# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11286-2014

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY Applicant

and

KESAKAPILLAI RAVEENDERAN Respondent

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Before:

Mr P.S.L. Housego (in the chair)
Mr E. Nally
Mr S. Marquez

Date of Hearing: 3 February 2015

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**Appearances**

Andrew Bullock, Counsel employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

The Respondent appeared and represented himself

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# JUDGMENT

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**Allegations**

1. The allegations against the Respondent made on behalf of the Solicitors Regulation Authority were as follows:

1.1. In breach of Rule 7 of the SRA Accounts Rules 2011 ("SRA AR 2011") he failed to remedy breaches promptly on discovery;

1.2 In breach of Rule 20.1 of the SRA AR 2011 and/or any of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the Principles") he withdrew money from client account other than in circumstances permitted by the SRA AR 2011 which he utilised for his own benefit or for the benefit of others not entitled thereto;

1.3 In breach of Rule 27.1 of the SRA AR 2011 he carried out inter ledger transfers of client money in circumstances not permitted by the said rule;

1.4 In breach of Rule 29.1 of the SRA AR 2011 he failed to keep accounting records properly written up at all times;

1.5 In breach of Principle 2 of the Principles he created fictitious invoices to facilitate the transfer of client money from client to office account and/or to disguise the transfers from his auditors.

2. Allegations 1.2, 1.3 and 1.5 were put as ones of dishonesty although for the avoidance of doubt it was not necessary to establish dishonesty to substantiate all or any of them.

**Documents**

3. The Tribunal reviewed all the documents including

Applicant

- Rule 5 Statement dated 29 September 2014 with exhibit DN1
- Standard Directions for first instance proceedings dated 1 October 2014
- Certificate of readiness dated 5 January 2015
- Applicant's statement of costs for hearing 3 February 2015

Respondent

- Index to Respondent's bundle of documents
- Bundle of documents comprising, (other than those already contained in the Applicant's trial bundle):
- Respondent's letter to the Tribunal dated 26 January 2015
- Letter from iCope dated 21 January 2015
- Letter from Croydon Tamil Welfare Association dated 20 November 2014

- Letter from iCope dated 3 December 2014
- Assets and liabilities
- Monthly income and expenses
- Certificate of readiness dated 3 November 2014
- Response to allegation and final statement of the Respondent dated 15 November 2014

**Preliminary Issue**

4. The Respondent had indicated in his Response dated 15 November 2014 that he agreed and accepted "all the allegations except one small point in allegation 1.2, in which it was stated that I withdrew money from client account for my own benefit. I never used client's money for my own benefit. Last few years I have been inducing (sic) money into the practice. For example in the year 2012- 2013 I drew £16,200 but I induced (sic) £51,250 into the business." Mr Bullock submitted that the Applicant accepted that any monies withdrawn by the Respondent from client account impermissibly were used in connection with the practice and not for items of personal expenditure (for example leading an extravagant lifestyle or paying debts) but it was put by the Applicant that this constituted utilising the money for the Respondent's benefit, the Respondent being a sole practitioner. On that basis, allegation 1.2 stood as pleaded and was admitted by the Respondent.

5. As the Respondent was making admissions of dishonesty which had potentially very serious consequences in terms of sanction, the Tribunal drew his attention specifically to the two limbed test for dishonesty which was set out at paragraph 22 of the Rule 5 Statement as laid down in the case of Twinsectra Ltd v Yardley and Others [2012] UKHL 12; there had been dishonesty where a person had acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he was acting dishonestly. The Tribunal also explained that it worked to the criminal standard of proof that is beyond reasonable doubt. Following that explanation from the Tribunal, the Respondent confirmed that he admitted all the allegations including those where an allegation of dishonesty was made. The hearing proceeded on that basis.

**Factual Background**

6. The Respondent was born in 1949 and admitted to the Roll of Solicitors in 1999. He did not hold a current practising certificate and his name remained on the Roll.

