

IN THE MATTER OF SIVASUBRAMANIAM SIVANANTHAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr W M Hartley (in the chair)
Mr R B Bamford
Mrs C Pickering

Date of Hearing: 18th December 2001

FINDINGS

of the Solicitors' Disciplinary Tribunal
Constituted under the Solicitors' Act 1974

An application was duly made on behalf of the Office for the Supervision of Solicitors ("the OSS") by David Elwyn Barton solicitor and partner in the firm of Whitehead Monckton of 72 King Street, Maidstone, Kent, ME14 1BL on 17th August 2001 that Sivasubramaniam Sivananthan of Deansbrook Road, Edgeware, Middlesex, solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the respondent were as follows:-

- a) that he compromised or impaired or was likely to do so, his independence or integrity;
- b) that he compromised or impaired, or was likely to do so, his duty to act in the best interests of his client;
- c) that he compromised or impaired, or was likely to do so, his good repute and that of the solicitor's profession;
- d) that he compromised or impaired, or was likely to do so, his proper standard of work
- e) that he acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rules 7 and 8 of the said Rules, (Rule 22 of the Solicitors' Accounts Rules 1998) he drew from clients' account moneys other than in accordance with the said Rules and utilised the same for his own benefit;
- f) that he had been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 18th December 2001 when David Elwyn Barton solicitor and partner in the firm of Whitehead Monckton of 72 King Street, Maidstone, Kent, ME14 1BL appeared as the applicant and the respondent was represented by Mr Riza of Queen's Counsel and Mr Angamama.

The evidence before the Tribunal included the admissions of the respondent to allegations b) to f) together with the oral evidence of the respondent.

At the conclusion of the hearing the Tribunal ordered that the respondent Sivasubramaniam Sivanathan of Deansbrook Road, Edgware, Middlesex, solicitor be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £3,172.50.

The facts are set out in paragraphs 1 to 28 hereunder: -

1. The respondent born in 1934 was admitted as a solicitor in 1991. His name remained on the Roll of Solicitors.
2. At all material times the respondent was carrying on practice under the style of Siwan & Co of 10a The Broadway , 1st Floor, Southall, Middlesex, UB1 1PS.
3. On 1st June 1999 the Monitoring & Investigation Unit of the OSS commenced an inspection of the respondent's books of account. The report of the Monitoring & Investigation Unit dated 16th December 1999 was before the Tribunal.
4. The Investigation & Compliance Officer identified a shortfall on the respondent's client account in the sum of £35,165.37.
5. The firm (Mr Sabharwal) acted for a Mr S and Ms E in numerous property transactions.
6. The respondent told the Investigation & Compliance Officer that he had no knowledge of the matters.
7. A review of the relevant two accounts in the clients' ledger showed that monies totalling £33,565.37 had been transferred from client account to office account.
8. Neither ledger account showed any bills of costs in relation to the transfers. The Investigation & Compliance Officer asked if any bills were available and Mr Sabharwal reviewed a number of client files but could not find any bills. He then accessed the firm's computer records and produced six bills totalling £9,951.27.
9. Mr Sabharwal said that all of the bills had been faxed to Mr S at his office but Mr Sabharwal could not say when they were faxed and it was noted that none of the bills were addressed to Mr S or Ms E.
10. In relation to the remaining sum of £23,614.10 Mr Sabharwal indicated that there were further bills although he could not produce them.

