SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11102-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MICHAEL ABRAHAM PHILIP HARRIS Respondent

Before:

Mr J. Astle (in the chair)
Mr J. P. Davies
Mrs V. Murray-Chandra

Date of Hearing: 7 November 2013

Appearances

Geoffrey Williams QC, solicitor of Geoffrey Williams & Christopher Green of The Mews, 38 Cathedral Road, Cardiff, CF11 9LL, for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were:

1.1 In relation to the firm's books of account, the Respondent allowed the client account to become overdrawn in breach of Rule 22(8) Solicitors Accounts Rules 1998 ("SAR").

1.2 The Respondent failed to keep accounting records and make appropriate reconciliations in breach of Rule 32(1) and (7) SAR. It was alleged the Respondent had acted dishonestly.

1.3 The Respondent failed promptly to remedy the breaches referred to in allegations 1.1 and 1.2 in breach of Rule 7(1) SAR.

1.4 The Respondent made withdrawals from a client account otherwise than in accordance with the circumstances set out in Rule 22(1) SAR. It was alleged the Respondent had acted dishonestly.

1.5 In relation to the matters set out at allegations 1.1 to 1.4, the Respondent was in breach of the principles set out at 1(a), 1(c), 1(e) and 1(f) SAR.

1.6 By failing to comply with the requirements of the SAR, the Respondent behaved in a way that was likely to diminish the trust the public placed in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007 ("SCC").

Documents

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

Applicant:

- Application dated 28 November 2012 together with attached Rule 5 Statement and exhibits
- Applicant's Statement of Costs dated 4 November 2013
- Email dated 6 November 2013 from Mr Williams QC to the Tribunal
- Client ledger for R & T (page 280A)

Respondent:

- Letter dated 11 April 2013 from Respondent to the Tribunal
- Letter from Dr Trotter to Dr Castilla dated 21 March 2013
- Consultation Information Sheet dated 16 April 2013 from Dr Castilla
- Letter dated 10 May 2013 from the Respondent to the Tribunal
- Letter dated 15 May 2013 from the Respondent to the Tribunal

- Letter dated 17 May 2013 from the Respondent to the Tribunal

- Letter dated 29 October 2013 from Dr Chesters
- Letter dated 31 October 2013 from the Respondent to the Tribunal together with enclosures

The Respondent's Application to Adjourn

3. The Respondent had applied to the Solicitors Regulation Authority ("SRA") for an adjournment which the SRA had put before the Tribunal by an email dated 23 October 2013. This had been refused by the Chairman of the Tribunal on 24 October 2013 who indicated that, at the outset of the substantive hearing, the Tribunal would consider any further medical evidence and/or information submitted by the Respondent. The Respondent was advised that the Tribunal may decide to proceed in his absence if he failed to attend.

4. The Respondent had renewed his application for an adjournment in a letter dated 31 October 2013. He had attached to his letter a Discharge Summary Form relating to his wife and his letter to the SRA also dated 31 October 2013. In that letter the Respondent stated his wife, having had surgery recently, required his constant care and attention, and could not be left alone for a day. He also made reference to his own health and stated it was "impossible for me to appear before the Tribunal on 07/11/13". He referred to the SRA offering to pay his travel expenses and indicated that, if and when he became able to travel, they would have to pay for two people to travel at peak hours.

5. The Tribunal also had a note of a telephone conversation that had taken place between the Respondent and a member of the Tribunal's staff on 6 November 2013 at 4pm. The Respondent had asked the member of staff to inform the Chairman of the Tribunal that "the Chairman was a very brave man to go against the GP's report and that if the hearing was to go ahead there would be consequences".

6. Mr Williams QC, on behalf of the Applicant, provided the Tribunal with a letter dated 29 October 2013 from the Respondent's GP which stated the Respondent's medical condition made it "difficult for him to attend a meeting in London, if he travels by public transport". Mr Williams QC submitted the Respondent had been properly served as required by the Rules and that the Tribunal should proceed in his absence. The Respondent had confirmed he would not be attending and he had raised issues of finance and health. The SRA had sent him a train ticket on 25 October 2013 and he had returned it immediately with his letter of 31 October 2013.

