SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11419-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JOHN RANDALL SLADE Respondent

Before:

Mr L. N. Gilford (in the chair)
Miss N. Lucking
Mr S. Howe

Date of Hearing: 21 January 2016

Appearances

Mr Inderjit Singh Johal, Solicitor, employed by the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, made by the Solicitors Regulation Authority ("SRA") were that:

1.1 between December 2013 and May 2014 he used clients' funds for his own benefit in breach of Rule 20.1 SRA Accounts Rules 2011 ("AR 2011") and all or alternatively any of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the Principles");

1.2 he failed to keep accounting records properly written up to show dealings with client monies in breach of Rule 29.1 SRA AR 2011 and in breach of all or alternatively any of Principles 4, 6, and 8 of the Principles;

1.3 he failed to appropriately record all dealings with client money in a client cash account or in a record of sums transferred from one client ledger account to another, and on the client side of a separate client ledger account for each client in breach of Rule 29.2 (a) and (b) SRA AR 2011 and in breach of all or alternatively any of Principles 4, 6, and 8 of the Principles;

1.4 he failed to promptly remedy breaches of the SRA AR 2011 in breach of Rule 7 SRA AR 2011 and in breach of all or alternatively any of Principles 4, 6, and 8 of the SRA Principles;

1.5 he made two client to office transfers for payment of the firm's costs when he was aware that there was a shortage in client account, in breach of Rule 20.3 (B) and 17.2 of the SRA AR 2011 and all or alternatively any of Principles 4, 6, and 10.

2. Dishonesty was alleged against the Respondent in respect of allegation 1.1, however proof of dishonesty was not essential to sustain the allegation.

Documents

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

Applicant

- Application dated 7 August 2015
- Rule 5 Statement and Exhibit "IJ1" dated 6 August 2015
- Applicant's Schedule of Costs dated 12 January 2016

Respondent

- Witness Statement of the Respondent and Exhibit "JRS1" dated 12 November 2015
- Personal Financial Statement dated 13 January 2016

Applicant & Respondent

- Email correspondence between the parties

Preliminary Matters

Non Attendance of the Respondent

4. The Respondent did not attend the hearing and was not represented. He had been in regular contact with the Tribunal and the Applicant in relation to the proceedings. His most recent contact was on 12 January 2016. In his Statement dated 12 November 2015, and in his email dated 11 January 2016, the Respondent had made it clear that he did not intend to attend the hearing.

5. Mr Johal applied for the case to proceed in the Respondent's absence, pursuant to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"), which provided that:

> "If the Tribunal is satisfied that notice of the hearing was served on the Respondent in accordance with these Rules, the Tribunal shall have the power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

6. The Tribunal was satisfied that the proceedings, and notice of the hearing date, had been properly served on the Respondent. The Tribunal reviewed the correspondence between the parties and the Tribunal office.

7. The Tribunal had regard to the principles in R v Hayward and others [2001] EWCA Crim 168 R v Jones [2002] UKHL 5 and Tait v Royal College of Veterinary Surgeons [2003] WL 1822941. The Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent himself from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. There was nothing to indicate that the Respondent would attend any future hearing if the case were to be adjourned. In the light of these circumstances, the Tribunal found it just to proceed with the case, notwithstanding the Respondent's absence.

Address for the Order

8. The Respondent, in correspondence, had requested that the address for any Order be that of his previous practice. The Tribunal noted that the Respondent had not been in practice at the requested address since September 2014. In the circumstances the Tribunal considered that the appropriate address for any Order was the Respondent's current address.

Admissions

9. The Tribunal treated the substantive allegations and underlying facts as expressly admitted, and the allegation of dishonesty as impliedly admitted as per the Respondent's statement of 12 November 2015 and his subsequent correspondence with the Applicant. The Tribunal, notwithstanding the admissions, required the Applicant to prove all allegations beyond reasonable doubt.

Factual Background

10. The Respondent was born in 1940, and was admitted to the Roll of Solicitors in 1969. At all material times the Respondent practised as a sole practitioner in the firm of JR Slade ("the Firm").

11. On 28 July 2014, the SRA began a Forensic Investigation (FI) into the Firm. An interim FI Report, dated 4 August 2014, and a final FI Report, dated 11 September 2014 were prepared. The final FI Report revealed a shortage in client account of £42,660.89. The SRA intervened into the Firm on 24 October 2014.

Allegation 1.1

12. In the period 10 December 2013 to 19 May 2014, the Respondent made 24 improper withdrawals and transfers from client account ranging in amount from £1,500 - £25,000 and totalling £228,500.92. In the period 10 December 2013 to 23 June 2014, the Respondent made 17 credit transactions into client bank account in order to replace the improperly withdrawn funds, ranging in amount from £1,500 - £34,956.25 and totalling £185,840.03.

