

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11281-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

RICHARD ARNOLD WILKES

Respondent

Before:

Mr A. G. Gibson (in the chair)

Mr I.R. Woolfe

Mrs V. Murray-Chandra

Date of Hearing: 21 April 2015

Appearances

Ms Devi Nadarajah, solicitor, employed by the Solicitors Regulation Authority (“the SRA”) of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent appeared and was represented by Mr Andrew Blatt of Murdochs solicitors, 45 High Street, Wanstead, London E11 2AA.

JUDGMENT

Allegations

1. The allegations against the Respondent, Richard Arnold Wilkes, made in a Rule 5 statement dated 30 July 2014, on behalf of the SRA, were that:
 - 1.1 In breach of principles 2, 4, 6 and 10 of the SRA Code of Conduct 2011 and contrary to Rules 14.1, 17.2, 17.4, 20.1 and 20.3 of the SRA Accounts Rules 2011 he transferred monies from the Firm's client bank account to its office bank account without having first sent bills or other notification of costs to the client and/or in amounts significantly in excess of the work actually done and/or when not properly due.

Allegation 1.1 was put as one of dishonesty although for the avoidance of doubt it was not necessary to establish dishonesty to substantiate all or any of it.
 - 1.2 In breach of Principles 2, 4, 6 and 10 of the SRA Code of Conduct 2011 and contrary to Rule 7.1 of the SRA Accounts Rules 2011 he failed to promptly rectify the shortage of monies on the Firm's client bank accounts.
 - 1.3 In breach of Principles 2 and 6 of the SRA Code of Conduct 2011 and contrary to Rule 14.5 of the SRA Accounts Rules 2011 he allowed money to be paid into and held in the Firm's client bank account without any underlying legal transaction.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included:

Applicant:

- Application and Rule 5 Statement dated 11 September 2014, together with Appendix DN1;
- Statement of Devi Nadarajah dated 11 December 2014;
- Copy letter from the SRA to the Respondent dated 14 October 2014.
- Schedule of Costs of the Applicant dated 7 April 2015.

Respondent:

- Respondent's admissions and denials;
- Respondent's witness statement dated February 2015;
- Copy email from Mr Blatt to the SRA and the Tribunal dated 15 April 2015;
- Respondent's Personal Financial Statement dated 17 April 2015, together with copy letters dated 8 July 2014 and 4 August 2014 from the Insolvency Service to the Respondent and a copy of a final charging order dated 4 August 2014 concerning the Respondent's home.

Tribunal:

- Memorandum of case management hearing on 14 October 2014.

Factual Background

3. The Respondent was born on 19 December 1946 and was admitted as a solicitor on 1 October 1973. His name remained on the Roll of Solicitors.
4. At all material times, the Respondent practised as the sole principal of Hansell Wilkes & Co (the "Firm") from offices at St Georges Chambers, 14 Newcomen Road, Dartmouth, Devon TQ5 9BN.
5. On the 30 September 2013, Sara Houchen, an Investigation Officer employed by the SRA (the "Officer"), commenced an investigation of the Firm's books of account and other documents at the Firm's offices. Her report was dated 11 December 2013 (the "Report").
6. On the 20 December 2013 the SRA intervened into the Firm and the Respondent's Practising Certificate was suspended. The SRA granted the Respondent's application for the suspension to be lifted, subject to conditions.
7. By letter dated 11 March 2014 the SRA sought the Respondent's written explanation for the matters raised in the Report.
8. On the 25 May 2014 the SRA decided to refer the Respondent's conduct to the Tribunal.

Allegation 1.1

9. The Report identified a minimum cash shortage of £255,339.64 as at the extraction date of 31 August 2013 and a shortfall of £280,760.86 as at 30 September 2013.
10. The shortage was caused by client money being improperly transferred from client to office account. Money was transferred either before any work had been done, or before bills had been delivered.
11. The shortage calculation was a minimum one because it was not possible to examine every ledger, and a sample of transaction files was examined to show how the Respondent created the shortage. The shortage was substantial and the underlying conduct was repeated many times over a prolonged period of time.
12. The Officer identified at least 167 instances between 21 February 2011 and 30 September 2013 where the Respondent had transferred monies from the firm's client account to the office account without the raised bill being sent to the client.
13. On 5 of the client matters, the bills raised appeared to the officer to be in excess of the value of the amount of work evidenced on the client matter files.
14. Those transfers were effected by the Respondent or on his direction, and consequently he had knowledge of them. He confirmed to the Officer that the fee earners who had conduct of the relevant files were not aware that the monies were being or had been transferred.

