to serve the proceedings in 2012 had been an effective address as at August 2011, as the Respondent had replied to the Applicant concerning a different issue after contact through that address. The Tribunal was satisfied that the Respondent had had proper notice of the proceedings and it was appropriate and just to hear the application in his absence. Further, the Tribunal was satisfied that the Respondent was aware that Tribunal proceedings were in train, particularly given that the Respondent was aware of the involvement of the police in the investigation, which clearly indicated the matters in issue were serious.

11. The Tribunal heard the Applicant's case until approximately 1.18pm. The Clerk checked at 2pm if the Respondent had attended, sent a representative or any written representations; he had not. The Tribunal then deliberated on its findings and announced those findings (in outline only) at approximately 2.20pm, before hearing submissions on costs from the Applicant. The Tribunal's decision on sanction and costs was announced at approximately 2.30pm.

Factual Background

12. The Respondent was born in 1948 and was admitted to the Roll of Solicitors in 1975. His name was removed from the Roll on 2 June 2010 and had not subsequently been restored.
13. At all material times the Respondent was a principal of Ravencourt Legal Services of Raven Court, Earl Street, Flint, Flintshire CH6 5ER ("the Firm"). Mr Jones was an assistant solicitor, supervised by the Respondent, at all material times. The Firm ceased to trade on 16 February 2009.
14. The Applicant commenced an investigation of the books of account and other documents of the Firm on 25 June 2008. The report and supporting documents arising from the investigation were dated 8 June 2011 ("the Report"). The scope of the investigation was confined to Mr Jones' participation in certain conveyancing transactions. On the day that the investigation officer ("IO") met with the Respondent, North Wales police attended the Firm's offices to execute a search warrant to secure computer data and documents relating to conveyancing transactions conducted by Mr Jones. The Applicant's detailed investigation had been deferred at the request of the police, whilst their investigations continued.
15. It was understood that the criminal charges against Mr Jones had been based on material identical to that referred to in the Rule 5 Statement; Mr Jones had been convicted of conspiracy to defraud. At the same time, a number of other individuals had been convicted with regard to connected matters. The allegations against Mr Jones in the Rule 5 Statement had been ordered to lie on the file and so there had been no adjudication by the Tribunal on those matters. However, those matters formed part of the factual background to the case against the Respondent.
16. Mr Jones acted for a client, referred to as "City Con", and a number of individuals connected with City Con, including Mr and Mrs S-W, Mr and Ms H, Ms S and in

particular Mr and Mrs L-H and Ms SW; the last three were understood to have been convicted along with Mr Jones. Companies connected with these individuals, including WHD Ltd and WH Ltd, also featured in the transactions, as did G Corp which in a number of cases provided the initial funding for the purchase. Mr Jones acted for the stated parties in various combinations where sub-sales and/or back to back transactions with price uplifts occurred. The Report and Rule 5 Statement alleged that these price uplifts were expressed in such a way that lender clients would advance by way of mortgage sums of money in excess of the original purchase prices. The IO identified 627 transactions from the client matter listing in the name of City Con.

17. The IO selected from these a random sample of 142 client account ledgers and from these he identified 24 transactions in which the Firm had acted in transactions involving the same property on more than one occasion. For these transactions, the IO identified a total price increase of £388,645, which produced an average uplift per property of £16,194. It was calculated that applying that average uplift to all of the 627 transactions produced an overall uplift of over £10 million.
18. The Report exemplified five transactions in which there was a price increase and some of the characteristics detailed in the Law Society's Green Warning Card on property fraud.
19. Mr Jones had conduct of the purchase and sale of 64 J Street, Hanley. He acted for the intermediate buyer and seller, who were connected and the price increase was £22,000. The lender was ME. There was nothing on the file to indicate that ME had been informed that the Firm acted for both parties or of the price difference. The transactions occurred in the period December 2003 to January 2005.
20. Mr Jones also acted in the matter of 14 R Street, Hanley. The initial purchase money was advanced by G Corp to fund the acquisition for £28,000. A sum, £2,447.37, was paid to a third party, S&R Associates, with no explanation and the property was transferred by Ms W to WH Ltd in December 2003. In April 2004 the property was transferred to Mr S-W for £46,000, who applied for and obtained a mortgage of £50,970. Mr Jones acted for the lender, GMAC. The parties were connected but there was nothing on the file to indicate that Mr Jones had notified GMAC that he had previously acted for both parties, or of the uplift between connected parties.
21. In the matter of 93 C Street, Hanley, G Corp again funded the initial purchase in May 2004 for £36,000 and the property was transferred to WH Ltd. In July 2004 the property was transferred to a connected person, Mr H, for £55,000. In January 2005 Mr H applied to GMAC for a loan of £55,724. Mr Jones acted for GMAC and received £55,220 into the Firm's client account. On 28 January 2005 £50,493.05 was paid to Mr G-J (of G Corp) and £4,117.45 to "CLH".
22. Transactions involving 14 C Place, Stoke, also involved transfers between connected parties. Mr Jones had acted for a former owner of the property when it sold for £50,000 to Mr H in June 2004. In February 2005 Mr Jones acted for Mr H in the sale and for the purchaser, Ms S, at a price of £82,000. Mr Jones also acted for the lender, GMAC, who provided funds of £69,630 on 25 February 2005. There was nothing on