7. At all material times the Respondent practised as the sole practitioner using the style K Ravi solicitors ("the firm") from offices in Pinner, Middlesex.

8. By an e-mail dated 23 November 2013, the Respondent made a self report to the Applicant in the following terms:

> "I, K Raveenderan of K Ravi Solicitors (SRA NO 548831 write to inform the following.

1. My firm could not complete the conveyancing transaction
2. Due to my negligent act K Ravi client suffered a loss.
3. **K Ravi as a firm cannot exist.**
4. We Have Stopped trading from Wednesday.
5. K Ravi wants the SRA to intervene in the interest of the clients.
6. Full detailed statement been (sic) sent to you by special delivery.
7. Please do the needful to intervene and advice (sic) us by fax."

9. Following receipt of the e-mail, David Bailey an Investigation Officer ("IO") employed by the Applicant commenced an investigation of the firm's books of account and other documents on 25 November 2013. On that day, the Respondent handed to the IO a prepared statement together with a copy letter confirming the e-mail. In his statement the Respondent accepted that he had breached "SRA regulations" and that he took full personal responsibility for the financial irregularities described or referred to. The Respondent was interviewed on the same day and a transcript of the interview was before the Tribunal. The IO prepared a Forensic Investigation ("FI") Report dated 25 January 2014. The IO calculated a minimum cash shortage on client account of £137,919.88. The firm had one client bank account and one office bank account with NatWest which the Respondent alone operated.

10. The transactions which had brought matters at the firm to a head were as follows;

11. The firm (the Respondent) was instructed by Mr SK on 6 September 2013 on the purchase of a business and freehold property located at C Terrace.

12. The purchase was to be funded by way of a mortgage advance from Barclays Bank in the sum of £230,750 and from client funds totalling £121,950. Client funds in that amount were received on 12 November 2013 and on 18 November 2013, the mortgage advance amounting to £230,750 was received and lodged into the firm's client account.

13. On 19 November 2013, the firm remitted the sum of £208,000 to the seller's solicitors, receipt of which was acknowledged on 19 November 2013. The Respondent explained that he was unable to complete the transaction and that there was a shortfall in the firm's client account in the amount of £140,000.

14. The shortfall was caused by the Respondent having utilised the funds received from Barclays Bank to redeem the mortgage on an unrelated matter.

15. The firm (the Respondent) was instructed by Mr SC, Mr RC and Mr VC on 19 February 2013 on the sale of 30 I Close for the sum of £239,000.

16. The property was subject to a mortgage with Santander, the redemption amount being £169,779.66.

17. The purchase price, amounting to £239,000 was received from the buyer's solicitors on 5 November 2013 and lodged in the firm's client bank account resulting in a credit balance in the sum of £305,971.63.

18. On 5 November 2013, the sum of £193,530 was paid to KB, an unrelated client reducing the credit balance in the client account to £113,641.43.

19. On 8 November 2013, the balance of the proceeds of sale, which amounted to £67,448.79, was paid to "Mr and Mrs [C]" further reducing the firm's client account balance to £33,806.09.

20. It was clear that there was a shortfall of at least £135,973.57 and that the firm was unable to redeem the mortgage with Santander from available funds in the client account.

21. On 18 November 2013, the Respondent redeemed the mortgage on 30 I Close with funds received from Barclays Bank on behalf of Mr SK, resulting in a minimum shortage in the firm's client account, after adjustment for balance of funds held and monies on account, in the sum of £137,919.88.

22. On 27 November 2013, the Applicant intervened into the firm as a consequence of which the Respondent's practising certificate was suspended. To the best of the Applicant's knowledge he had not practised since that date.

23. On 13 June 2014, an officer authorised by the Applicant decided to refer the Respondent to the Tribunal.

**Witnesses**

24. None.

**Findings of Fact and Law**

25. 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.

