

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11451-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MARK ST JOHN MORRIS

Respondent

Before:

Miss T. Cullen (in the chair)

Mr S. Tinkler

Mr P. Hurley

Date of Hearing: 14 September 2016

Appearances

Daniel Purcell, solicitor of Capsticks Solicitors LLP of 1 St George's Road, Wimbledon, London, SW19 4DR for the Applicant.

The Respondent appeared and was represented by Mark James, Counsel of Temple Garden Chambers, 1 Harcourt Buildings, Temple, London, EC4Y 9DA.

JUDGMENT

Allegations

1. The Allegations against the Respondent were that:
 - 1.1 On 21 July 2010, the Respondent withdrew the sum of £9,235 from the client account of Mark Morris Solicitors otherwise than in the circumstances permitted by Rule 22 of the Solicitors Accounts Rules 1998, and in order to make a payment to a creditor of that firm and thereby breached:

- 1.1.1 Rule 1.02 of the Solicitors Code of Conduct 2007;
- 1.1.2 Rule 1.06 of the Solicitors Code of Conduct 2007;
- 1.1.3 Rule 22(1) of the Solicitors Accounts Rules 1998.

It was alleged the Respondent had acted dishonestly in relation to Allegation 1.1.

- 1.2 The Respondent failed to remedy the breach of Rule 22(1) of the Solicitors Accounts Rules 1998, which he committed on 21 July 2010, until 1 December 2010 and thereby breached Rule 7 of the Solicitors Accounts Rules 1998.
- 1.3 On 3 April 2013, the Respondent withdrew the further sum of £2,930.32 from the client account of Mark Morris Solicitors otherwise than in the circumstances permitted by Rule 20.1 of the SRA Accounts Rules 2011, and in order to make a further payment to the same creditor of that firm and thereby breached:

- 1.3.1 Principle 2 of the SRA Principles 2011;
- 1.3.2 Principle 6 of the SRA Principles 2011;
- 1.3.3 Rule 20.1 of the SRA Accounts Rules 2011.

It was alleged the Respondent had acted dishonestly in relation to Allegation 1.3.

- 1.4 The Respondent failed to remedy the breach of Rule 7 of the SRA Accounts Rules 2011, which he committed by making that withdrawal on 3 April 2013, until 20 June 2013, and thereby breached Rule 7.1 of the SRA Accounts Rules 2011.
- 1.5 In addition to the matters the subject of the allegations set out in paragraphs 1.1-1.3 above, between 5 January 2011 and 11 April 2014, the Respondent withdrew further client monies from the client account of Mark Morris Solicitors to a total value of £19,645.83, otherwise than in the circumstances permitted by:

- 1.5.1 In relation to the period up to 5 October 2011, Rule 22(1) of the Solicitors Accounts Rules 1998; and
- 1.5.2 Thereafter, Rule 20.1 of the SRA Accounts Rules 2011.

- 1.6 Between 11 August 2012 and a date unknown between 9 April 2014 and 19 May 2014, the Respondent failed to record all dealings with client money in a client cash account, in breach of Rule 29.2 of the SRA Accounts Rules 2011.
- 1.7 Between those same dates, the Respondent failed to carry out reconciliations as provided for within Rule 29.12 of the SRA Accounts Rules 2011, in breach of that Rule.

The Respondent admitted all the allegations including dishonesty.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 23 November 2015 together with attached Rule 5 Statement and all exhibits
- Redacted Witness Statement of Helen Maskell of the Solicitors Regulation Authority dated 29 July 2016
- Applicant's Reply to the Respondent's Answer dated 17 June 2016
- Applicant's Statements of Costs dated 6 September 2016

Respondent:

- Respondent's Answer to the Rule 5 Statement dated 3 June 2016
- Witness Statement of Mark Morris (the Respondent) dated 16 August 2016
- Second Witness Statement of Mark Morris dated 13 September 2016
- Statement of Means for Mark Morris dated 17 August 2016
- A number of Witness Statements containing Character References
- Statement of Respondent's Costs dated 7 September 2016

Factual Background

3. The Respondent, born in February 1963, was admitted to the Roll of Solicitors on 2 March 1992.
4. From 24 December 2004 up until 30 September 2014 the Respondent practised as a solicitor on his own account as Mark Morris Solicitors at 9 South Border, Purley, Surrey, CR8 3LL ("the firm").
5. On 9 April 2014 an Investigation Officer ("IO") of the Solicitors Regulation Authority ("SRA") commenced an inspection of the books of account and other documents of the firm, and produced a report dated 11 August 2014 ("the Report").