15. The Respondent's conduct in relation to the making of improper withdrawals from client account was exemplified by the matters identified in the Report. They were all probate matters or connected to probate matters. They typified the way he transferred monies that were for sums far in excess of the value of work undertaken.
16. The Firm acted in the Estate of Mrs "C" deceased. An examination of the ledger revealed that between 13 February 2013 and 13 August 2013 the Firm had raised 17 bills with a total value including VAT of £97,272.00 and subsequently transferred a total of £93,769.00 from client to office account. Only 3 of the bills were found on the file and the Respondent confirmed that if the bills were not on the file, they had not been delivered to anyone. The Respondent acknowledged that the amount billed of £97, 272.00 in the matter did not reflect the actual work done on the file and on the Respondent's own calculation, as at 31 August 2013, £5,070.00 worth of work had been undertaken excluding the value element.
17. In the second case, the Firm acted in the Estate of Mr "J" deceased in the sale of his property. An examination of the ledger revealed that between 15 July 2013 and 2 August 2013, the Firm posted six bills to the ledger totalling £54,546.00 and one credit note for £5,562.00. In the same period, the firm transferred a net figure of £49,031.00 from client to office account. The client file contained one bill, for a total of £900.00 costs and £47.00 of disbursements. The remaining five bills were not on the file. Four of the bills were located in the firm's central file. The Respondent confirmed to the Officer that the bills on the central file would not have been sent out to the clients if they were not in the client file.
18. In the third matter, the Firm acted in the estate of Mr "D" deceased. Between 24 December 2012 and August 2013, the client ledger showed that 8 interim bills with a total value including VAT of £36,852.00 had been raised and that £36,943.84 had been transferred from client to office account. Only one of the bills was found on the matter file and there was no evidence it had been delivered to anyone. Four of the remaining bills were in the Firm's central file and the Respondent confirmed that these bills were not delivered. He acknowledged that the £36,852.00 billed on the matter did not reflect the actual work and by his own calculation only £3,840.00 worth of work had been undertaken excluding the value element. As at the 31 August 2013 there was a shortage on this matter of £36,943.84 and it increased to £39,672 by the 30 September 2013 due to further improper transfers.
19. In the fourth matter, the firm acted in the estate of Mrs "H" deceased. Between 10 June 2013 and 16 August 2013 9 bills were raised with a total value including VAT of £58,386.00. Two credit notes to the value of £27,420.00 were posted to the office side of the client ledger. A total of £58,448.00 was transferred from client to office account and within the same period sums of £4,128.00 and £23,292.00 were returned to the client account. The client file contained one bill dated 19 June 2013 for £3,600.00 plus £62.00 disbursements. There was no evidence on the file that the bill had been delivered to anyone. The Respondent acknowledged that the interim bills were not sent out to the client and further that the amount billed of £36,852.00 did not reflect the actual work done on the file. On his own calculation work to the value of £4,260.00 had been undertaken.

