

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10964-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

PETER ROSS LLOYD-COOPER

Respondent

Before:

Miss T. Cullen (in the chair)

Mr R. Prigg

Mr D. Gilbertson

Date of Hearing: 12th September 2012

Appearances

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

Ms Jane Henry appeared as a representative of the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:-
 - 1.1. He withdrew monies from client bank account other than as permitted by Rule 22(1) of the Solicitors' Accounts Rules 1998 ("the 1998 Rules").
 - 1.2. Contrary to Rule 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC") he misappropriated and utilised clients' funds for his own benefit and/or the benefit of other clients.
2. It was contended that in respect of the conduct represented by the allegations made above, the Respondent had so behaved as to justify the imposition of a sanction by the Tribunal. Dishonesty was not an essential ingredient of either of the allegations. However, the case was put against the Respondent in relation to both allegations that he acted dishonestly in relation to his misappropriation of clients' monies and utilisation of the same for his own benefit and/or the benefit of other clients. The case was put against the Respondent on the basis that his conduct was dishonest by the ordinary standards of reasonable and honest people and that he realised that by those standards his conduct was dishonest.

Documents

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

Applicant:

- Application dated 28 March 2012;
- Rule 5 Statement dated 28 March 2012 with exhibit "JRG1";
- Miscellaneous correspondence;
- Statement of costs dated 10 September 2012.

Respondent:

- Unsigned and undated statement.

Preliminary Matter 1

4. The Respondent did not appear and was not legally represented. Ms Henry told the Tribunal that she appeared only as a representative for the Respondent and not in any legal capacity. She explained that the Respondent was too ill to attend at the Tribunal and he had asked her to read out a statement on his behalf.
5. Mr Goodwin, on behalf of the Applicant, provided the Tribunal with an email from the Respondent dated 11 September 2012 in which the Respondent had confirmed that he was aware of the hearing date and would attend if he felt well enough to do so. Mr Goodwin told the Tribunal that he was content for Ms Henry to make representations

on behalf of the Respondent limited to the matters contained within the Respondent's statement.

6. The Tribunal was satisfied that notice of the hearing had been served on the Respondent in accordance with The Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"). In addition, it was apparent that the Respondent was aware of the hearing date as he had confirmed this in his email to Mr Goodwin and Ms Henry had told the Tribunal that the Respondent had asked her to attend on his behalf today. In accordance with Rule 16(2) of the SDPR, the Tribunal decided to hear and determine the application in the absence of the Respondent.

Preliminary Matter 2

7. A report had been prepared by Dr Exworthy, a Consultant Forensic Psychiatrist, at the request of the Respondent's former solicitors and this had been disclosed as part of the proceedings. The Chairman disclosed that she knew Dr Exworthy in a personal capacity but confirmed that she had not discussed this matter with him. Neither party raised any objection to the Chairman's continued involvement in hearing the case.

Factual Background

8. The Respondent was born on 2 June 1947 and admitted as a solicitor on 2 October 1972. His name remained on the Roll of Solicitors. At all relevant times, the Respondent was a partner at Kennedys/Kennedys Law LLP ("the firm"). The Respondent was suspended from work on 27 April 2010 and expelled as a member of the firm on 14 May 2010.
9. On 19 July 2010, the Forensic Investigation Department of the Solicitors Regulation Authority ("SRA") carried out an inspection of the firm's books of account which resulted in the production of a report dated 16 September 2010 ("Report 1").
10. Report 1 identified a cash shortage on client account as at 27 April 2010 in the sum of US \$2,131,859.85 (£1,449,975.92 equivalent).
11. The investigation followed a report which had been made to the SRA by the firm on 27 April 2010 in relation to concerns regarding the conduct of the Respondent.
12. The Respondent was instructed by ABC Limited ("ABC") who was a commercial client of the firm. ABC was incorporated in the British Virgin Islands and instructed the Respondent in relation to a hotel which it planned to build in North Africa. The firm used a sterling client account and a US Dollar account in relation to ABC's matter. The firm received equity subscription funds from shareholders of ABC into the firm's client bank account. The monies were to be held pending further instructions from ABC as to distribution.
13. The Respondent attended, either in person or by telephone, all board meetings of ABC at which all payments were discussed, authorised and minuted and board authorisation applied to all distributions of the equity subscription funds held by the firm.

