

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11139-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

DAVID NIGEL BIRD

Respondent

Before:

Mr. I. R. Woolfe (in the chair)

Mr. A. Ghosh

Mrs S. Gordon

Date of Hearing: 5th September 2013

Appearances

Mr Peter Steel, solicitor of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, Holborn Viaduct, London EC4M 7RF for the Applicant

Mr David McIntosh QC (Hon) of Rodney Warren & Co Solicitors, Berkeley House, 26/28 Gildredge Road, Eastbourne, East Sussex BN21 4RN for the Respondent

JUDGMENT

Allegations

1. The allegations against the Respondent were that, by virtue of his conduct in withdrawing monies and thereafter using those monies for his own purposes or the purposes of other clients of the firm HP&B, he:
 - 1.1 Failed to act with integrity in breach of Rule 1.02 of the Solicitors' Code of Conduct 2007;
 - 1.2 Failed to act in the best interests of his clients in breach of Rule 1.04 of that Code;
 - 1.3 Behaved in a way which was likely to have diminished the trust the public placed in him and in the legal profession in breach of Rule 1.06 of that Code;
 - 1.4 Held client money outside of a client account otherwise than in the circumstances permitted by Rule 16(1) of the Solicitors' Accounts Rules 1998;
 - 1.5 Withdrew sums from client account in circumstances other than those permitted by Rule 22(1) of those Rules; and
 - 1.6 Failed to keep accounting records to show client money received, held or paid contrary to Rule 32(1)(a) of those Rules.

Dishonesty was alleged with regard to the Respondent's conduct. However dishonesty was not an essential ingredient of any of the allegations against him.

Documents

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

Applicant

- Application dated 18 March 2013;
- Rule 5 Statement and exhibit "AJB1" dated 18 March 2013

Respondent

- Reply in Mitigation dated 20 August 2013;
- Statement of Income and Expenditure dated 27 August 2013;
- Character References.

Factual Background

3. The Respondent was admitted as a solicitor on 2 November 1987. His name remained on the Roll of Solicitors.

4. At all times material to the allegations the Respondent practised as a Partner at the firm of HP&B (“the firm”) from offices in Wrexham. The Respondent was dismissed from the partnership with immediate effect on 4 November 2011.
5. On 24 April 2012 a duly authorised officer of the Applicant commenced an inspection of the books of account and other documents of the firm at its offices. The inspection culminated in a Forensic Investigation Report (“the FI Report”) dated 28 June 2012.
6. The FI Report confirmed (by reference to information provided by the firm’s accountants) that, between 4 April 2006 and 21 September 2011 the Respondent had drawn 45 cheques to a total value of £185,881.79 on the firm’s client account, each of which was made payable to:
 - 6.1 The Respondent himself (39 cheques totalling £95,883.49); or
 - 6.2 “Britannia Building Society 332234485” (four cheques totalling £88,152); or
 - 6.3 “Principality Building Society re: D N Bird” (one cheque to a value of £500).
7. One cheque to the value of £1,346.30 could not be found by the bank, and so the identity of the payee on the cheque was not known.
8. In the case of all such cheques the identity of the payee was recorded upon the relevant cheque stub or cheque requisition form as being someone other than the Respondent; characteristically either the client themselves or (in probate matters) a creditor of the estate or an individual who shared the same surname as the Deceased.
9. In the course of an interview with the Forensic Investigation Officer (“FIO”) on 14 June 2012 the Respondent admitted to the FIO, amongst other things, that all of the cheques referred to had been written and presented by him into bank accounts held either in his sole name or jointly with his wife.
10. On 27 July 2012 the Respondent wrote (via his legal representatives) to the Applicant’s FIO, enclosed documents requested in the course of the interview on 14 June 2012 and further explained the circumstances in which money had come to be withdrawn.
11. On 21 September 2012 a supervisor employed by the Applicant wrote to the Respondent and enclosed a copy of the FI Report and requested an explanation of the matters raised.
12. On 8 October 2012 the Respondent replied (again via his legal representatives). He made certain admissions and advised that, of the monies misapplied by him, over £70,000 had been used for purposes other than his personal use.
13. On 22 November 2012 a duly authorised officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

14. None

Findings of Fact and Law

15. 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.

16. **The allegations against the Respondent were that, by virtue of his conduct in withdrawing monies and thereafter using those monies for his own purposes or the purposes of other clients of the firm HP&B, he:**

Allegation 1.1 Failed to act with integrity in breach of Rule 1.02 of the Solicitors' Code of Conduct 2007;

Allegation 1.2 Failed to act in the best interests of his clients in breach of Rule 1.04 of that Code;

Allegation 1.3 Behaved in a way which was likely to have diminished the trust the public placed in him and in the legal profession in breach of Rule 1.06 of that Code;

Allegation 1.4 Held client money outside of a client account otherwise than in the circumstances permitted by Rule 16(1) of the Solicitors' Accounts Rules 1998;

Allegation 1.5 Withdrew sums from client account in circumstances other than those permitted by Rule 22(1) of those Rules; and

Allegation 1.6 Failed to keep accounting records to show client money received, held or paid contrary to Rule 32(1)(a) of those Rules.

Submissions on behalf of the Applicant

16.1 Mr Steel referred the Tribunal to the Rule 5 Statement which he relied upon in its entirety and the factual background to the case.