Allegation 1.1

6. On 21 July 2010 the sum of £9,235 was transferred out of the client account to the office account of the firm. The transfer was described on the firm's bank statement as "To Mark Morr S T/As Ref:- Land Lords". It was described in the client account cashbook as "Landlords". The receipt of that sum into office account was described as "Transfer from MA MO CL AC T/As Ref:- Land Lords" and thereafter paid out to a company called S Ltd.
7. In a letter to the IO dated 23 May 2014 the Respondent confirmed S Ltd was the Landlord of the firm's last offices at 42-44 Bishopsgate, London, EC2N 4AJ and that any payment to them would have related to rent and service charges for the office. The Respondent also stated in that letter:

"All telephone transfers have always been made by me and on my authority...."

8. In the narrative to the entries within the client bank statement relating to the payment on 21 July 2010, the Transfer Type was described as "Businesscall" which was a term used by the bank to describe a bank transfer effected by telephone.

Allegation 1.2

9. The Report stated that the sum of £9,235, which the Respondent withdrew from his client account on 21 July 2010, was not replaced until 1 December 2010, some 19 weeks later.

Allegation 1.3

10. On 3 April 2013 in the sum of £2,930.32 was transferred out of the firm's client account to the firm's office account. The transfer was described on the bank statement as "To Mark Morr S T/As". The receipt of that sum into the office account was described as "Transfer from Mrs Cli Pro No1".

11. In his letter to the IO dated 23 May 2014, the Respondent accepted:

"I am the only person who could have made and/or authorised this transfer....."

12. On the same day as that transfer was made, a further payment also in the sum of £2,930.32 was made from the firm's office account to S Ltd. The Report confirms there were insufficient funds available in the office account at that time to make this payment, without the transfer of this sum from client account that day.

Allegation 1.4

13. The Report confirmed that the sum of £2,930.32, which the Respondent withdrew from the office account on 3 April 2013, was not replaced until 20 June 2013, some 11 weeks later.

Allegation 1.5

14. The Report confirmed that there were 36 further occasions between 5 January 2011 and 11 April 2014 when sums ranging in value between £70 and £3,000, amounting to a total of £19,645.83, had been withdrawn from client account otherwise than in circumstances permitted by Rule 22(1) of the Solicitors Accounts Rules 1998 and the corresponding provisions of Rule 20.1 of the SRA Accounts Rules 2011. There was no evidence that the transfers were made in order to facilitate a payment to a specific creditor of the firm. However, the IO observed that some of the entries were made on occasions when the office account was close to its overdraft limit and/or would have exceeded the overdraft limit had the relevant transfer not been made.

Allegation 1.6

15. As at 9 April 2014, the firm's client account cashbook had not been written up since 11 August 2012. This deficiency was rectified at some point between 10 April 2014 and 19 May 2014.

Allegation 1.7

16. As the Respondent did not maintain a cash account between 11 August 2012 and 9 April 2014 at the earliest, he had not carried out reconciliations during that period.

Witnesses

17. No witnesses gave evidence.

Findings of Fact and Law

18. The Tribunal had carefully considered all the documents provided, and the submissions of both parties. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.
19. **Allegations 1.1 to 1.7**
- 19.1 The Respondent admitted all the allegations including the allegations of dishonesty. The Tribunal found all the allegations proved, both on the Respondent's admissions and on the documents before it.
- 19.2 The Tribunal had been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.
- 19.3 The Tribunal was satisfied that using client funds without the clients' knowledge to pay a creditor of the firm would be regarded as dishonest by the ordinary standards of reasonable and honest people. Furthermore, the Respondent, who was an experienced

solicitor, must have known those funds belonged to clients and not to him and as such they could not be used to pay the debts of his practice. Despite this he made conscious decisions to withdraw those funds from client account without the clients' knowledge or permission at a time when he was close to exceeding his firm's overdraft limit. He then used those funds to pay his firm's landlord. The Tribunal was satisfied that the Respondent did know that his conduct would be regarded as dishonest by the standards of reasonable and honest people. All the allegations were found proved.