14. On 14 April 2010, the Chairman of ABC sent an email to the Respondent which was copied to Mr NT at the firm. The letter indicated that on 8 March 2010, the client had instructed the Respondent by email to transfer the remaining balance standing to the credit of its client ledger account, estimated to be in the region of US \$2.2 million, for the benefit of ABC's bank account held with Barclays Bank plc. The Respondent had not acted on ABC's original instruction dated 8 March 2010.
15. The Chairman's letter of 14 April 2010 requested the firm's confirmation "...that the funds to which I refer (US \$2.2 million) are securely deposited in a duly regulated client account administered by Kennedys".
16. On 23 April 2010, the firm's finance director reviewed ABC's client ledger account which showed that the sum of US \$6,626,871.35 (including interest earned) had been received into the firm's client bank account. The ledger also showed that the sum of US \$6,602,307.13 had been paid out of the firm's client bank account leaving a balance of US \$24,564.22.
17. On 26 April 2010, the partners at the firm held a meeting with representatives of ABC. During the course of the meeting, ABC identified that seven payments had been made from the equity shareholder funds held by the firm totalling approximately US \$2.19 million. The seven payments were not recognised by ABC as being properly associated with its matter or as having been authorised at any board meeting.
18. The firm agreed to immediately investigate the propriety of the seven payments and to replace any resulting shortfall. The firm appointed RGL Forensics ("RGL") to undertake an investigation. RGL concluded that six of the seven payments had been misappropriated by the Respondent.
19. The two largest payments were exemplified within Report 1 as follows.

Central Exchange - £600,554.00

20. On 2 May 2008, the Respondent signed a payment instruction in respect of a telegraphic transfer. The payee was stated as being "Central Exchange" and the payment details were stated as "Project investment funds".
21. In an affidavit dated 19 May 2010, the Respondent indicated that the payment to "Central Exchange" had been made on the instruction of another client of the firm, Mr A, who was unconnected to ABC. The Respondent stated that he was unable to recall the precise client matter to which Mr A's payment instruction had related but indicated that monies which should have stood to the credit of Mr A's (unidentified) matter for the purpose of making the payment to "Central Exchange" had previously been improperly withdrawn by him by way of five banker's drafts totalling £701,265.00 which had been payable to an entity called "Freeany Enterprises".

AO Shipley – HM Revenue & Customs - £254,258.39

22. On 11 February 2008, the Respondent signed a payment instruction form for a telegraphic transfer payment of £254,258.59.

23. In his affidavit dated 19 May 2010, the Respondent explained that the payment to HM Revenue & Customs was in respect of stamp duty for the client matter of ALN/C Investments Ltd and the purchase of a property at 11 Queens Street. The matter was not connected to ABC.
24. The Respondent indicated that the monies which should have stood to the credit of ALN/C Investments Ltd's matter for the purpose of making the relevant payment to HM Revenue & Customs had previously been improperly transferred by him to an unconnected matter, which he identified as "RP" in order to facilitate a repayment to its shareholders. The Respondent explained that monies from the RP matter had previously been improperly withdrawn by him in the form of four banker's drafts totalling £318,260.00 payable to "Freeany Enterprises".
25. In an email to the firm dated 26 April 2010, the Respondent said that there had been:

"inexplicable and totally uncharacteristic lapses of my normal high standards in my management of Client Account monies, the shortfall in ABC's shareholder funds is in the process of being made good by me IN FULL..".

The email went on to say that it was "my fault and my responsibility" as to why monies had not been transferred to the client as instructed and stated:

"I wish I could explain how things got out of hand and perpetuated, but I cannot do so. However, what I can say is that at no time was my intention to deprive ABC of any part of their shareholder funds - making good by me in full was always going to be done... I have let them [ABC] down, let Kennedys down and let myself down – the memory of which will live with me forever and will almost certainly precipitate the end of my professional career... Self evidently I fully appreciate that this is only part of the problem but it is also a very important part of the solution".

26. Report 1 also identified a potential further cash shortage in the sum of US \$6,260,700 (£4,100,000 equivalent). A schedule was produced to the Investigation Officer ("IO") as at 22 June 2010 which listed a series of payments categorised as "unauthorised payments" and "potentially unauthorised payments" made on the instruction of the Respondent.
27. The schedule particularised approximately 37 client matters against which payments had been charged and inter-ledger transfers made in a nine year period from 17 April 2001 to 22 April 2010. The schedule showed a total of approximately £4.1million, described on the schedule as "Total – amounts for which Kennedys is at risk".
28. The firm issued legal proceedings against the Respondent. An amended Particulars of Claim dated 13 July 2010 showed that the total value of payments misapplied or potentially misapplied by the Respondent amounted to approximately £5.2million which excluded the effect of improper inter-ledger transfers.
29. In his affidavit dated 19 May 2010, the Respondent indicated that the payments had been improperly made for the benefit, or the intended benefit, of a company which he identified as TP Ltd ("TP"). The Respondent said that TP was incorporated in

Pakistan and was a company in which he had a personal interest. He stated that TP had been in the process of raising finance to fund the construction of an industrial plant in Pakistan.