13. The Respondent provided his explanation for withdrawing client money to the FI Officer on 28 July 2014 and in his statement to the SRA dated 30 July 2014. He explained that he had received an unsolicited telephone call from a company called "DB" offering to advertise his business on the internet with a view to increasing his client base. He initially made payments to DB for advertising, website production and domain name purchases.

14. DB had requested an initial upfront payment of £6,000-£7,000. Having made the initial payment, the Respondent was then informed that he had subscribed to their services and was required to pay regular instalments. He would receive demands for cash over the telephone and a representative of DB would attend his home to collect the money. The Respondent stated that he had been taken in by the individuals representing DB, however, he explained that he had also suffered from injury and ill-health, and that had affected his judgement.

15. The Respondent had paid DB £50,000 from personal resources. He continued to pay DB as he was told that his websites could be sold in part or whole for a profit. He had signed a contract for the sale of his website for £428,000; the contract was titled "Domain Name Sale Agreement. Website Sale Agreement", and was dated 13 February 2014. The completion date of the sale was 13 April 2014. The contract did not complete as, according to DB, there had been complications surrounding the copyright. The Respondent was asked to make further payments to DB, which he did.

16. The Respondent admitted to the FI Officer that when he ran out of personal funds, he made cash withdrawals from client bank account, cashed client bank account cheques, and used these to pay DB.

17. In his statement of 30 July 2014, the Respondent stated:

> "it was during this last period that I had run out of my own funds and was unfortunately tempted by the rewards of the contract to borrow from client account in order to keep up with the demands being made. Some of the demands particularly with the advertising section were that if I did not pay up in full then there would be immediate repercussions and court action which made me fear for my safety and reputation. At this time I was completely caught up in what turned out to be a scam without being able to break out of the vicious cycle that I found myself in……..I have never taken money from Client's Accounts before and have always considered that account to be sacrosanct….I am truly sorry for the infringements with regard to my withdrawal of monies from my client account, which I have restored so far as I am able. If there is any monies still due to my Client account, then this will be taken out of the monies paid by the Equity Release Company which are offering me the sum of £108,000".

18. The FI Officer confirmed in her final report that the minimum cash shortage of £42,660.89, which existed at the start of the investigation, had not been replaced at the date of the final FI report, 11 September 2014. However, the FI Officer was unaware that the cash shortage had in fact been replaced by the Respondent on 10 September 2014.

Allegations 1.2 and 1.3

19. The interim FI report recorded that the Respondent's books of account were not up to date as at 28 July 2014. The Firm maintained handwritten client ledger accounts. The Respondent's bookkeeper had maintained the books of account up until 31 May 2014. However, after her departure, the books were not maintained. The interim FI report confirmed that the Firm had not maintained a client cash book.

20. The improper withdrawals and credits made by the Respondent between 10 December 2013 and 23 June 2014 were posted against individual client ledger accounts, in particular the estate administration ledger account of J deceased.

21. On 28 July 2014, the Respondent stated that he believed that he had replaced all of the monies improperly withdrawn from client account. However, on 29 July 2014, he confirmed that he had not retained a separate record detailing the payments and credits in order to evidence this. The Respondent had noted the transactions on "bits of paper" and had also kept a running total "in his head".

22. The Respondent was given an opportunity to bring his books of account up to date. On 26 August 2014, the FI Officer returned to the Firm and discovered that the books were not in any better position than on her previous visit. Although the Respondent produced a reconciliation statement for the month ending 30 June 2014, the FI Officer found the statement unreliable as it contained two misposted and incorrect calculations. Further, the Firm's manual ledger accounts had not been brought up to date as they did not contain any entries for transactions conducted in June, July and August 2014.

23. The FI Officer discovered that the Firm operated a client cash book. However, since May 2014, it had not been contemporaneous, as entries had been made retrospectively from the client bank account statements.

Allegation 1.4

24. On 29 July 2014, the Respondent was informed by the FI Officer that her initial draft analysis of his books of accounts indicated a shortage on his client bank account. The Respondent indicated that in the event of a shortage, he would replace client monies from his personal funds. He informed the FI Officer that he was applying to an equity release scheme in relation to his residential property and that he hoped to release funds in the sum of £108,000.

25. On 26 August 2014, the Respondent agreed with the FI Officer that his Firm's client account had a minimum cash shortage of £42,660.89. The Respondent explained that he had entered into the equity release scheme and that he had signed the mortgage offer and deed, but was unable to provide a timescale for completion or when he would be in receipt of funds.