20. In the fifth matter, the Firm acted in the probate of the estate of Mr J deceased. Between 22 April 2013 and 29 August 2013, the client ledger showed that the firm had raised 7 interim bills with a total value of £26,184.00 including VAT and transferred a total of £26,932.25 from client to office account. Credit notes to the value of £1,398.00 were posted, and between 6 June and 25 July 2013 office to client transfers totalling £2,124.00 were made to reverse previous improper transfers. Two bills were found on the file but there was no indication that they had been delivered to anyone. The other 5 interim bills were found in the central file. The Respondent acknowledged that these bills had not been delivered to anyone and he also acknowledged that the amount billed of £26,184.00 did not reflect the actual work done. His own calculation as at 31 August 2013 showed the work undertaken was valued at £6,160.00.
21. In the sixth case, the Firm acted for Mr "A" in connection with his purchase of a property. The client ledger for Mr A showed that the Firm raised a bill of £300.00 on 5 July 2013 and transferred the money from client to office account on the same day. The bill was not on the file and there was no evidence that it had been delivered to the client.
22. The ledger showed a receipt on the 8 July 2014 from the client into client account of £24,000.00. On the same day the Firm raised a bill for £15,294.00 and transferred this from client to office account. On 22 July 2014, following the receipt of further monies from the client, the Firm raised a bill for £8,400.00 and transferred this sum to office account. Neither of these bills was on the client file nor had either been delivered to the client.
23. The sum of £20,304.00 was returned to client account on 25 July 2013 and a further £3,690.00 was returned on the 13 August 2013, £23,994.00 was improperly transferred from client to office account during the course of the transaction and then returned to rectify the position.
24. The Respondent similarly utilised money belonging to Ms "H". The Firm held £21,000 for her and between 3 August 2012 and 19 September 2012 the Respondent posted 3 bills with identical narratives and made transfers to office account totalling £15,000. Between 27 September 2012 and 1 March 2013 £14,500.00 was transferred back to enable the client to be repaid.
25. The Respondent told the officer he had been regularly transferring money in such circumstances and a review of 25 matter files and 41 client ledgers showed the same general pattern. The transfers were accompanied by transfers back to rectify the position and between the 1 February 2013 and 31 March 2013 there were 131 such back transfers totalling £1,055,928.45. In interview on the 23 October the Respondent accepted the pattern identified, and that the transfers had been made to deal with cash flow problems and to keep the Firm within its £30,000 overdraft limit. The Respondent said he had been doing this since the middle of 2012 and was attempting to borrow or sell to rectify the shortage. He agreed he had breached Accounts Rules and Principles and failed to achieve Outcomes.

Allegation 1.2

26. As at the date of the Report the identified minimum shortage had not been replaced and this remained the position.

Allegation 1.3

27. The Firm had acted for Ms “JH” in respect of the drafting and re-drafting of her will over several years. On 3 August 2012 the Firm’s client ledger showed a cash payment being received in the sum of £21,000.00. In interview the Respondent stated that Ms JH wanted to put the money into the Firm’s client account and not into her own bank account in circumstances where she owed money to the bank and she was concerned that “they might clobber it all”. The Respondent advised the Officer that he was aware that he should not provide banking facilities to clients or operate a client account without an underlying legal transaction.

Correspondence subsequent to the Report

28. On 11 March 2014, a supervisor employed by the SRA wrote to the Respondent enclosing a copy of the Report and requesting an explanation of the matters raised. On 9 April 2014 the Respondent replied. He did not deny the first allegation, admitted that he allowed a shortage to occur and failed to rectify it promptly, although he maintained that he made best efforts to do so. He did not deny that he provided banking facilities.
29. On 2 May 2014 a duly authorised officer of the Applicant decided to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal.

Submissions of the Applicant

30. Ms Nadarajah told the Tribunal that all of the allegations were now admitted by the Respondent. Whilst his name was still on the Roll of Solicitors, he held no Practising Certificate. He had been bankrupt since the 2 July 2014.
31. Ms Nadarajah took the Tribunal through each of the allegations and the underlying evidence. In respect of the dishonesty attaching to allegation 1.1 Ms Nadarajah said that the Respondent’s conduct was dishonest and he knew it was dishonest; it was not a moment of madness. He had candidly told the Officer why he did it and what steps he was attempting to take to rectify the shortfall. In Ms Nadarajah’ submission both limbs of the test for dishonesty set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL were satisfied. It was also clear from the case of Bultitude v The Law Society [2004] AER (D) 252 that an intention permanently to deprive was not required to prove dishonesty in these circumstances, although ultimately the Respondent had not been able to rectify the shortfall.
32. Ms Nadarajah told the Tribunal that claims against the Compensation Fund of £1,262,473.71 had been paid out.

Witnesses

33. None.

Findings of Fact and Law

34. The Tribunal had due regard to the Respondent's right 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 Applicant was required to prove the allegations beyond reasonable doubt.

36. **The allegations against the Respondent, Richard Anthony Wilkes, made in a Rule 5 statement dated 30 July 2014, on behalf of the SRA, were that:**

Allegation 1.1 - In breach of principles 2, 4, 6 and 10 of the SRA Code of Conduct 2011 and contrary to Rules 14.1, 17.2, 17.4, 20.1 and 20.3 of the SRA Accounts Rules 2011 he transferred monies from the Firm's client bank account to its office bank account without having first sent bills or other notification of costs to the client and/or in amounts significantly in excess of the work actually done and/or when not properly due.