30. The Respondent indicated that he had negotiated a loan of £27million from the Ruler of a state in the United Arab Emirates (“the Ruler”) to fund the industrial plant construction in Pakistan by TP. The Respondent indicated that the loan had been negotiated between himself and a Mr ALR (“Mr ALR”) who was acting as the Ruler’s agent.
31. The Respondent stated that Mr ALR had requested an amount equal to the first year’s interest on the Ruler’s intended loan to be paid in advance of the loan being released, and had initially instructed him that payments were to be made to an entity called Freeany Enterprises which was said to be the Ruler’s company.
32. The loan did not materialise. The Respondent stated that he believed that Mr ALR had diverted funds paid to Freeany Enterprises for his own purpose because he was in financial difficulty and he suggested that Mr ALR had substantial gambling debts.
33. A second report (“Report 2”) dealt with the investigation work conducted by RGL and the firm in relation to the potential further cash shortage identified by Report 1.
34. Report 2 identified that as at 27 January 2011, the maximum extent of the further cash shortage which existed on the firm’s client bank account had been recalculated as £3,429,837.60 in relation to 24 client matters. This was a smaller amount than that identified in Report 1. It was not possible to quantify the final extent of the further cash shortage because the Respondent had stated (via his legal representatives) that he could obtain retrospective written authorities from clients in respect of a number of the payments. It was agreed between the firm and the Respondent’s legal representatives that any such authorities would be produced on or prior to 9 February 2011. The firm proposed to contact all relevant clients, asking them to identify any unauthorised payments once any retrospective authorisations had been received from the Respondent’s solicitors.
35. The IO was given documentation said to be written clients’ authorities and which had been provided by the Respondent’s solicitors in respect of payments to five clients and which amounted to approximately £500,000.00. On the face of it, the authorities reduced the maximum extent of the further cash shortage by an equivalent amount. Some of the written authorities did not appear to be complete.
36. In a letter dated 6 December 2010, the SRA wrote to the Respondent care of his solicitors in order to obtain his explanation in relation to the matters set out in Report 1.
37. In a letter dated 22 December 2010, the Respondent’s solicitors replied and indicated that the Respondent was suffering from health issues and severe depression. It was said that the Respondent was not in a position to respond to the SRA’s enquiries immediately.

38. In an email dated 14 January 2011, the Respondent's solicitors wrote to the SRA and attached a copy of a letter from Dr McLaren, Consultant Psychiatrist dated 30 June 2010.
39. In a letter dated 4 March 2011, the Respondent's solicitors wrote to the SRA and enclosed a copy of a report prepared by Dr Exworthy, Consultant Forensic Psychiatrist dated 26 January 2011.
40. In a letter dated 30 June 2011, the SRA wrote to the Respondent's solicitors and enclosed a copy of Report 2. The SRA asked the Respondent to respond to its earlier letter dated 6 December 2010 and to provide an explanation in relation to the matters set out in Report 2. There was no response.

Witnesses

41. None.

Findings of Fact and Law

42. The Tribunal determined all the allegations to its usual standard of proof, that is beyond reasonable doubt.
43. **Allegation 1.1: He withdrew monies from client bank account other than as permitted by Rule 22 (1) of the Solicitors' Accounts Rules 1998 ("the 1998 Rules").**

Allegation 1.2: Contrary to Rule 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC") he misappropriated and utilised clients' funds for his own benefit and/or the benefit of other clients.

It was contended that in respect of the conduct represented by the allegations made above, the Respondent had so behaved as to justify the imposition of a sanction by the Tribunal. Dishonesty was not an essential ingredient of either of the allegations. However, the case was put against the Respondent in relation to both allegations that he acted dishonestly in relation to his misappropriation of clients' monies and utilisation of the same for his own benefit and/or the benefit of other clients. The case was put against the Respondent on the basis that his conduct was dishonest by the ordinary standards of reasonable and honest people and that he realised that by those standards his conduct was dishonest.