the matter file to indicate that Mr Jones had notified GMAC that he was acting for both parties, or that there had been an uplift.

23. In the matter of 5 R Street, Stoke, there were transfers between connected parties in which the property price increased. In September 2003 Ms S purchased the property for £40,000. In October 2004 Mr Jones acted for Ms W and Ms S in a sale to Ms W for £56,000; he also acted for the lender, SPML, who provided a loan of £47,600 to Ms W. There was nothing on the file to indicate that Mr Jones had informed SPML he acted for the connected parties, or of the price increase.
24. In the course of the investigation, the IO asked the Respondent if he had observed any of the hallmarks of mortgage fraud on Mr Jones' files; he replied "No, nothing like that."
25. The Report noted that Mr Jones was paid an annual salary plus a bonus if he billed more than £100,000. The Respondent told the IO that following the receipt of advice from an accountant, Mr Jones had set up a limited company "Ruthin Legal Services Ltd" through which he traded. A ledger print out provided to the IO included this company in its listing, with a balance of £214,078.75. The Respondent told the IO that that was the amount paid to Mr Jones as he had billed over £400,000 to City Con and others in that period (which was not specified but was prior to the commencement of the investigation i.e. before June 2008).
26. On 4 September 2007 the Respondent wrote to the Firm's insurance broker concerning an application for professional indemnity insurance. Amongst other matters, it was stated:

"You will note that the gross fee income for our last financial year was £562,923.57. The gross income has increased largely as a result of acting for a company called WHD Ltd who purchase properties which invariably are rented out or divided into leasehold flats and either sold or rented out. It is anticipated that this work will no longer be available to this Firm as they have decided to instruct other solicitors. We would estimate that the fee income from that source for the last financial year was £250,000."
27. By letter dated 28 July 2011 the Applicant wrote to the Respondent (a similar letter being sent to Mr Jones at the same time) seeking an explanation of the matters set out in the Report; the Respondent was in particular asked about his supervision of Mr Jones. The Respondent having left his former address the letter and Report were sent to the Respondent at his email address. There being no reply from the Respondent, a second letter was sent by email on 17 August 2011. No reply or acknowledgement was received.
28. On 30 August 2011 the Respondent sent an email to the Applicant about matters unconnected with the allegations in this case; the contents of the email were not relevant to this case, but the email indicated that the Respondent had received email communications to that address in August 2011.

Witnesses

29. There were no witnesses and the matter proceeded on the documents.

Findings of Fact and Law

30. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
31. The Tribunal noted that no findings had been made against Mr Jones on the basis of the matters in the Rule 5 Statement. The decision in Mr Jones' case was in relation to the conviction, which was not pleaded in the case against the Respondent. In order to determine if the allegations concerning lack of supervision had been proved, the Tribunal had to be satisfied to the required standard that there were matters which the Respondent should have been aware of but which he had failed to notice, due to inadequate supervision.
32. **Allegation 1 - The Respondent failed to ensure that his practice was supervised and managed so as to provide for:**
- 1.1 proper supervision over Mr Nicholas John Jones ("Mr Jones");**
- 1.2 adequate supervision and direction of client matters.**
- 32.1 The Respondent had not replied to the proceedings, so the allegations were treated as denied.
- 32.2 The Tribunal considered carefully the Report, and its supporting documents, which it accepted as being true and accurate in the absence of any challenge by the Respondent. The Tribunal noted that there was no allegation that the Respondent had been involved in any of the apparently fraudulent transactions himself; the allegations were based on a failure to supervise.
- 32.3 There was no doubt that the Respondent was responsible for the supervision of Mr Jones. Whilst Mr Jones was a solicitor of considerable experience, and it would not be expected that he would be subject to the same level of supervision as an inexperienced solicitor, it was incumbent on the principals of a firm to ensure that there were proper systems of supervision in place.
- 32.4 The Applicant had alleged that the various matters in which Mr Jones had acted, five of which are exemplified at paragraphs 18 to 22 above, were simply a means to enable mortgage money to be raised for the purchaser clients. Mr Jones and the Firm had owed a duty of care to its lender clients, including those referred to in the exemplified transactions. That duty included informing lender clients of material information and the Tribunal accepted that material information could and should include price uplifts within a short period and/or that the transactions were between connected parties, for both of which Mr Jones was acting. The fact that in the exemplified matters there was