11. On 12th October 1999 the firm wrote to the OSS enclosing further bills of costs purported to be signed by Mr S and Ms E in a total sum of £22,176.25.
12. As at the date of the report the firm had still not accounted for an amount of £1,437.85. None of the bills sent to the OSS were addressed to either Mr S or Ms E.
13. The firm (Mr Sabharwal) acted for Mr R in his purchase of a property.
14. The respondent said that he had no knowledge of the matter.
15. The relevant account in the client's ledger showed the transfer of monies totalling £2,980 from client to office bank account.
16. No bill of costs was produced to support the transfer of £2,980 and the Investigation & Compliance Officer suggested that this amount included Stamp Duty of £1,400 and the Land Registry fee of £200.
17. The transaction on behalf of Mr R had been completed on 7th June 1999 but at the date of the inspection Stamp Duty and Land Registry fees had not been paid. Mr Sabharwal contended that there was authority from another client Ms E (referred to above) to use her money to stamp the R matter. No authorisation had been received from Ms E at the time of the report but on 12th October 1999 the firm sent to the OSS a document purportedly signed by Mr R saying that Mr S and Ms E had authorised the "payment of fees/Stamp Duty" from monies held by the firm on their behalf.
18. The respondent's firm acted also for the mortgagees of the property purchased by Mr R namely the Bank of Scotland who advanced the sum of £118,980 to fund the purchase from a Ms L who appeared to be represented by Shaizir & Co, solicitors apparently of 1 Great Cumberland Place, London, W1.
19. The report on title and funds request, signed by the firm on 3rd June 1999 stated:-
 - "3. The First Legal Charge and Letter of Undertaking (if applicable) will be completed, executed and in our possession before completion. We will be put in funds at completion to enable stamping and registration and we undertake to register the First Legal Charge (if applicable) immediately after completion.
 10. We undertake to forward the appropriate deeds package to you.
 11. The purchase price of the subjects is £140,000 and the whole purchase price including deposit will be passed through an account in our name.
20. As at 11th October 1999 the Stamp Duty and Land Registry fees had not been paid in connection with this matter and Mr Sabharwal agreed that the firm had not complied with items 3 and 10 mentioned above, because they were now aware that Shaizir & Co did not exist as a firm of solicitors and that they had not received the deeds package even though they had transmitted the Bank of Scotland's funds to a bank account in the name of Shaizir & Co.

21. Mr Sabharwal and the respondent both confirmed that they were aware of The Law Society's Green Warning Card guidance in respect of "fraudulent buyer/fictitious solicitors".
22. The matter file contained only five items of correspondence to or from "Shaizir & Co" and a letter from them dated 7th June 1999 indicated that a partner of that firm was a Mr D Balasubramanian whom the Investigation and Compliance Officer thought was an assistant with Siwan & Co.
23. Mr Sivasubramaniam said that Mr Balasubramanian was not a partner of Shaizir & Co but he did not make any further comments about this matter.
24. When "Shaizir & Co" wrote requesting the funds to be sent to a different bank account to that which they first specified, Mr Sabharwal only confirmed that the bank account was in the name of "Shaizir & Co" and he added that he had never spoken to anyone at the firm.
25. Mr Sabharwal also agreed that he had not informed the Bank of Scotland of the deposit of £14,000 which had not passed through the account of Siwan & Co but which had apparently been a personal cheque drawn on Mr R's account and made payable to Shaizer & Co. This was a breach of the undertaking signed by the firm on 3rd June 1999 and set out above.
26. The report of the Monitoring & Investigation Unit specified breaches of twelve undertakings totalling £783,992.62 given by the firm (Mr Sabharwal) in the course of acting for Mr S, Ms E, Mr S's business partner and their company.
27. In meetings with the Investigation & Compliance Officer the respondent agreed that he was aware of The Law Society's Warning Card guidance in respect of undertakings but he made no comments as to the undertakings discussed.
28. On 26th January 2000 the Compliance & Supervision Committee of the OSS authorised an intervention into the respondent's practice of Siwan & Co.

The Submissions of the Applicant

29. The applicant had been informed on the day before the hearing that all the allegations were admitted by the respondent except allegation (a).
30. The respondent had been the sole principal of the firm and the intervention had been made on the grounds of suspected dishonesty and of Accounts Rules breaches.
31. The claims on the Compensation Fund as at June 2001 stood at £68,662.19.
32. The applicant was not alleging dishonesty against the respondent but the circumstances surrounding the facts revealed a very substantial degree of failure properly to supervise the practice. The degree of failure was such that in terms of protection of the public it might not matter a great deal whether or not the respondent had been dishonest. The responsibility for the failure fell to the respondent as sole principal.

33. The deficiencies regarding the undertakings were viewed by the OSS as being particularly serious because of their repetitive nature and because cumulatively they amounted to substantial sums.
34. It was not alleged that the respondent had personally given the undertakings but they were given by members of his staff in what appeared to be a complete absence of supervision.
35. Although the respondent had denied allegation a) he had accepted that there was an absence of supervision. It might therefore be that the only issue between the parties was one of degree.
36. It was incumbent upon a solicitor, especially a sole practitioner with staff, to make sure that staff were adequately supervised. A rogue member of staff may have gone beyond anything he was required to do but the respondent's failure to supervise meant that, in the submission of the applicant, allegation a) was proved.
37. Looking at the picture in the round and what had gone on, or more accurately had not gone on, meant that it was open to the Tribunal to find such a degree of failure that allegation a) was proved.