7. Mr Williams QC further submitted the medical evidence provided was not sufficient, indeed this issue had been dealt with in the Chairman's written Decision dated 24 October 2013. The letter from the Respondent's GP dated 29 October 2013 simply said the Respondent would find it "difficult" to attend a "meeting". Mr Williams QC submitted this was not a meeting so it was not clear what the Respondent had told his GP. He further submitted many respondents overcame their own difficulties where their character and careers were at stake. Although the Respondent did not currently

have a practising certificate, Mr Williams QC submitted it was in the public interest for the matter to proceed today. Apart from denying all the allegations, the Respondent had provided no explanations, and he had not complied with any of the Tribunal's directions.

The Tribunal's Decision

8. The Tribunal had considered carefully all the documents provided and the submissions of the Applicant. The Respondent had been served with notice of today's hearing on 20 June 2013 and was clearly aware of today's hearing having indicated that he would not be attending. The Tribunal was satisfied there had been proper service of the proceedings.

9. The Tribunal then went on to consider the Respondent's further application for an adjournment. The Tribunal also bore in mind the Tribunal's Adjournment Policy and the cases of R v Hayward [2001] EWCA Crim 168, and Tait v The Royal College of Veterinary Surgeons [2003] UKPC 34, which set out the principles to be considered by the Tribunal in determining an application to adjourn. The Tribunal was mindful that any decision to proceed in the Respondent's absence must be exercised with the utmost caution.

10. The medical report provided by the Respondent's GP did not state that the Respondent was medically unfit and therefore unable to attend before the Tribunal. The Respondent had voluntarily chosen not to attend and he had confirmed that he was aware the hearing may proceed in his absence if his application for an adjournment was refused. The Tribunal noted the Applicant had sent the Respondent a train ticket which he had promptly returned. The Respondent had not complied with any of the Tribunal's directions and had simply denied all the allegations. In all the circumstances the Tribunal did not consider it would be unfair to proceed and refused the Respondent's application for an adjournment. These were serious allegations and it was in the public interest for the case to proceed without further delay.

Factual Background

11. The Respondent was born on 14 March 1937 and admitted to the Roll on 11 January 1965. At all material times the Respondent practised as the sole principal of Harris and Co at Albermarle House, Osborne Road, Southsea, Hampshire, PO5 3LB ("the firm").

12. The Respondent had not held a practising certificate since August 2011. The firm was intervened on 1 November 2011 and the Respondent was made bankrupt on 10 November 2011.

13. On 14 August 2011, Mr C, who had been employed by the Respondent as a conveyancing executive, joined the firm of Hughes Way ("HW"), and took with him files that he had been working on at the firm which were current. In August 2011 the Respondent closed his practice and transferred deeds and other documents to another local firm for storage.

14. On 12 September 2011, the SRA carried out an inspection of the books of account and other documents at the firm. A Forensic Investigation Report dated 6 October 2011 was produced which revealed a number of alleged breaches of the Solicitors Accounts Rules.

15. During the course of the investigation, Mr Johnston, the Forensic Investigation Officer from the SRA ("FIO") was unable to meet with the Respondent due to the Respondent's ill-health. The FIO examined the firm's client and office bank statements, and bank reconciliations from January 2011 to August 2011.

Allegations 1.1, 1.5 & 1.6

16. The FIO was unable to calculate the firm's total liability to clients as at 31 August 2011. Cash available in the client account was £95,020.22, which resulted in a minimum cash shortage of £165,369.59. There were overdrawn client ledger accounts of £74,641.04, three reconciling transfers from office to client of £25,849.25 and an unexplained book difference of £12,220.66.