Previous Disciplinary Matters

20. None.

Mitigation

21. Mr James, Counsel for the Respondent, confirmed the Respondent accepted it was inevitable that he would be struck off the Roll of Solicitors in order to maintain the reputation and standards of the profession. The Respondent accepted that his conduct had been aggravated by incorrect information he had given in his Answer to the Rule 5 Statement dated 3 June 2016 and in his witness statement dated 16 August 2016 which had misled the Investigation Officer, the SRA and the Tribunal. In those documents the Respondent had indicated the transfer of £9,235 had been a banking error. However, the Respondent had provided a second witness statement dated 13 September 2016 in which he had made a clean breast of matters and accepted the transfer was made by him. Mr James accepted that this had only been done the day before the hearing. The Respondent also accepted he should not have misled the Investigation Officer. The issue of a banking error came about when the bookkeepers looked at the books and gave an account which the Respondent had then adopted as his own explanation. He realised and accepted this was wrong.
22. Mr James submitted the Respondent had acted to protect his business and in the best interests of his client. Bailiffs had been demanding rent and had produced an Order to seize goods from the firm. Mr James submitted this would have been catastrophic for clients who had ongoing cases. The Respondent accepted clients' money was sacrosanct and he should not have made the transfers. He had been in a difficult situation and had to pay the money there and then.
23. Whilst Mr James accepted this was a serious case, he submitted it was still very different from the types of cases where respondents had enjoyed an extravagant lifestyle as a result of stealing conveyancing funds. This was not the case here as the Respondent had not kept the money for himself but had used it to fund business creditors. He had also returned the funds and there had been no actual loss to any client.
24. In relation to Allegation 1.3, this client had been bankrupt and her funds were being held by the Respondent. The sum of £2,930.32 was replaced within four months of removal. The Respondent had been expecting funds from a client in the region of £9,000 but that client did not pay.

25. Mr James submitted that, as it was accepted the Respondent would be struck off in relation to Allegations 1.1 and 1.3, no separate penalty should be imposed in relation to the remaining allegations. The Respondent had been going through a very difficult and stressful period at the material time. The Tribunal was provided with details of his personal circumstances in relation to this.
26. The Respondent had ensured the orderly winding up of his business, he had corrected all client balances, brought the ledgers up to date, properly transferred funds from client to office account having issued bills, put in place run-off insurance cover and he had filed a Cease to Hold Report from his accountants. The Tribunal was reminded the Respondent had taken proper steps to protect his clients, ensure there were no losses and make transfers in an orderly manner.
27. The Tribunal was referred to a number of witness statements which provided character references from relatives, colleagues and professionals with whom the Respondent had worked.

Sanction

28. The Tribunal had considered carefully the Respondent's submissions and statements. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.
29. The Tribunal considered the aggravating and mitigating factors in this case. It was an aggravating factor that the Respondent had made misleading statements to the Investigation Officer and in his first witness statement. He had acted dishonestly, his conduct had been repeated and client funds were not replaced promptly. The Tribunal was satisfied that the Respondent, particularly in light of his seniority and experience, knew or ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the profession.
30. The Tribunal took into account the fact that the Respondent had replaced client funds although this was many weeks later, and that he had, albeit at a late stage, made admissions and shown insight. He had shown some remorse and had apologised for his behaviour. He also had a previously long standing unblemished career. These were all mitigating factors. The Tribunal also took into account the various witness statements which provided good character references.
31. Whilst the Tribunal accepted the Respondent had some financial difficulties at the material time, this was no excuse for using client funds, which were sacrosanct, to settle the firm's debts. Safeguarding client money was a fundamental tenet of the solicitors' profession. It did not matter whether those funds were a small amount or a large amount, they did not belong to the firm and could not be used for any purpose not authorised by the client.
32. The Tribunal was mindful of the case of the SRA v Sharma [2010] EWHL 2022 (Admin) in which Coulson J stated:

“Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”

33. In this case no exceptional circumstances had been pleaded and none were found. The Tribunal was satisfied that the appropriate sanction was to strike the Respondent off the Roll of Solicitors. Whilst the Tribunal had considered the lesser sanctions available it concluded that, in light of the seriousness of the misconduct which involved dishonesty, removal from the Roll was the minimum sanction necessary to uphold public confidence and maintain the reputation of the profession.

Costs

34. Mr Purcell requested an Order for the Applicant’s costs. After some discussion, he confirmed costs had been agreed with the Respondent in the sum of £14,500. Mr James confirmed this was correct and did not request any restriction on the enforcement of those costs.
35. Accordingly the Tribunal made an Order that the Respondent pay the Applicant’s costs in the agreed sum of £14,500.

Statement of Full Order

36. The Tribunal Ordered that the Respondent, MARK ST JOHN MORRIS, 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 £14,500.00.

Dated this 26th day of October 2016
On behalf of the Tribunal

T. Cullen
Chairman