

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11137-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

STEPHEN LESLIE HISEMAN

Respondent

Before:

Mr P. Housego (in the chair)

Mr L. N. Gilford

Mr S. Howe

Date of Hearing: 12 November 2013

Appearances

Mr David Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Applicant

The Respondent did not attend and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 In breach of Rule 1.02 of the Solicitors' Code of Conduct 2007 he failed to act with integrity;
 - 1.2 In breach of Rule 1.03 of the said Code he failed to act in the best interests of his clients;
 - 1.3 In breach of Rule 1.06 of the said Code he acted in a way that diminished the trust placed in him and/or the solicitors' profession.

It was alleged that in each respect the Respondent was dishonest although for the avoidance of doubt it was not necessary to establish dishonesty for the allegations to be made out.

Documents

2. The Tribunal reviewed all of the documents submitted on behalf of the Applicant and the Respondent, which included:

Applicant

- Application dated 28 February 2013;
- Rule 8 Statement and exhibit "DEB1" dated 28 February 2013;
- Schedule of Costs and costs break down dated 12 November 2013

Respondent

- None

Preliminary Matter

3. Mr Barton told the Tribunal that he had had no contact with the Respondent since the proceedings were issued in February 2013. He referred the Tribunal to the case management hearing which took place on 14 May 2013 and following which the Tribunal directed that there be substituted service upon the Respondent by advertisement of notice of the proceedings and the date of the substantive hearing in a newspaper in the Sussex area in which the Respondent had last practised and in the New Jersey, USA area where it appeared the Respondent was last residing. Mr Barton produced the two advertisements to the Tribunal.
4. Mr Barton said that he had also been in contact with solicitors on the South Coast who were acting for the Respondent in other matters but who were not instructed in these proceedings. He had informed them of the substantive hearing date although they had not been able to accept service of these proceedings.

5. Mr Barton submitted that he had taken all possible steps to notify the Respondent of the substantive hearing date and he had still not engaged or attended before the Tribunal. He invited the Tribunal to proceed in the absence of the Respondent.

The Tribunal's Decision

6. The Tribunal was satisfied that substituted service had been effected upon the Respondent and that all possible steps had been taken on behalf of the Applicant to notify the Respondent of the hearing date including informing his solicitors instructed on other matters.
7. The Tribunal took into account the case of R v Jones [2001] QB 862 wherein the Judgment stated:

“... ”

22 In our judgment, in the light of the submissions which we have heard and the English and European authorities to which we have referred, the principles which should guide the English courts in relation to the trial of a defendant in his absence are these.

- (1) A defendant has, in general, a right to be present at his trial and a right to be legally represented.
- (2) Those rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing, or having the means of knowledge as to, when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him...
- (3) The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.
- (4) That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
- (5) In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular: (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear; ... (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation; ... (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him; (vii) the risk of the jury reaching an

improper conclusion about the absence of the defendant; (viii) the seriousness of the offence, which affects defendant, victim and public; (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates...

(6) If the judge decides that a trial should take place or continue in the absence of an unrepresented defendant, he must ensure that the trial is as fair as the circumstances permit...".

8. The Tribunal was satisfied that the Respondent had waived his right to attend the hearing. The Respondent had continually failed to engage and the Tribunal was content to proceed in the absence of the Respondent whilst ensuring that he received as fair a hearing as the circumstances permitted.

Factual Background

9. The Respondent was an unadmitted person. At all material times the Respondent was employed or remunerated by CK Solicitors ("the firm") of Selsey, West Sussex. The sole principal was Mr Simon Kenny and the firm was intervened by the Applicant on 25 May 2011.
10. On 28 June 2012 Mr Whitmarsh, a Forensic Investigation Officer ("FIO") of the Applicant commenced an investigation of the firm's books of account and other documents. His Forensic Investigation Report ("FI Report") was dated 24 October 2012.
11. The Respondent conducted matters on behalf of clients Miss L and Mr S. Miss L's witness statement dated 22 October 2012 described the Respondent's conduct in dealing with her matter and that the Respondent had failed to act in Miss L's best interests, had failed to act with integrity and had diminished the trust placed in him and in the solicitors' profession with regard to monies paid by her to the Respondent totalling £75,000 which had not been returned or its whereabouts explained.
12. The Respondent had acted for Mr S in the settlement of a debt claim. Mr S signed a witness statement dated 23 September 2012 which detailed the Respondent's conduct in dealing with his matter. On 17 February 2011 Mr S paid to the Respondent £15,000 which had, he said to Mr S, been paid to settle the debt. It was the Applicant's case that the Respondent had represented to Mr S that the claimant had agreed to receive that sum in settlement but Mr S had subsequently learned that the debt was settled on payment of only £10,000.