17. During the course of the inspection the FIO received statements from Mr C and the principal of HW, Mr Hughes, regarding matters that had been transferred to HW. There were two items which required further clarification from Mr C and Mr Hughes. The first item related to a cheque for £4,320 in respect of commission due to FS, who had been sent a cheque but the cheque had not been honoured. Mr Hughes confirmed the other item related to a mortgage advance which:

> "……has not been utilised for the correct purpose. This is because I had a call from [JT of LBG] enquiring about that matter and another matter. I was able to give assistance with the other matter but I have no knowledge of the case of [LEL]."

Purchase of 12 S Road, Drayton

18. This file had been transferred to HW. Contracts were exchanged on 2 August 2011, while the matter was still being handled by the firm, and completion was due to take place on 26 August 2011. The sum of £84,813.61 was to be used from the client's sale of another property, so the balance required from the client to complete the purchase was £95,836.70.

19. The firm's bank statement confirmed the receipt of the sale proceeds of £84,813.61. The amount of £95,836.70 was also paid into the account on 9 August 2011. However, the balance on the firm's client account was only £95,020.22. Having deducted the deposit paid on exchange, there should have been at least £147,650.31. On the day of completion at approximately 12:30pm, the Respondent telephoned HW to confirm the money was not available and completion could not proceed. The Respondent's clients made a claim against the firm in relation to this matter.

Purchase of 64 S Avenue, Redhill

20. On 12 August 2011 Mr C wrote to the client to advise her that the firm had ceased practising on 5 August 2011 and that, with her consent, her file would be transferred

to HW. The purchase had already completed on 1 August 2011. During the course of the transaction, the client had paid the sum of £160,247.93 to the firm which was required to complete the purchase. The completion statement on the file revealed that the firm should have paid the following disbursements:

- Estate agent's commission of £3,641.40
- Stamp duty on the purchase of £9,712.50.

However, after completion the client received a request for payment of these funds from the agent and HMRC.

Client C – Premises at CRS

21. Mr C instructed the Respondent to act for him in the lease of premises at CRS. The agreement required the Respondent to give undertakings in relation to costs to both the immediate and superior landlords. Mr C deposited the sum of £4,000 with the firm. Mr Hughes informed the SRA that although no draft lease had been received from the landlord's solicitors, the Respondent had rendered an account of £1,000 plus VAT which should have left a balance of £2,800. However these monies were not available from the firm's bank accounts. Mr C had requested Mr Hughes to report the matter to the SRA.

Allegations 1.2, 1.5 & 1.6

22. In addition to the cash shortage, when the firm's client account was reconciled on 30 June 2011, no comparison was made to liabilities to clients (the client matter list printed on 13 September 2011 showed there were five debit balances totalling £74,641.04), there were three reconciling transfers from office to client account totalling £25,849.25, there was an unexplained book difference of £12,220.66 and there were further unexplained adjustments. The three reconciling transfers were not supported by any movement of funds at the bank.

Allegations 1.3, 1.5 & 1.6

23. The three reconciling receipts totalling £25,849.25 were dated 8 October 2010 and the FIO discovered that the client account reconciliation carried forward the same differences/adjustments from one month/year to the next. The breaches had not been remedied.

Allegations 1.4, 1.5 & 1.6

24. A ledger account in the name of "R & T – MAP Harris" indicated the Respondent had borrowed money from clients and that loans from clients had been paid into this client account, from which the Respondent had borrowed money by transferring money from that client account to office account with the narrative typically being "loan to office MAPH authorised". By 29 July 2011 this ledger was overdrawn by £74,356.22 which accounted for a large part of the debit balance on client account.

25. There was no evidence that the clients obtained independent legal advice in relation to loans to the Respondent, and there was no evidence that the Respondent had obtained proper authority from the relevant clients for such loans to take place.