Allegation 1.1 was put as one of dishonesty although for the avoidance of doubt it was not necessary to establish dishonesty to substantiate all or any of it.

36.1 The Respondent admitted this allegation, including dishonesty.

36.2 The Tribunal found allegation 1.1 and dishonesty in respect of it to have been proved beyond reasonable doubt on the facts and documents before it.

37. **Allegation 1.2 - In breach of Principles 2, 4, 6 and 10 of the SRA Code of Conduct 2011 and contrary to Rule 7.1 of the SRA Accounts Rules 2011 he failed to promptly rectify the shortage of monies on the Firm's client bank accounts.**

37.1 The Respondent admitted this allegation.

37.2 The Tribunal found allegation 1.2 to have been proved beyond reasonable doubt on the facts and documents before it.

38. **Allegation 1.3 - In breach of Principles 2 and 6 of the SRA Code of Conduct 2011 and contrary to Rule 14.5 of the SRA Accounts Rules 2011 he allowed money to be paid into and held in the Firm's client bank account without any underlying legal transaction.**

38.1 The Respondent admitted this allegation.

38.2 The Tribunal found allegation 1.3 to have been proved beyond reasonable doubt on the facts and documents before it.

Previous Disciplinary Matters

39. None.

Mitigation

40. Mr Blatt asked the Tribunal to accept the Respondent's statement dated February 2015 in mitigation. He had spoken to the Respondent yesterday and asked him why he had wanted to appear at the hearing, since on the face of it there was little he could add. However, the Respondent had been determined that he wanted to face the Tribunal and take his punishment. Whilst the Respondent would not be giving evidence, he wanted to make it clear through Mr Blatt that he had never had any intention permanently to deprive his clients of any of the funds. Mr Blatt had explained civil dishonesty to him and he had accepted that part of allegation 1.1.
41. The Respondent now admitted all of the allegations, although he had initially denied any lack of integrity or dishonesty. Mr Blatt asked the Tribunal to think about right and wrong and in his submission it was better to use those terms in relation to this Respondent. The Respondent knew that what he had done was wrong but did not think that it was "dishonest" in any other sense.
42. The Respondent had treated his practice as his family. He had been in practice for over 30 years when the recession had come and he had wanted to survive and protect his employees, his clients and himself. There was no excuse for using client money to allow the firm to survive but this background would give the Tribunal some context to the Respondent's actions. It was not the case that the Respondent did not intend to pay back the shortfall and he had usually done so. At intervention there was a shortage of some £300,000 but the Respondent said that this had crystallised because of the intervention as he had had a real hope of refinancing.
43. It was clear from the interview held on the 23 October 2013 that the Respondent understood that he had to have done the work in order to render bills. He had never sought to cover up his actions or deceive the Officer. He had been prepared to be candid and honest as could be seen from the interview. In that interview, the Officer had accepted fairly that there had been speedy repayment and that there had been no long-term shortfalls on any particular client. She had commented that the Respondent had kept good and accurate records. The Respondent would guess amounts of money to take in respect of work done on his and other fee earner matters. However, none of the other staff were aware of what he was doing and he took full responsibility for his actions.
44. The Respondent had thought that what he was doing was a technical breach rather than one that was offensive to practising standards and he sought to offer no excuse for it. He had used his client's funds for the practice, to keep staff in employment and allow his family to survive. In Mr Blatt's submission the key point was that this was short term borrowing and the Respondent had always planned to recapitalise and repay the money.