26. **Allegation 1.1 - In breach of Rule 7 of the SRA Accounts Rules 2011 ("SRA AR 2011") he [the Respondent] failed to remedy breaches promptly on discovery;**

26.1 For the Applicant, Mr Bullock submitted that the Applicant's case rested on what the Respondent had admitted in interview and what the IO found. The IO identified a minimum unremedied cash shortage of £135,973.57 as at 5 November 2013 which by 18 November 2013 had increased to £137,919.88 and continued up to the date of the intervention. The circumstances in which the shortage arose were that sums received in respect of a conveyancing transaction for Mr SK were then paid out on another matter to discharge the Cs' mortgage with Santander. Monies that should have been available for the redemption had been in part used for another client Mr KB. On 18 November 2013, the inevitable happened and the situation crystallised as the Respondent did not have enough money from other clients coming into client account to remedy the shortage arising from the monies he had misapplied.

26.2 The Tribunal considered the evidence, the submissions for the Applicant and the Respondent's admissions and found allegation 1.1 proved to the required standard; indeed it had been admitted.

27. **Allegation 1.2 - In breach of Rule 20.1 of the SRA AR 2011 and/or any of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the Principles") he [the Respondent] withdrew money from client account other than in circumstances permitted by the SRA AR 2011 which he utilised for his own benefit or for the benefit of others not entitled thereto;**

27.1 For the Applicant, Mr Bullock relied on the payment on 5 November 2013 of £193,530 to Mr KB referred to in respect of allegation 1.1 and the use of monies received from Barclays Bank for Mr SK to redeem the mortgage on 30 I Close. He also referred the Tribunal to the transcript of the interview conducted by the IO with the Respondent on 25 November 2013 during the course of which the Respondent admitted these transactions. After referring to the detail of the transactions, the following exchange took place about when the impermissible transactions began ("R" refers to the Respondent):

> "IO: So you were transferring client's funds across to the office account when it was, when you weren't allowed to do that?
> R: Yes
> IO: When did you start doing this?
> R: A long time ago, I can't remember"
> IO: Would you say before 2010
> R: I don't know..."

27.2 The Tribunal considered the evidence, the submissions for the Applicant and the Respondent's admissions and found allegation 1.2 proved to the required standard; indeed it had been admitted.

28. **Allegation 1.3 - In breach of Rule 27.1 of the SRA AR 2011 he [the Respondent] carried out inter ledger transfers of client money in circumstances not permitted by the said rule;**

28.1 For the Applicant, Mr Bullock submitted that this allegation rested on the short passage in the interview quoted in respect of allegation 1.2 above and the following:

> "R: ... Sometimes when I transfer, which is not the right invoices I think
> IO: Fabricated invoices, sorry
> R: Yes
> IO: And did that so that you could get more funds across into the client account
> R: Yeah
> IO: And then how did you make good the shortfall on those particular ledgers?
> R: Most of the time I put money into, I borrowed money and put into this one and then I also put money direct into the office accounts and things like that, I have done it
> IO: And then you took money from one client and paid off...

R: Yes
IO: Completed a transaction with a different client's funds
R: Yes I have done it
IO: And you also put clients' money directly into an incorrect ledger
R: I admit all the faults are with me because I am the one who did the posting and everything and although I am not well and my wife also not well with personal things like that, I am not anyway claiming that because it's sometimes when you are under pressure and when you do realise, you know, what you are doing and you get sucked into it"

By way of detail, Mr Bullock clarified that allegation 1.3 did not encompass the transactions for Mr SK and the Cs included in the FI Report because by then the Respondent had ceased writing up ledgers altogether; this was just a matter of cheques going out of client account rather than money shown as moving in the accounting records.

28.2 The Tribunal considered the evidence, the submissions for the Applicant and the Respondent's admissions and found allegation 1.3 proved to the required standard; indeed it had been admitted.