26. On 11 October 2011 the SRA sent the Respondent a copy of the Forensic Investigation Report inviting his comments upon it. On 28 October 2011 a response was received, said to be on behalf of the Respondent and signed "pp MAP Harris". In this the Respondent stated the following:

- He provided details of his medical condition, with a report from his GP and said it was difficult for him to respond to the allegations
- With the agreement of the SRA files had been transferred to other firms unless individual clients had requested other arrangements which were complied with
- Arrangements had been made for the storage of files and the firm's bookkeeping records although the Respondent stated "I do not at present have immediate access to these and am unable therefore to comment at present on the detailed allegations……."
- The firm's bankers froze the account on 28 October 2011
- There were costs which could be transferred to office account in respect of matters which had completed before closure.

Witnesses

27. The following witnesses gave evidence:

- Alan Ferns Hughes
- Derek Calvert Johnston (SRA Forensic Investigation Officer)

Findings of Fact and Law

28. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of Mr Williams QC. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be applying the criminal standard of proof when considering each allegation.

29. Allegation 1.1: In relation to the firm's books of account, the Respondent allowed the client account to become overdrawn in breach of Rule 22(8) Solicitors Accounts Rules 1998 ("SAR").

29.1 Rule 22(8) of the Solicitors Accounts Rules 1998 ("SAR") made clear the only circumstances in which a client account could be overdrawn. The Respondent's firm did not fall into any of the exceptions specified. The Tribunal had heard evidence from Mr Johnston confirming that he had not met the Respondent during his investigation and that he had been informed by the firm's bookkeeper that the Respondent was ill.

29.2 Mr Johnston confirmed he had found a minimum cash shortage on client account of £165,369.59. He also indicated that due to the state of the firm's books he was unable to ascertain how much should have been in client account and that the shortage he had discovered was based on the amount of cash available and evidence provided by Mr Hughes and Mr C as to the amount that should have been there.

29.3 The Tribunal also heard evidence from Mr Hughes who confirmed that he had not known about the state of the firm's client account when Mr C had joined HW and brought files with him. Mr Hughes had anticipated there were only three matters on which completion was required. HW had required the sums of £84,813.61 from the sale of the client's property, together with the sum of £95,836.07 paid by the client to the Respondent's firm on 9 August 2011 and the mortgage advance of £160,000, to complete the purchase of 12 S Road. Mr Hughes had asked the Respondent to transfer monies or confirm that money was available in order to complete the transaction, but he did not receive either. As a result of this Mr Hughes stopped the lender from sending funds to HW and the transaction could not complete. The Respondent did not acknowledge that he had had the money and nor did he explain what had happened to it. He just did not have the money. Mr Hughes had not asked him where it was.

29.4 The Tribunal was satisfied that the Respondent had allowed the client account to become overdrawn in breach of the SAR in view of the minimum shortage found by Mr Johnston and the fact that the Respondent had been unable to provide client funds to HW when they had clearly been paid by the client to the firm for the purpose of completion. The Tribunal found allegation 1.1 proved.

30. Allegation 1.2: The Respondent failed to keep accounting records and make appropriate reconciliations in breach of Rule 32(1) and (7) SAR. It was alleged the Respondent had acted dishonestly.

Allegation 1.3: The Respondent failed promptly to remedy the breaches referred to in allegations 1.1 and 1.2 in breach of Rule 7(1) SAR.

Allegation 1.4: The Respondent made withdrawals from a client account otherwise than in accordance with the circumstances set out in Rule 22(1) SAR. It was alleged the Respondent had acted dishonestly.

30.1 Mr Johnston in his evidence confirmed that the last reconciliation available was dated 30 June 2011. He confirmed there had been no comparison of liabilities to clients, the figures had not been reconciled and it was not clear what the adjustments represented. Some adjustments had been carried through every month which indicated nothing had been done about them. There were transfers showing in the cash books; however the bank statements for the same period did not show the funds being paid into the client account. The relevant client ledgers did not show movements. It therefore appeared the books showed money going into client account when the money had not been paid.