26. The Respondent credited the sum of £106,353.05 to his wife's ledger on 10 September 2014, being the sum received from the equity release scheme. On 6 October 2014, he informed the SRA Supervisor that he had used his wife's ledger as a "holding account" from where he could transfer money to other ledgers. On 13 October the Respondent provided evidence to the SRA of the reimbursement of client account, by way of copy bank statements and copy ledger card of J deceased.

27. On 13 October the Respondent informed the SRA that his bookkeeper could only attend once or twice a week and that only the client account ledgers were completed to date and that she was working on his office account.

Allegation 1.5

28. The final FI report recorded that the Respondent made two transfers from the Firm's client account to the office account, totalling £8,609.56. The transfers were broken down as follows:

    a) 4 August 2014 in the amount of £4,941.03 and;

    b) 15 August 2014 in the amount of £3,688.53.

29. The Respondent told the FI Officer that both transactions were payments on account of the Firm's costs. The first transfer was a bill on the T client matter and the second was for a bill on the K client matter.

30. The Respondent told the FI Officer that he had made the transfers as the bank had reduced his overdraft facility on office account and that the transfers reduced the overdrawn balance to bring it within the new limit.

31. The Respondent queried with the FI Officer the correctness of the transfers. The FI Officer replied that the transfers had been made by him in the knowledge that there was an unrectified shortage in client account. The FI Officer referred him to the letter sent to him by the SRA on 21 August 2014. That letter informed the Respondent of the shortage on client account as identified in the interim FI report and reminded him of his obligation to replace it as a matter of urgency

32. The following information contained in that letter was pointed out to the Respondent:

> "it would be highly inappropriate of you to take costs from client account when you know that the client account is deficient since your obligation is to remedy the breach promptly upon discovery. While the account is deficient your interests in taking costs are in conflict with your client's interests in being paid their full entitlement from client account".

33. By cover of a letter dated 5 September 2014, the Respondent provided the FI Officer with copies of the bills in the T and K matters. It transpired that the costs he had transferred were not limited to those clients but also to client P (£3,712.30) and Slade - the Respondent's wife - (£558). On 13 October 2014, the Respondent sent a further letter to the SRA enclosing copy bills on the P and Slade matters.

The SRA's Investigation

34. The SRA wrote to the Respondent on 27 March 2015, requesting an explanation of his conduct. In his reply of 23 April 2015, the Respondent accepted that he had breached the Accounts Rules and the Code. By way of explanation, he pointed out that:

- He had been the victim of "a sophisticated fraud perpetrated by individuals masquerading as Google". The Respondent had raised this matter with the FI Officer when she visited his office, and subsequently raised it with the police.

- The fraud had had a significant impact on him at the time, which caused him to act in ways that were "entirely out of character and far removed from the professional standards that I expected of myself."

- That throughout the relevant period, he was in poor and declining health which further affected his judgement.

Witnesses

35. None.

Findings of Fact and Law

36. The Applicant was required to prove the allegations beyond reasonable doubt, notwithstanding the Respondent's admissions. 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.

37. **Allegation 1.1 - Between December 2013 and May 2014 he used clients' funds for his own benefit in breach of Rule 20.1 of the SRA AR 2011 and all or alternatively any of Principles 2, 4, 6 and 10 of the Principles.**

37.1 The Applicant submitted that the Respondent had borrowed a staggering amount of client monies from client account over many months to satisfy demands for payments of cash from a company that was executing a fraud. The Respondent had behaved in this way as he was seeking the rewards of a contract he had entered. The Respondent's borrowings involved numerous improper withdrawals and transfers of monies from client account leading to a loss of clients' monies. The Respondent's actions meant that he had failed to act with integrity or in the best interests of his clients. His actions also resulted in his having acted in a manner that undermined the trust that the public placed in him and the profession and he had failed to protect clients' monies. These actions, it was further submitted, were dishonest.

Dishonesty

37.2 The Applicant submitted that the Respondent's actions were dishonest according to the test laid down in Twinsectra v Yardley and Others [2002] UKHL 12 ("Twinsectra").

37.3 The Respondent had deliberately used over £225,000 of clients' monies for his own benefit. He had made numerous withdrawals of monies from client account over 4 months. Although he replaced the monies, the use of the monies for his own purposes was objectively dishonest.

37.4 Further, Mr Johal submitted, the Respondent was aware that his conduct would be judged to have been dishonest by the ordinary standards of reasonable and honest people because:

- He knew that borrowing money from the client account was wrong. In his statement to the SRA of 30 July 2014, the Respondent stated "I had run out of my own funds and was unfortunately tempted by the rewards of the contract to borrow from client account in order to keep up with the demands made";

- He was aware of the sacrosanct nature of client account but nevertheless still decided to use client monies for his own benefit. As the Respondent stated: "I have never taken money from Clients Account before and have always considered that account to be sacrosanct".