45. Mr Blatt took the Tribunal through the interview of the 23 October 2013. In his submission it could be seen from that interview that the Respondent had not been reckless and neither had he been out permanently to deceive his clients. The money had been used for cash flow and the Tribunal could see the Respondent's straightforward and honest answers that he had given to the Officer. It could also be seen from the interview that the Respondent had applied to take extra funds from his SIPP but had been unable to pursue the application. In Mr Blatt's submission the Respondent had made efforts to deal with the shortage. It was a key point that the Respondent had not been criminally dishonest.
46. Mr Blatt took the Tribunal through the Respondent's witness statement. It was clear from the statement that the effect of the recession on a small business had been significant and in 2012 the Respondent had started teaming and lading.
47. Mr Blatt concluded by saying that the Respondent accepted his default and was ashamed, embarrassed and humiliated. It had been extremely difficult for him to face the Tribunal. He accepted that his actions had not been correct and that they were reckless but he had had no intention permanently to deprive and a real intention to recapitalise.
48. In questioning by the Tribunal, the representatives were asked about the claim on the Compensation Fund. Ms Nadarajah said that a claim of £309,778.19 related to one claimant but she was unaware as to whether there had been any claims for negligence. Mr Blatt explained that a cheque had been sent out to satisfy the claim for £309,770.19 but it had not been honoured because of the intervention. He was unaware as to whether it would be settled post intervention.
49. In further questioning by the Tribunal, Mr Blatt said that the Respondent's drawings in the last two years had been some £4,000 per month. He was now only in receipt of a State pension, had no equity in his home and was bankrupt with no prospect of future earnings.

Sanction

50. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
51. The Respondent had admitted dishonesty and had made no dispute as to the facts and had made clear admissions. His actions had not been a moment of madness but had been repeated many times.
52. The Respondent's culpability for the events in question was high and he had been solely responsible. The harm caused had been similarly high with a shortage of around £250,000 that had not been replaced; the profession as a whole had lost both reputation and a large sum of money as a result of the Respondent's malpractice. The dishonesty was clearly an aggravating factor and the Respondent's actions had been calculated, deliberate and repeated. He had breached his obligations to his clients but had made no attempt at concealment. There were few mitigating factors but the Respondent had shown a degree of cooperation with the SRA and had made open and frank admissions.

53. The Tribunal considered the principle set out in SRA v Sharma [2010] EWHC 2022 (Admin), that is where a solicitor had been found to have been dishonest, unless exceptional circumstances could be shown, then the normal consequence should be for that solicitor to be struck off. The Tribunal found that there were no exceptional circumstances in this case. The Respondent's conduct was disgraceful and he would be struck off.

Costs

54. The Tribunal had before it the Applicant's schedule of costs in the sum of £21,386.05. Ms Nadarajah said that the schedule had been prepared on the basis of partial admissions by the Respondent. However, a number of reductions could be made due to the fact that the hearing had been shorter than anticipated and Mr Bullock had not been required to attend. Ms Nadarajah was asked by the Tribunal whether the query raised at the case management hearing concerning costs had been taken into account and she responded that it had not been.
55. Mr Blatt said that there was no justification for the supervision costs and the forensic inspection costs were significant at just over £9,000. The Respondent had been open and candid and Mr Blatt wondered how the level of costs had been incurred. According to the judgment in the case of Brett v the SRA [2014] EWHC 2974 (Admin) the costs which a person may be ordered to pay must be proportionate and these costs were disproportionate in this context. Mr Blatt asked the Tribunal to discount the supervision costs and assess the forensic investigation costs on a proportionate basis.
56. Mr Blatt also noted the comments made by the Tribunal at the case management hearing at paragraph 15 in which it was said that it was not clear why the Applicant could not have instructed a London-based advocate to attend and thus avoided the costs of travel and accommodation. In Mr Blatt's submission Mr Bullock's travel and attendance for the case management hearing should not be allowed as another advocate had been present. The overall costs were high given that there was one file and early admissions. The Respondent's costs had been considerably less.
57. The Tribunal examined the costs in some detail and reduced the figures for attendances on documents as well as discounting the amounts claimed for the hearing and Mr Bullock's attendance. In the Tribunal's determination the proportionate amount of costs to be paid by the Respondent in all the circumstances should be £12,250.
58. The Tribunal had heard that the Respondent was impecunious and this had not been challenged by the Applicant. The Tribunal had applied the principles in the cases of D'Souza v The Law Society [2009] EWHC 2193 (Admin) and Matthews v SRA [2013] EWHC 1525 (Admin) and in view of the Respondent's age, his lack of any future earning prospects and his current impecuniosity would order that the costs order should not be enforced without leave of the Tribunal.

Statement of Full Order

59. The Tribunal Ordered that the Respondent, Richard Arnold Wilkes, 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 £12,250.00, such costs not to be enforced without leave of the Tribunal.

Dated this 5th day of June 2015

On behalf of the Tribunal

A. G. Gibson
Chairman