Witnesses

13. Mr Cary Whitmarsh, the FIO gave evidence.
14. Mr Whitmarsh confirmed the truth of his FI Report and that the Report related to the Respondent only. He confirmed that the Respondent had been employed/remunerated by CK Solicitors which firm had been intervened by the Applicant as at 25 May 2011 and the Respondent was present at the firm on that date.

15. Mr Barton referred Mr Whitmarsh to the witness statement of Miss L and he confirmed that he had taken the witness statement of Miss L and similarly the witness statement of Mr S.

Findings of Fact and Law

16. 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.
17. **The allegations against the Respondent were that:**

Allegation 1.1 - In breach of Rule 1.02 of the Solicitors' Code of Conduct 2007 he failed to act with integrity;

Allegation 1.2 - In breach of Rule 1.03 of the said Code he failed to act in the best interests of his clients;

Allegation 1.3 - In breach of Rule 1.06 of the said Code he acted in a way that diminished the trust placed in him and/or the solicitors' profession.

It was alleged that in each respect the Respondent was dishonest although for the avoidance of doubt it was not necessary to establish dishonesty for the allegations to be made out.

Submissions on behalf of the Applicant

- 17.1 Mr Barton referred the Tribunal to the Rule 8 Statement upon which he relied and the factual background in support of the allegations against the Respondent.
- 17.2 He submitted that in the case of Miss L, in the absence of a credible explanation, the irresistible inference was that the Respondent had misappropriated the money. He submitted that none of the representations made to her had been fulfilled. This included that the loans of £50,000 and £25,000 respectively had been made to a couple based in France to settle a tax bill and that the loan would be secured against property owned by them yet payments were made to the personal bank account of the Respondent.
- 17.3 In the absence of a credible and documented explanation the irresistible inference was that the Respondent had dishonestly misappropriated the money and/or had given Miss L dishonest explanations and reassurances.
- 17.4 Mr Barton referred the Tribunal to the case of Iqbal v the Solicitors Regulation Authority [2012] EWHC 3251 (Admin) and submitted that the Tribunal was entitled to draw an adverse inference from the Respondent's silence and his complete lack of participation in the proceedings.
- 17.5 In the case of Mr S Mr Barton referred the Tribunal to the Rule 8 Statement, which stated:

“ ...

11. Mr S learned that the debt was settled on payment of only £10,000...The irresistible inference is that the Respondent was dishonest in each and all of the following respects:

11.1 In stating that Lombard had agreed to accept £15,000 in settlement;

11.2 In causing Mr S to pay to him personally the said sum;

11.3 In paying Lombard only £10,000;

11.4 In retaining, or otherwise failing to account for, the sum of £5,000”.

17.6 Mr Barton submitted that on the documents monies had clearly gone missing in the case of Mr S and there was a complete absence of explanation for that from the Respondent. In relation to Mr S Mr Barton said that it was evident that the Respondent had dealt with the monies outside of the firm.

Submissions of the Respondent

17.7 None

The Tribunal's Findings

17.8 The Tribunal had listened carefully to the submissions on behalf of the Applicant.

17.9 The Tribunal was satisfied that the Respondent had received from Miss L the sum of £75,000, referred to in her witness statement, which stated:

“ ...

9. On 29 January 2008, I sent the £50,000.00 to the account stated in the promissory note [the personal account of the Respondent]. The £50,000.00 was sent in two amounts of £40,000.00 and £10,000.00. I attach as exhibits JL3 and JL4 the relevant bank statements showing the payment of these sums.

10. In February 2009, Mr Hiseman asked me if I could lend the couple in France a further £25,000.00 to which I agreed. I lent this sum in the knowledge that Mr Hiseman had failed to repay the loan of £50,000.00 on 2 June 2008.

11. I attach as exhibit JL5 a copy of my Lloyds TSB bank statement showing the payment of £25,000.00 on 13 February 2009”.

17.10 The Tribunal had regard to the Promissory Note dated 29 January 2008 on headed notepaper of CK Solicitors in which the Respondent had promised to repay Miss L the £50,000 plus £400 per month in interest commencing 01 March 2008. It noted that as at the date of the FI Report the Respondent had not repaid the monies to Miss L and she had taken legal action to recover her monies.