37.5 The Respondent, in his statement dated 12 November 2015, fully admitted the extent to which he was said to have breached the SRA AR and the Code. He expressed his deep regret of the disservice to his clients and the way his actions reflected on the profession he had held so dear for his entire working life.

37.6 The Tribunal was satisfied that the Respondent had made the improper transfers as alleged and admitted. The Tribunal accepted that the Respondent was the victim of a fraud, but found that his actions, in removing substantial amounts of client monies from client account over a sustained period were unacceptable, and in the words of the

Respondent himself, "plainly wrong". Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt; indeed it was admitted.

37.7 The Tribunal accepted that the combined test set out in Twinsectra, (that the Respondent acted dishonestly by the ordinary standards of reasonable and honest people and realised by those standards he was acting dishonestly), was the appropriate test for dishonesty. The Tribunal found that there could be no doubt that reasonable and honest people, applying ordinary standards, would consider that a solicitor who used client money for his own purposes had acted dishonestly, and therefore the objective test was satisfied. The Respondent admitted that he had consciously decided to act in the manner alleged and accepted, and that he was aware at the time of doing so that his actions would be considered dishonest. The Tribunal thus found that the subjective test was also satisfied and that dishonesty was proven beyond reasonable doubt; indeed it was admitted.

38. **Allegation 1.2 - failed to keep accounting records properly written up to show dealings with client monies in breach of Rule 29.1 SRA AR 2011 and in breach of all or alternatively any of Principles 4, 6, and 8 of the Principles;**

Allegation 1.3 - failed to appropriately record all dealings with client money in a client cash account or in a record of sums transferred from one client ledger account to another, and on the client side of a separate client ledger account for each client in breach of Rule 29.2 (a) and (b) SRA AR 2011 and in breach of all or alternatively any of Principles 4, 6, and 8 of the Principles.

38.1 The Applicant submitted that the Respondent's accounting records were deficient as since May 2014, ledgers were not written up, a contemporaneous cash book was not maintained and accurate reconciliations were not carried out. The Respondent also failed to properly record all dealings with client money in the client ledgers. His inadequate record keeping was not in the best interests of clients and undermined the trust the public placed in him and in the provision of legal services. Further, it was argued, this was additional evidence of his failure to run his business or carry out his role in the business effectively.

38.2 The Tribunal found that by failing to keep properly written up accounting records to show his dealings with client money, and by failing to record all of his dealings with client monies, the Respondent was in breach of the SRA AR 2011. Further, he was in breach of the Principles as alleged. Accordingly, the Tribunal found allegations 1.2 and 1.3 proved beyond reasonable doubt; indeed they were admitted.

39. **Allegation 1.4 - failed to promptly remedy breaches of the SRA AR 2011 in breach of Rule 7 SRA AR 2011 and in breach of all or alternatively any of Principles 4, 6, and 8 of the SRA Principles.**

39.1 The Applicant submitted that, as a result of the Respondent's actions there existed a shortage on the Firm's client account from at least 29 July 2014 until 10 September 2014. Further, client ledgers were not written up from the end of May 2014 until October 2014.

39.2 The Tribunal found that the Respondent knowing that he had improperly withdrawn monies from his client account had allowed the shortage to subsist. In so doing he was in breach of the SRA AR 2011 and had failed to act in the best interests of his clients. Further he had not run his business or carried out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles. The Respondent's actions diminished the trust the public placed in him and the provision of legal services. Accordingly, the Tribunal found allegation 1.4 proved beyond reasonable doubt; indeed it was admitted.

40. **Allegation 1.5 - made two client to office transfers for payment of the Firm's costs when he was aware that there was a shortage in client account, in breach of Rule 20.3 (B) and 17.2 of the SRA AR 2011 and all or alternatively any of Principles 4, 6, and 10.**

40.1 By transferring costs due to the Firm from client account at a time when there was a shortage in the client account, the Respondent had failed to act in the best interests of his clients. The Applicant submitted that he should not have transferred costs in the knowledge that there was an insufficient amount of monies in client account to repay all clients their full entitlement; he should have waited until the shortage had been replaced before taking his costs. This, it was argued, undermined the trust that the public placed in him and in the provision of legal services. Further, he had failed to protect client money.