a time gap between the transactions did not alter the reality of the transactions, which was that they were “back to back” transactions.

- 32.5 The Tribunal had some concerns about the statistical validity of the calculations in the Report which indicated that the Firm had acted in matters where there was an overall uplift of about £10 million. The transactions examined in detail by the IO were, of their nature, the most likely to involve an uplift and/or fraud and were a small sample of the transactions carried out for City Con. The Tribunal noted that Mr Barton had told it that publicity connected to Mr Jones’ fraud trial had indicated that the overall fraud was of the order of £20 million. The Tribunal could not rely on this information, of course, as it was not part of the evidence in the case.
- 32.6 The Tribunal did not have clear evidence of the number of transactions which Mr Jones had carried out and which actually bore some of the hallmarks of mortgage fraud; those exemplified clearly did.
- 32.7 However, the Tribunal was satisfied that Mr Jones had carried out a substantial number of transactions which were, at best, questionable. This was clear from the fact that there had been a total of 627 transactions in the name of City Con, in the period 2003 to 2008 at the latest; this was a substantial number for a small Firm such as that operated by the Respondent. It was further clear that Mr Jones had billed substantial amounts. His target had been £100,000 per annum but in one period he had billed so much that he was paid over £200,000, a substantial part of which was a bonus for billing above £100,000. The Tribunal noted that there was some lack of clarity about the precise period to which this payment related, but it was understood to be a 12 month period. In any event, it was clear from the letter to the insurance broker in September 2007 (quoted at paragraph 26 above) that about £250,000 of the Firm’s fees had been derived from work for one of the City Con linked entities. As the Firm’s total income for the period had been about £563,000, the income from the City Con work was a very substantial part of the Firm’s income.
- 32.8 That letter also showed that the Respondent was clearly aware that the increase in his Firm’s income had been due to the City Con work. The Tribunal did not have available the Firm’s fee income in previous years, but noted that the exemplified transactions had occurred in the period from late 2003 so income from those linked to City Con was significant for a number of years.
- 32.9 The Tribunal noted that the IO had not questioned the Respondent in detail about his system of supervising Mr Jones. However, the Report noted that when asked if he had observed any of the hallmarks of mortgage fraud, the Respondent had simply answered “No, nothing like that.” The Applicant had sought the Respondent’s explanation and comments on supervision when it wrote to him in July and August 2011. The Respondent had failed to offer any explanation and, in the circumstances, his failure to explain allowed the Tribunal to infer that the Respondent did not have a satisfactory explanation.
- 32.10 The Tribunal was satisfied that Mr Jones had carried out a substantial number of transactions which bore the hallmarks of mortgage fraud. Those hallmarks were plain to see and proper supervision would have revealed the true nature of the transactions. The work done by Mr Jones contributed hugely to the Firm’s income and it should be

expected that the principal of the Firm with responsibility for supervising Mr Jones would satisfy himself that the work was being carried out properly. The Respondent should have seen that on a large number of transactions, the hallmarks of mortgage fraud were present. He had failed to ensure that lender clients were informed of matters material to their lending decisions and so had contributed to the ability of Mr Jones, and others, to carry out a number of fraudulent transactions.

- 32.11 The Tribunal was satisfied to the highest standard, on the evidence presented, that the allegations had been proved.