29. **Allegation 1.4 - In breach of Rule 29.1 of the SRA AR 2011 he [the Respondent] failed to keep accounting records properly written up at all times;**

29.1 For the Applicant, Mr Bullock referred the Tribunal to the FI Report where the IO recorded that the Respondent was unable to provide any accounts as at the extraction date and explained that no postings had been undertaken since the end of June 2013. This was confirmed by the transcript of the interview, when referring to the transaction for Mr SK, the following exchange took place:

"IO: No ledger for the client, why was that?
R: I haven't done anything since July
IO: When you say you haven't done anything since July, what do you mean?
R: I haven't done any ledgers or anything since July
IO: So no accounts have been written up
R: No
IO: Since July. So the money was simply lodged into the client account
R: Yes"

29.2 The Tribunal considered the evidence, the submissions for the Applicant and the Respondent's admissions and found allegation 1.4 proved to the required standard; indeed it had been admitted.

30. **Allegation 1.5 - In breach of Principle 2 of the Principles he [the Respondent] created fictitious invoices to facilitate the transfer of client money from client to office account and/or to disguise the transfers from his auditors.**

30.1 For the Applicant, Mr Bullock submitted that the Applicant's case rested solely on the passage quoted above in respect of allegation 1.3 when the Respondent stated that he had fabricated invoices.

30.2 The Tribunal considered the evidence, the submissions for the Applicant and the Respondent's admissions and found allegation 1.5 proved to the required standard; indeed it had been admitted.

31. **Allegation of dishonesty in respect of allegations 1.2, 1.3 and 1.5**

31.1 For the Applicant, in the Rule 5 Statement, it was asserted that by making irregular inter-client transfers, the Respondent had used client funds in the running of the practice. As a consequence there was a shortage in the client account which the Respondent could not replace. In his recorded interview with the IO, the Respondent stated:

> "When my insurance, it was £3,000 and then it went to £40,000, I thought I'd be able to manage and make a firm out of it because then shortage came and then I've been transferring money from one account to the other account and without realising it like, you know, it got out of hand when there is money on a client account, I didn't look into anything that I said oh that's money on the client account, oh this can be profit, this can be sent to the other side like that I did and then in the end this particular transaction then the accounts had to be done and when I came into the computer, I found out I'm short of money, lots of money short..."

31.2 Mr Bullock submitted that in his Additional statement the Respondent confirmed:

> "I have borrowed and used this money for the practice, the deposits in the office account will clearly demonstrate this."

The Respondent admitted that he had fabricated invoices to facilitate the transfer of funds from his client account to his office account and that he had manipulated the books of account to conceal his actions from his auditors. Mr Bullock submitted that the allegation of dishonesty had been admitted by the Respondent at this hearing and in interview with the IO:

> "IO: Do you feel that you acted in an honest way?
> R: No
> IO: In what way would you say that you acted dishonestly?
> R: Because I haven't kept proper accounts, proper ledger and transferred funds without the knowledge of the client. Now I know these are serious breaches"

Mr Bullock submitted that on the basis of the Respondent's admissions, the test for dishonesty in the case of Twinsectra was satisfied.

31.3 The Tribunal considered the evidence, the submissions for the Applicant and the Respondent's admissions. The Tribunal had explained the two limbed test in the case of Twinsectra and the Respondent had admitted that at the time of his conduct he knew it to be dishonest. The Tribunal found that this admission was properly made; the evidence against the Respondent was overwhelming. The Tribunal considered that the conduct which the Respondent had admitted and which had been found proved against him in respect of allegations 1.2, 1.3 and 1.5 was such that it would be

considered dishonest by the standards of reasonable and honest people and that in acting as he did, the Respondent realised that by those standards he was acting dishonestly. The Tribunal found dishonesty proved to the required standard; indeed it had been admitted.