40.2 The Tribunal found that the transfers were in breach of the SRA AR 2011, and the Principles; the Respondent could not properly require the payment of his fees when he knew that client account was deficient. Accordingly the Tribunal found allegation 1.5 proved beyond reasonable doubt; indeed it was admitted.

Previous Disciplinary Matters

41. None.

Mitigation

42. The Tribunal had regard to the mitigation advanced by the Respondent in his statement of 12 November 2015, and the accompanying documents. He expressed regret for his actions stating that "I deeply regret the disservice to my clients and the way my actions reflect on the profession which I have held so dear for my entire working life….I am anguished that this should be the sorry note upon which my 45 years of practice as a solicitor has ended. Prior to this, my professional record was…exemplary."

43. The Respondent accepted that his actions were wrong, and did not seek to make excuses for them. He explained that he had "…fallen victim to a sophisticated fraud…" He detailed his embarrassment at being "…sucked in by this proposal that was, with hindsight too good to be true..." and being unable to "…extricate myself form it without compromising my professional standards in the way that I did."

44. In his statement, the Respondent asked that the Tribunal take into account that although he had handled the situation poorly, he was being threatened by individuals from DB.

45. The Respondent wished it to be known that he had repaid all the funds that he "wrongfully used"; he had retired from practice; and he had no intention to resume practice as a solicitor or in any associated position.

Sanction

46. The Tribunal had regard to the Guidance Note on Sanctions (4th Edition) and carefully considered the admissions, submissions and mitigation advanced.

47. The Tribunal firstly considered the seriousness of the Respondent's admitted and proven conduct. The Tribunal found the Respondent to be completely culpable for the breaches; the misconduct having arisen as a direct result of his sole actions. The Respondent had clearly been motivated by his desire initially to increase his business, and then to make a profit on the sale of the website. The Respondent was an experienced solicitor, who was fully aware of his duties and obligations in relation to his clients' monies. The Tribunal found that in acting in the way that he did, the Respondent had caused harm to the trust the public places in the profession and the provision of legal services.

48. The Tribunal found the Respondent's conduct to be aggravated by his dishonesty which was proven and admitted. His dishonest conduct was deliberate, calculated and repeated, and was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin ("Sharma"):

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

49. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

Given the serious nature of the proven and admitted allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers, such as no order, a reprimand, fine or restrictions, as these were inappropriate and disproportionate to the seriousness of the misconduct.

50. The Tribunal recognised that the Respondent had genuine insight into his misconduct. He had made good the shortage by entering into an equity release scheme so as to ensure that none of his clients suffered any financial loss; the Respondent, whilst being unable to "undo the past or restore any damage" to the profession, had done all that was within his power to see that his clients had suffered no permanent loss as a result of his actions. The Tribunal acknowledged that he had co-operated fully with the Applicant, admitting his misconduct throughout the Applicant's investigation and prior to his being referred to the Tribunal. The Tribunal accepted that the Respondent had previously had 45 years of successful and unblemished practice.

51. The Tribunal did not find that the circumstances of this case were enough to bring it in line with the residual exceptional circumstances category referred to in the case of Sharma. Whilst the Tribunal accepted that the Respondent had experienced difficult personal circumstances, including health issues (although there was no independent medical report to that effect), the Tribunal did not consider that they constituted exceptional reasons such as to reduce the sanction. Further, the Tribunal found that whilst he was no doubt being pressured into paying over sums of money, the circumstances in which the money was taken and paid did not amount to duress in law or in fact, and did not amount to exceptional circumstances. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved admitted dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

52. Mr Johal applied for costs in the sum of £10,817.03. Both Mr Johal and the Tribunal were in possession of the Respondent's interim response to the Applicant's Schedule of Costs. Mr Johal explained that he had been unable to provide the Respondent with the additional details requested in relation to the perusal of files and documents; he submitted that the costs claimed were reasonable. He accepted that there should be a reduction in the estimated hearing costs, as the hearing had been much shorter than originally anticipated. Mr Johal also submitted that both conferences with the FI Officer were necessary, but that the costs of Mr Willcox in attending the second conference could be removed. He also accepted that there should be a reduction in the costs associated with the correspondence.

53. The Tribunal determined that the costs of the investigation seemed disproportionate, given the admissions of the Respondent at an early stage, and reduced those costs from £4,604.20 to £4,000. The Tribunal also reduced the drafting, correspondence, case conference and hearing costs of the Applicant. Having considered the representations made, the Tribunal Ordered that the Respondent pay costs of £8,550.00.

Statement of Full Order

54. The Tribunal Ordered that the Respondent, JOHN RANDALL SLADE, 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 £8,550.00.

DATED this 3rd day of February 2016
On behalf of the Tribunal

L. N. Gilford
Chairman