30.2 The Tribunal was satisfied the Respondent had not reconciled his client account since June 2011 and those reconciliations that had been done since January 2011 had not been done properly so as to compare liabilities to clients. It was also clear from the

documents before the Tribunal that over a period of seven months from January 2011 to June 2011, the same adjustments referred to as "Trans not reconciled" in the sums of £1,155.75 and £1,210.25, were showing on the reconciliation statement month after month. Over the entire period, there was an unexplained book difference of £12,220.66. Accordingly the Tribunal was satisfied that the Respondent had failed to keep accounting records properly written up, failed to make appropriate reconciliations and failed to remedy SAR breaches.

30.3 The Tribunal had been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest. An allegation of dishonesty had been made on both allegations 1.2 and 1.4.

30.4 Client monies had clearly gone missing and were unaccounted for. Mr C had lost at least £2,800, the client purchasing 12 S Road had lost her money and the client purchasing 64 S Avenue had received requests for payment of monies she had already paid to the Respondent's firm.

30.5 It was clear to the Tribunal that had reconciliations been properly carried out, it would have been apparent that there was a shortfall on client account. There was no evidence before the Tribunal as to who had carried out the reconciliations, however, the Respondent, as the Principal of the firm, had responsibility for those reconciliations.

30.6 The Tribunal had considered carefully the client ledger of R & T, who, Mr Williams QC had indicated, it was believed were the Respondent's relatives. This ledger showed round sum transfers being made to the office account described as "loan to office". There were other entries described as "loan to Indemnity 270 Insurance". The account showed the Respondent's personal and practice debts were being paid from this account. There was also a discrepancy on this ledger. The ledger continued to show a debit balance from 30 April 2011 until 29 July 2011. However the Tribunal was provided with an additional page 280A, to be inserted in the bundle of the Applicant's exhibit documents, which showed a payment into the account made on 11 July 2011 in the sum of £80,000 described as "Mr [B]". This took the ledger to a credit balance for a short time but still led to an overall debit balance of £74,356.22.

30.7 The Tribunal was satisfied that failing to conduct proper client account reconciliations which, if they had been done properly, would show deficits on client account in circumstances where the Respondent's personal and practice debts were being paid from client account and the Respondent knew this, would be regarded as dishonest by the standards of ordinary and honest people.

30.8 The Respondent had clearly used this client account of R & T to make payments towards his firm's indemnity insurance as well as other office expenses. If proper loans were being made to the practice, then these should have been paid into the firm's office account and not the client account of R & T. There had been no adequate explanation from the Respondent explaining where the client account

shortfall had gone, and it was clear to the Tribunal that the firm had been in financial difficulties from 2007 as the office account had hovered around its overdraft limit since then. This had ultimately led to the Respondent's bankruptcy.

30.9 The Tribunal was satisfied the Respondent knew by making payments for office expenses and indemnity insurance from funds in a client account, he was using those funds for a purpose for which they were not intended. The Tribunal was further satisfied the Respondent knew that by failing to carry out proper reconciliations, knowing payments for his office and personal expenses were being made from client account, he knew he was able to conceal the shortfall in client account. The Tribunal was therefore satisfied that by concealing the client account shortfall in this way the Respondent knew he was dishonest by those standards. The Tribunal was satisfied that the Respondent had acted dishonestly in relation to allegations 1.2 and 1.4.

31. **Allegation 1.5: In relation to the matters set out at allegations 1.1 to 1.4, the Respondent was in breach of the principles set out at 1(a), 1(c), 1(e) and 1(f) SAR.**

31.1 Having found allegations 1.1 to 1.4 all proved, including the allegations of dishonesty, the Tribunal was satisfied that the Respondent had failed to keep other people's money separate from money belonging to him or his practice, that he had failed to use each client's money for that client matter only, that he had failed to establish and maintain proper accounting systems and proper internal controls over those systems to ensure compliance with the rules, and that he had failed to keep proper accounting records accurately to show the position with regard to money held for each client. The Tribunal was satisfied allegation 1.5 was proved.