16.2 Mr Steel told the Tribunal that all of the allegations were admitted by the Respondent.

16.3 With regard to the 45 improper withdrawals by the Respondent totalling £185,881.75, Mr Steel said that the mechanism for the withdrawals had been the same in each case whereby the Respondent had raised cheques purportedly to pay clients or creditors or beneficiaries in probate cases. He said that the cheque stubs had been written up to support the pretence of legitimate recipients. Letters to third parties purporting to enclose cheques had also been prepared.

- 16.4 Mr Steel said that whilst some of the money had been diverted to provide a contingency fund for potential claims against the firm, the majority had been for the Respondent's personal benefit.
- 16.5 Mr Steel said that the Respondent had accepted full responsibility which was to his credit and he had made good the loss but he told the Tribunal that this had been a prolonged course of conduct by the Respondent and the Respondent had acknowledged the serious impact upon his professional status.

Submissions on behalf of the Respondent

- 16.6 Mr McIntosh told the Tribunal that the Respondent's wife would have been present in support of her husband were it not for the fact that she was attending a re-training course in order to return to work.
- 16.7 Mr McIntosh said that there was nothing which could alter the fact of dishonesty on the part of the Respondent. The Respondent could not hide from the seriousness of his misconduct but he had already been severely punished by the loss of his professional standing amongst friends, family and his community. Mr McIntosh said that the Respondent was already working in employment he would not previously have undertaken and he would be caused greater damage once the outcome of the hearing was known.
- 16.8 The Respondent wanted an end to the matter and Mr McIntosh said that the Respondent had taken all steps to seek to correct the situation in particular he had repaid every penny he had taken. He had expressed his sincere regret, he had co-operated fully with the investigation and no clients of the firm had lost money.
- 16.9 Mr McIntosh referred the Tribunal to the Respondent's Reply in Mitigation dated 20 August 2013 and to the character references produced on his behalf and he asked the Tribunal to take them into account. He submitted that the references established that the Respondent's misconduct had been out of character in the 28 years of his professional life and his private life which had previously been unblemished.
- 16.10 Mr McIntosh said that there was a strong suggestion, from the Respondent's explanation of his conduct, of his inability to own up to the fact that he was struggling with his work and that he had sought to protect his firm's claims record and to hide, unwisely, from his wife his inability to support his family. Mr McIntosh submitted that these matters had been a catalyst for the Respondent's juggling of client monies and for bolstering the family's funds.
- 16.11 Mr McIntosh submitted that there had been a lack of support for the Respondent within the firm, throughout his time there. He said that the firm had added to his isolation and his avoidance tendencies. Mr McIntosh submitted that it was extraordinary that it was not identified that the Respondent was struggling or that he was doing/had done unwise things. The Respondent had felt unable to seek help. Mr McIntosh told the Tribunal that the Respondent had not been suited to being a solicitor. The firm had suffered as had all other firms in the recession and that had added to the pressure of work although it was not an excuse for the Respondent's behaviour. The Respondent had also been required by the firm to pay personally the

increase in the firm's professional indemnity insurance premium owing to the claims against the firm for which the Respondent had been responsible. This had added to his problems.

- 16.12 Whilst the Respondent had not sought a medical report retrospectively Mr McIntosh said that it did seem that he had not behaved rationally at the material time.
- 16.13 Mr McIntosh asked the Tribunal to have regard to the Respondent's situation with some sympathy and to take into account that the Respondent had repaid all of the monies, had co-operated fully with the Applicant and his former firm and that he had acted wholly out of character.

The Tribunal's Findings

- 16.14 The Tribunal found all of the allegations proved on the facts and on the documents including that the Respondent had been dishonest. It noted that the Respondent had admitted all of the allegations including dishonesty.
- 16.15 The Tribunal was satisfied that the Respondent's misconduct had taken place over a lengthy period of time, he had sought to conceal his actions by the making of false entries in client ledgers and the creation or falsifying of documents and there were no excuses for the Respondent's conduct which was wholly reprehensible.

Previous Disciplinary Matters

17. None

Mitigation

18. Mr McIntosh mitigated in his submissions to the Tribunal and referred the Tribunal to the Respondent's Reply in Mitigation.

Sanction

19. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
20. The Tribunal had regard to the Judgment of Sir Thomas Bingham in Bolton v The Law Society [1994] 1 WLR 512, which stated, inter alia, that:

“Any solicitor 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...

..the most fundamental of all: to maintain the reputation of the solicitor's profession as one in which every member, of whatever standing, may be trusted to the ends of the earth...”.

21. These were serious allegations which had been found proved including that the Respondent had acted dishonestly and in all the circumstances of the case, the

Tribunal was satisfied that the only appropriate sanction was that the Respondent be struck off the Roll of Solicitors.

Costs

22. Mr Steel told the Tribunal that costs had been agreed in the sum of £11,000 and that the Applicant would enter into negotiations with the Respondent with regard to the terms of payment.
23. Mr McIntosh referred to the Respondent's statement of income and outgoings. He acknowledged that there was no reference to assets and informed the Tribunal that the Respondent had an ISA of £5,000, a half equity share in the matrimonial home valued at £140,000, a car with a value of £1,000 and another interest in property with a value of approximately £25,000.
24. Mr McIntosh said that the costs had been agreed in the sum of £11,000 on the basis that the Applicant would be willing to negotiate payment terms over a period of time including by instalments.
25. The Tribunal noted that the costs had been agreed and it ordered that the Respondent pay costs in the sum of £11,000.

Statement of Full Order

26. The Tribunal Ordered that the Respondent, DAVID NIGEL BIRD 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 £11,000.00.

DATED this 26th day of September 2013
On behalf of the Tribunal

I. R. Woolfe
Chairman