Previous Disciplinary Matters

33. There were no previous disciplinary matters in which findings had been made against the Respondent.

Mitigation

34. There was no mitigation offered on behalf of the Respondent.

Sanction

35. The Tribunal had regard to its Guidance Note on Sanctions (September 2013).
36. As the Respondent was no longer on the Roll of Solicitors, the only possible sanction which the Tribunal could impose was the making of a direction under s47(2)(g) of the Solicitors Act 1974 (as amended) prohibiting the restoration of the Respondent's name to the Roll except by order of the Tribunal. The Tribunal simply had to consider whether, in the light of its findings, it was appropriate to make such an order. The Tribunal did not have the benefit of any representations from the Respondent, but took into account the facts and matters referred to in the proceedings.
37. The Tribunal had found that the Respondent had failed to exercise adequate supervision over Mr Jones, such that Mr Jones had been able to act in a number of fraudulent conveyancing transactions. Whilst Mr Jones had been an experienced solicitor, and therefore should require less supervision than an inexperienced solicitor, it remained the duty of a principal in a firm to ensure that supervision was proper and adequate. Here, it clearly had not been. Mr Jones' contribution to the growth in fee income of the Firm was substantial; the Respondent should have supervised closely the work being done to ensure that it was being done properly, particularly given its contribution to the Firm's overall income. The Respondent did not appear to have taken any action to question the transactions when the Firm was removed from the conveyancing panel of a building society; whilst such steps can be taken for reasons which are wholly unrelated to the conduct of a firm, a principal should satisfy himself that there was no criticism of the firm. Further, the Respondent had failed to offer any explanation or account concerning his supervision of Mr Jones.
38. In all of the circumstances, it was appropriate and proportionate to make the order under s47(2)(g) of the Solicitors Act 1974 (as amended).

Costs

39. Mr Barton applied for an order for costs against the Respondent and submitted a handwritten schedule of costs, together with information on the investigation costs.
40. The costs of the Applicant's investigation were calculated at £36,030.08, but it was pointed out that this related also to the investigation against Mr Jones. The Tribunal was invited to consider that apportioning one-third of the costs to the Respondent might be appropriate, but this was a matter for the discretion of the Tribunal. One third of the investigation costs could be rounded to £12,000.
41. Mr Barton's fees, set out on the schedule, were calculated at the rate of one-third of the time spent. For example, over fifteen hours had been spent working on documents and drafting, but only 5 hours were claimed on the schedule, at the rate of £200 per hour. Mr Barton's overall claim for his own costs was calculated at £2,300.
42. In addition, disbursements had been incurred for travel and for the advertisements (being £523.55 for the advertisement in the Bangkok Post and £230.68 for the advertisement in the North Wales Daily Post). Mr Barton told the Tribunal that he had had some difficulty identifying a suitable English language publication in Thailand. The total claimed by the Applicant was £15,245.73, including the investigation costs.
43. Mr Barton submitted that even if the cases against both Mr Jones and the Respondent had been heard together, it was unlikely that a "joint and several" order would be appropriate and nor would an equal split be appropriate, given the different levels of culpability in this case. In response to a question from the Tribunal, Mr Barton submitted that most of the investigation had been carried out on the papers and the investigation officer had spent comparatively little time with Mr Jones and the Respondent. It was for the Tribunal to exercise its judgment about the apportionment of costs, given that the major professional misconduct in the case was Mr Jones' involvement in fraudulent matters. Mr Barton told the Tribunal that it would be difficult to enforce a costs order in Thailand.
44. The Tribunal noted that no order for costs had been made against Mr Jones. It also noted that no information had been supplied by the Respondent concerning his financial position; there was no need, therefore, to consider reducing any costs order on the basis of the Respondent's means.
45. The Tribunal was content to adopt the apportionment of costs proposed by Mr Barton. Whilst the professional misconduct of Mr Jones was greater than that of the Respondent (given that Mr Jones had been convicted of a serious offence and sentenced to imprisonment), the Respondent had had a duty to supervise adequately and had failed to do so. That default had allowed the fraudulent conveyancing matters to proceed. In these circumstances, apportioning one-third of the overall costs to the Respondent was appropriate.
46. The Tribunal considered that the costs as claimed were reasonable and proportionate to the matters in issue in the case. The Respondent was ordered to pay the Applicant's costs in the sum of £15,245.73.

Statement of Full Order

47. The Tribunal makes a direction under Section 47(2)(g) of the Solicitors Act 1974 (as amended) prohibiting the restoration of the name of the First Respondent PHILIP ANDREW STEWART DAVIES, former solicitor, to the Roll of Solicitors except by Order of the Tribunal and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,245.73.

DATED this 13th day of June 2014

On behalf of the Tribunal

J. A. Astle
Chairman