32. **Allegation 1.6: By failing to comply with the requirements of the SAR, the Respondent behaved in a way that was likely to diminish the trust the public placed in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007 ("SCC").**

32.1 The Tribunal had no doubt that the Respondent's conduct had diminished the trust placed by the public in him or the legal profession. Indeed, in the particular case of the transaction concerning 12 S Road, Drayton, the client had suffered a great deal as the purchase had not completed and the client's money had not been accounted for. Furthermore, on the matter of 64 S Avenue, the client had received a request for payment of estate agent fees and stamp duty when she had already paid these funds to the Respondent's firm. Mr C had lost the sum of at least £2,800. These clients had clearly suffered serious financial losses which had adversely affected the trust placed by them in the Respondent.

Previous Disciplinary Matters

33. The Respondent had appeared before the Tribunal previously on 29-30 March 2011.

Sanction

34. The Tribunal had considered carefully the Respondent's letters which made reference to his medical condition and other personal difficulties. The Tribunal referred to its

Guidance Note on Sanctions when considering sanction. The Tribunal also 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.

35. The medical evidence from the Respondent included a letter between two GP's dated 21 March 2013, a Consultation Information Sheet dated 16 April 2013 which listed the Respondent's medical conditions and a short letter from Dr Chesters dated 29 October 2013.

36. This was a case where clients had suffered financial losses, serious damage had been caused to the reputation of the profession and the Tribunal had found the Respondent had acted dishonestly over a number of months. His conduct had caused a great deal of damage to the reputation of the profession.

37. The Tribunal was mindful of the case of the SRA v Sharma [2010] EWHL 2022 (Admin) in which Coulson J stated:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll"

38. The Tribunal was satisfied that there were no exceptional circumstances in this case and that accordingly the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

39. Mr Williams QC requested an Order for the Applicant's costs in the total sum of £39,260.23 and provided the Tribunal with a Statement of Costs which had been served on the Respondent. Mr Williams QC accepted that some reduction would need to be made to take account of the fact that there was some duplication of work as the Rule 5 Statement had been issued by a firm of solicitors and then subsequently the matter had been dealt with in house by the Applicant. Mr Williams QC had been involved in the case since January 2013 and provided the Tribunal with details of his hourly rate.

40. He confirmed the Respondent was still declared bankrupt but no other information had been received regarding his financial circumstances, despite information about his means having been requested from him. In the circumstances Mr Williams QC requested an order for costs in the usual terms.

41. The Tribunal had considered carefully the matter of costs. The Tribunal was of the view that the costs claimed were high, particularly in light of the fact that there was duplication of work due to the change in legal representation for the Applicant. The Tribunal assessed the Applicant's costs in the sum of £30,000 and ordered the Respondent to pay this amount.

42. In relation to enforcement of those costs, the Tribunal noted the Respondent had not provided any documentary evidence of his income, expenditure, capital or assets despite having been requested to do so by the Tribunal in a letter dated 20 June 2013,

as well as by the Applicant. The Tribunal had particular regard for the case of SRA v Davis and 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."

43. The Tribunal was also mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs in circumstances where his livelihood had been taken from him. As well as the Applicant requesting information about the Respondent's financial circumstances, the Tribunal had also written to the Respondent on 20 June 2013 requesting his full financial details with documentary evidence in support. He had failed to provide any such information. The Respondent had been declared bankrupt on 10 November 2011 and Mr Williams QC indicated that it was believed the Respondent continued to be an undischarged bankrupt. In the absence of any other financial information or evidence from the Respondent, it was difficult for the Tribunal to take a view of his financial circumstances.

Statement of Full Order

44. The Tribunal ORDERED that the Respondent, Michael Abraham Philip Harris, 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 £30,000.00.

DATED this 13th day of December 2013
On behalf of the Tribunal

J. Astle
Chairman