- 43.1 Mr Goodwin told the Tribunal that the firm's investigation had identified a cash shortage on client account as at 27 April 2010 as a result of the Respondent's misappropriation of client monies. In addition the firm had discovered that a potential further cash shortage also existed as a result of the Respondent's suspected misapplication of client monies.
- 43.2 The Tribunal was told that ABC had instructed the Respondent in relation to the funding and construction of a hotel in North Africa. The firm had discovered that the Respondent had failed to act on ABC's original instruction to transfer the credit balance of its client ledger to the firm's bank account. Mr Goodwin stated that

following a review by the firm, it had been discovered that the approximate credit balance remaining on the relevant ledger account totalled only US \$24,564.22 instead of the sum of US \$2.2million which should have been held by the firm. During the course of a subsequent meeting, ABC had identified that seven payments had been made from the equity shareholder funds held by the firm which were not recognised as being properly associated with its matter or as having been authorised at any board meeting. Mr Goodwin told the Tribunal that the investigation by RGL had concluded that the six of the seven payments had been misapplied by the Respondent. He stated that the six relevant payment instruction forms were signed by the Respondent either as “fee earner” or “partner” and were countersigned by two other partners in accordance with the firm’s payment authorisation procedures although there was no suggestion that the other partners at the firm had been involved in the matter.

- 43.3 Mr Goodwin referred the Tribunal to the two largest payments which had been exemplified within Report 1. He told the Tribunal that the Respondent had claimed that the payment to “Central Exchange” had been made at the instruction of Mr A, who was unconnected to ABC and the Respondent had admitted that the monies which should have stood to the credit of Mr A’s matter in order to make the payment had previously been improperly withdrawn by him in the form of banker’s drafts made payable to “Freeany Enterprises”.
- 43.4 Mr Goodwin told the Tribunal that the Respondent had also admitted that the monies which should have stood to the credit of the ALN/C Investments Ltd matter for the purpose of making the payment to HM Revenue & Customs had previously been improperly transferred by him to the RP matter and that monies from the RP matter had previously been improperly withdrawn by him in the form of banker’s drafts which had again been made payable to “Freeany Enterprises”.
- 43.5 Mr Goodwin told the Tribunal that Report 1 had also identified a potential further cash shortage as a result of the continuing investigation work which had been carried out by RGL. He explained that the IO had been provided with a schedule which had stated that the firm was “at risk” for the sum of approximately £4.1million. He stated that the firm had subsequently issued proceedings against the Respondent for recovery of the funds and the Respondent had admitted that a number of the payments included in the schedule had been improperly made for the benefit or intended benefit of TP, which was a company in which he had a personal interest. Mr Goodwin said that there was no suggestion that ABC had given authorisation for their money to be used in this way. He claimed that the Respondent had been involved in “teeming and lading” by allocating one client’s payment to another in order to detract from any possible shortfall.
- 43.6 Mr Goodwin told the Tribunal that, following further investigation, the IO had identified that a person bearing the same name as Mr ALR, who had acted as the Ruler’s intermediary in the negotiation of the loan, had been the subject of legal action by London based casinos. Mr Goodwin stated that it was not known whether this was the same individual but said that even if it was not, the Respondent had been engaged in serious misconduct in utilising funds in the way that he had.
- 43.7 Mr Goodwin stated that although the amount of the further cash shortage had been smaller than originally identified, it had been caused by the Respondent’s

misappropriation and utilisation of client monies in relation to 24 matters. He told the Tribunal that the firm had subsequently provided the SRA with further information to show that the estimated shortfall was likely to be nearer £2.3million rather than the amount first anticipated. Mr Goodwin pointed out that it had been difficult for the firm to identify the true extent of the shortage due to the “teeming and lading” practices adopted by the Respondent whilst at the firm.

43.8 Mr Goodwin told the Tribunal that even without any element of dishonesty, the allegations against the Respondent were very serious. He had withdrawn money from the firm’s client account and utilised it for his own benefit or for the benefit of other clients and although the misappropriation may not have been as extensive as first believed, there had still been a very substantial shortfall.

43.9 The Tribunal was asked to consider its own Guidance Note on sanctions which included the comments made in Bolton v The Law Society (1994) 1WLR 512 when it had been said that:

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal”.

Mr Goodwin reminded the Tribunal that Bolton had set out the most fundamental principle for the imposition of sanctions by the Tribunal which was:

“...to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth...”

Mr Goodwin pointed out that the Tribunal’s Guidance Note made it clear that that the Tribunal would regard:

“...the breach of the heavy obligation to safeguard clients’ money, which is quite distinct from the solicitor’s duty to act honestly, as extremely serious”.

In addition, the Guidance Note stated that the dishonest misappropriation of client funds would “...invariably lead to strike off”. He reminded the Tribunal that, notwithstanding any particular personal mitigation that may be put forward on the Respondent’s behalf, the Tribunal would need to have regard to the fact that:

“The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price”. (Bolton above).