- 17.11 The Tribunal was satisfied that by his conduct towards Miss L, the Respondent had failed to act with integrity, had failed to act in the best interests of his client and had acted in a way that diminished the trust placed in him and/or the solicitors' profession.
- 17.12 In relation to Mr S, the Tribunal had regard to his witness statement and it was satisfied that at the material time, Mr S had been a vulnerable client. The Tribunal accepted that Mr S had been told by the Respondent that the creditor had offered to settle for £15,000 and the Respondent had told Mr S that he would write a personal cheque and Mr S needed to reimburse him. Mr S subsequently discovered that the matter had been settled by payment of £10,000 to the creditor and the Tribunal was satisfied that Mr S thus paid £5,000 more to the Respondent than was necessary to settle the matter and that the additional monies had been paid to the Respondent personally.
- 17.13 The Tribunal was satisfied that by his conduct towards Mr S, the Respondent had failed to act with integrity, had failed to act in the best interests of his client and had acted in a way that diminished the trust placed in him and/or the solicitors' profession.
- 17.14 With regard to the allegation of dishonesty the Tribunal found that in each respect the Respondent was dishonest. It was satisfied on the combined test in Twinsectra Limited v Yardley and Others [2002] UKHL 12 that by the ordinary standards of reasonable and honest people in misappropriating clients' money the Respondent was dishonest [the objective test] and he knew that by those standards his conduct in so doing was dishonest [the subjective test]. The Tribunal also drew an adverse inference in relation to the Respondent's conduct and that there had been no explanation from him for his conduct.
- 17.15 On the facts, Miss L had paid £75,000 to the Respondent and she had not received her money back despite various implausible explanations for that by the Respondent including that he would sell his own house in France and take out a loan on his own property to repay her yet there was no evidence that he had done either of those things.
- 17.16 In the case of Mr S, the Respondent took advantage of him when he was vulnerable and deceived him as to the amount required to settle the debt, and had asked for and received into his personal bank account £5,000 from Mr S, which was not required for the purpose for which he asked for it, and which he improperly retained.
- 17.17 The Respondent had attempted to attach a cloak of legitimacy to his actions which the Tribunal found to have been worthless.
- 17.18 The Tribunal found the allegations proved on the facts and on the documents.

Sanction

- 18 The Tribunal had regard to its Guidance Note on Sanctions.
19. It made the only order available to it being a Section 43 Order which is a regulatory as opposed to a punitive order and is intended to afford protection to the public and the

profession by ensuring that the Respondent may not work again in a legal practice other than with the permission and consent of the Applicant.

Costs

20. Mr Barton asked the Tribunal to summarily assess the costs and to make an order for costs in the sum of £12,972.25 being the total of the Applicant's costs. He said that no information had been produced by or on behalf of the Respondent regarding his finances and in the absence of that he asked the Tribunal to make an unqualified order for costs.
21. In relation to the FI costs Mr Barton confirmed that time spent amounted to 33.3 hours and totalled £2,479.25 plus £706. His own costs totalled £9,797 inclusive of VAT, making a grand total of £12,972.25.
22. In response to a question from the Tribunal Mr Barton said that his time spent on documents amounted to 28.5 hours and included all preparatory work, not merely the Rule 8 Statement but also perusal of a quantity of material which had to be assessed and discarded and work involving preparation of the substituted service notices.
23. The Tribunal summarily assessed the Applicant's costs and it was satisfied that the proceedings had been properly brought and the costs properly incurred. No financial information had been provided by the Respondent and the Tribunal could not therefore take account of his financial circumstances.
24. The Tribunal ordered that the Respondent do pay the costs of the Applicant in the sum of £12,972.25.

Statement of Full Order

25. The Tribunal ORDERED that as from 12th day of November 2013 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Stephen Leslie Hiseman;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Stephen Leslie Hiseman;
 - (iii) no recognised body shall employ or remunerate the said Stephen Leslie Hiseman;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Stephen Leslie Hiseman in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Stephen Leslie Hiseman to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Stephen Leslie Hiseman to have an interest in the body;

And the Tribunal further Ordered that the said Stephen Leslie Hiseman do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,972.25.

Dated this 22nd day of November 2013
On behalf of the Tribunal

P. Housego
Chairman