**Previous Disciplinary Matters**

32. None.

**Mitigation**

33. The Respondent gave sworn mitigation. He regretted what had happened; he did not intend it to happen but personal and other circumstances affected the practice. The Respondent testified that his wife was disabled and he suffered from severe asthma and anxiety. He gave details of his daily home commitments. The main reason for what had happened was the increase in his professional indemnity insurance premium from £2,300 to £42,000 when he went into the Assigned Risks Pool ("ARP") with which he could not cope straight away and then the recession came. It would have cost around £7,000 to close the firm at the point of entering the ARP but his staff had mortgages and he continued for the sake of the staff. The Respondent confirmed that he had paid the ARP premium from client account. The shortfall increased all the time until he could not carry on and had no alternative but to ask the Applicant to intervene. The Respondent also felt that some of the team undertaking a particular type of work had not been not truthful with him about collecting money but he accepted that he should have supervised them. This was not an excuse; he accepted responsibility. (In his Additional Statement the Respondent also indicated that there were clients who failed to pay his fees.) His financial situation was bad; he had no money and his property, which was in joint names, was being sold by the second mortgagee, a private individual. The Respondent testified that his only income was his state pension. He confirmed that the Income and Expenses figures set out in his document bundle were correct. He was being pursued through the courts by his first mortgagee, an institutional lender and for the unpaid professional indemnity insurance premium for his last year at the firm which in his Assets and Liabilities he had described as "office insurance" of £27,900. He also owed £22,694 to the office landlord. The Respondent had listed intervention fees of £105,000 and testified that once the property was sold and household bills were paid as well as a loan in respect of the practice, he would pay the landlord, the indemnity insurance premium and the balance would go to the Applicant. The Respondent attributed his misconduct to the poor health of himself and his wife and also believing what people had told him; he should not have trusted anyone. Being a solicitor was the only thing that he knew and he asked that he be allowed to continue in practice subject to restrictions that he could not control client account. If he was allowed to practise on a constant basis it would be very helpful for him in paying off his debts as set out above.

**Sanction**

34. The Tribunal had regard to the Guidance Notes on Sanction and the mitigation it had been offered. The Tribunal was mindful of the guidance in the case of Bolton v The Law Society [1994] 1 WLR 512 particularly that the most fundamental purpose of sanction was to maintain the reputation of the solicitor's profession and it was also

mindful of its duty to protect the public. The Respondent admitted taking approximately £137,000 over time from his client account (this figure being identified by the IO as the shortfall in client account) in order to continue to run his practice. He accepted that this was dishonest. When the firm went into the ARP the premium went up to over £40,000 a year. The Respondent could not pay it from office account and did so from client account (this was not the subject of any allegation but formed part of the background). He then ceased to write up his ledgers, and used one client's money for the progression of another matter. Ultimately there was not enough money and the Respondent called in the Applicant. This was a deliberate course of action over a prolonged period, resulting in substantial loss. The Respondent was a sole practitioner and had direct responsibility for the circumstances giving rise to the misconduct. He was a solicitor of some 14 years' experience at the material time. The Tribunal was mindful that its indicative Guidance set out that the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off save in exceptional circumstances as set out in the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). The Tribunal had invited the Respondent to address it on exceptional circumstances. He asserted that there were exceptional circumstances relating to his wife's and his own health. He said that he was let down by others. These did not constitute exceptional circumstances relating to dishonesty in a solicitor's firm. The Tribunal considered that there was no alternative in this case, there being no exceptional circumstances, to striking the Respondent off from the Roll of Solicitors.

**Costs**

35. For the Applicant, Mr Bullock had submitted a statement of costs totalling £11,022.44. However he asked that it be reduced because his preparation time had been less than that expected and the hearing time was also shorter. Subject to those reductions, he had discussed the costs with the Respondent who had agreed that he would pay them. The Tribunal summarily assessed costs in the sum of £10,000 and made an immediately enforceable order having been told by the Respondent that his commitments would be met from the sale of his property.

**Statement of Full Order**

36. The Tribunal Ordered that the Respondent Kesakapillai Raveenderan, 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 £10,000.00.

Dated this 25th day of February 2015
On behalf of the Tribunal

P.S.L. Housego
Chairman