43.10 The Tribunal was told that the Respondent had taken responsibility for his actions and had notified the firm that he intended to put matters right and rectify any shortfall. Mr Goodwin referred the Tribunal to Bultitude v The Law Society (2004) EWCA Civ 1853 which, he said, established that it was not necessary to show that the Respondent intended to permanently deprive his clients of their funds in order to prove that he had acted dishonestly.

43.11 The Tribunal was asked to note that although the Respondent had admitted the allegations against him, he had denied acting dishonestly. Mr Goodwin invited the Tribunal to consider the “combined” test for dishonesty as set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 in which it was stated that:

“...Before there can be a finding of dishonesty it must be established that the defendant’s conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest”.

Mr Goodwin told the Tribunal that the public would have no difficulty in concluding that what the Respondent had done was dishonest. Furthermore, he submitted that the Respondent knew that he was being dishonest when he had utilised ABC’s funds. Mr Goodwin acknowledged that Dr Exworthy’s report confirmed that the Respondent was suffering from a depressive illness and he stated that it was right that the Tribunal should take this into account. He said that it had been difficult for Dr Exworthy to establish when the Respondent’s depression had started but it was clear that it had “crystallized” in 2009 or 2010. Mr Goodwin pointed out that the Respondent’s misappropriation of client funds had taken place over a nine year period and so his depression could not amount to any kind of “defence”.

43.12 The Tribunal found allegations 1.1 and 1.2 substantiated on the facts and documents before it and indeed the Respondent had admitted the allegations. The Tribunal had been invited to find that the Respondent had been dishonest. Mr Goodwin had claimed that the Respondent had acted dishonestly in misappropriating ABC’s funds. The Tribunal considered the “combined” test for dishonesty set out in Twinsectra and concluded that the Respondent’s conduct would be seen as dishonest by the ordinary standards of reasonable and honest people. The Respondent had claimed that he had not intended to permanently deprive clients of their monies and he had said that he intended to rectify any shortfall. However, the Tribunal noted that Bultitude made it clear that it was not necessary to show that the Respondent had intended to permanently deprive ABC of its funds in order to prove that he had acted dishonestly. The Tribunal concluded that the Respondent knew that what he was doing was dishonest and was satisfied beyond reasonable doubt that the Respondent’s conduct had been dishonest.

Previous Disciplinary Matters

44. None.

Mitigation

45. The Tribunal had read and considered the statement which had been provided by Ms Henry, on behalf of the Respondent. Ms Henry told the Tribunal that the Respondent had wanted to attend at the hearing today but he had not felt well enough to do so. She said that she could not add anything further other than to say that the Respondent was currently aged 65 and was unwell. She did not think that he would ever work again. She told the Tribunal that she understood that the public interest had to be protected but said that an order for strike off would significantly affect the Respondent’s mental state and “his very being”.

Sanction

46. The Tribunal had found both allegations substantiated against the Respondent. He had also been found to have been dishonest. In order to protect the public and to maintain the reputation of the profession, the only appropriate sanction in this case was that the Respondent should be struck off the Roll of Solicitors and the Tribunal so ordered. The Tribunal did not consider that there were any exceptional circumstances such as those identified in the decision of the Divisional Court in Solicitors Regulation Authority v Sharma (2010) EWHC 2022 (Admin) which would justify a sanction other than striking off.

Costs

47. The Applicant's claim for costs was £25,191.46. Mr Goodwin told the Tribunal that the Respondent had indicated that whilst he did not object to the amount of the costs claimed, he was not in a position to pay as he was now subject to a bankruptcy order. Ms Henry confirmed that the Respondent had been made bankrupt in July 2012.
48. Mr Goodwin invited the Tribunal to make an order for costs in the amount claimed. He accepted that in view of the Respondent's financial circumstances and taking into account the decisions made in Merrick v The Law Society [2007] EWHC 2997 (Admin) and D'Souza v The Law Society [2009] EWHC 2193 (Admin) the Tribunal may decide that any order for costs should not be enforced without further leave of the Tribunal but he stated that he would leave this to the Tribunal's discretion.
49. The Tribunal made a summary assessment of costs as claimed and fixed in the sum of £25,191.46. The proceedings had been properly brought and accordingly the Tribunal ordered that the Respondent should pay costs fixed in that amount. The Respondent was a declared bankrupt and, in view of his financial circumstances, the Tribunal decided that the order for costs should not be enforced without further leave of the Tribunal.

Statement of Full Order

50. The Tribunal Ordered that the Respondent, Peter Ross Lloyd-Cooper, 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 £25,191.46, such costs not to be enforced without leave of the Tribunal.

Dated this 24th day of October 2012
On behalf of the Tribunal

Miss T. Cullen
Chairman