The Submissions of the Respondent

38. All the allegations were accepted except allegation a). Independence meant not being beholden to anyone. Lack of integrity meant, for example, the giving of undertakings or a transfer of costs with a view to gain for oneself. This was not being alleged. It was alleged that the respondent had failed to supervise. If it had been asserted that the respondent had made some kind of gain from what had occurred this would be a different kind of case.

The oral evidence of the Respondent

39. The respondent gave details of his training and practice in Sri Lanka as an attorney at law.
40. There had been no disciplinary proceedings against him in Sri Lanka where he had had an unblemished record.
41. He had come to England in 1988 as he was no longer able to practise in Sri Lanka because of civil strife.
42. The respondent had been granted indefinite leave to remain in the United Kingdom in 1997. He was married and his wife was in Sri Lanka. As he was now unable to practise and was on income support his wife's application to join him had been rejected as the respondent could not support her without recourse to public funds.
43. The respondent gave details of his practising history in the United Kingdom. From 1994 he had practised on his own.
44. He was the sole principal of Siwan & Co. Mr Sabharwal had joined the respondent's firm from a firm in Southall. He had not been known to the respondent previously.

Mr Sabharwal had had a law degree but was not a solicitor. He had good experience and a good network and generated work. He had worked hard to build up the practice.

45. Mr Sabharwal's role when he started had been assisting the respondent. He could do anything.
46. After the respondent had had a fall and fractured his ankle Mr Sabharwal said that he would look after the respondent's interests. The respondent had agreed and had said he must work under supervision.
47. In 1997 Mr Sabharwal had become the practice manager. The respondent had no reason to doubt his integrity. He and Mr Balasubramaniam, the respondent's assistant solicitor, had said that they would operate the conveyancing department and the respondent supervised.
48. Mr Sabharwal had had access to the office account not the client account. The respondent now knew that Mr Sabharwal had been engaged in nefarious activities and the OSS were thinking of taking disciplinary action against him in relation to the period in the respondent's firm. All was not well with his conduct.
49. The respondent had been kept in the dark. The files were not in the cabinet.
50. Letters were supposed to come to the respondent but Mr Sabharwal had asked for a Punjabi speaking secretary and he had instructed her to get the mail from the post-office. Detrimental letters had been removed. The respondent was completely in the dark.
51. The respondent had only come to know what had occurred when an Investigation & Compliance Officer of the OSS came to his office.
52. The respondent had given specific instructions to his employees to come to him if there was a problem.
53. Also in his spare time the respondent would go through the ledger cards. Some files were missing and Mr Sabharwal had said they were locked in a cabinet and he had forgotten the key. He had wanted those files in his custody.
54. The respondent would go to the office and open the mail and put it out for the respective employees. Out going mail also came to the respondent for signature. Mr Sabharwal only had permission to sign correspondence. Any financial matters had to be done on the respondent's signature.
55. The respondent would give staff a "pep talk" on their duties.
56. The respondent had asked Mr Sabharwal about the shortfall and he had replied that he had done conveyancing matters for which bills had been sent out or bills were held on the file or on the computer. When the Investigation and Compliance Officer had asked, Mr Sabharwal had been able to produce some bills, copies of which were before the Tribunal.

57. The respondent had had nothing to do with the deals and conveyances underpinning the £35,000 nor with the preparation or delivery of bills.
58. He had had nothing to do with the transactions.
59. Mr Sabharwal had been able to move the money from client account to office account by telling the respondent that this was in respect of bills and that the firm had a claim on that money as costs. To move the money from client account to office account the respondent would have had to sign.
60. The cheque to Shaizir & Co had been signed by the respondent. Mr Sabharwal had told him from the correspondence that there were two solicitors on the letterhead and that they were practising solicitors on the Roll and that there was nothing to worry about regarding the existence of the firm. The respondent had signed the cheque but had later come to know that the firm was non-existent.
61. The respondent had been told by Mr Sabharwal that the money for Stamp Duty from Mr R had had to be transferred from Ms E and had been authorised by her affidavit. Mr Sabharwal had obtained the affidavit after the respondent had received the papers in this case.
62. In relation to the undertakings the respondent had only come to know of these at the time of the inspection. He had had nothing to do with them. The Investigation and Compliance Officer had asked for the respondent's specimen signature in two places. Only later had the respondent received the bundle and known that a series of undertakings had been given and had been surprised to see his signature forged by Mr Sabharwal.
63. The respondent had reported this matter to the police when he returned from having surgery in Sri Lanka. The police had referred him to the Serious Fraud Squad.
64. The respondent was now not allowed to practise except as a fee earner for someone else. His health was poor and he needed his wife here to look after him. The respondent wanted to work as an employed solicitor under someone else's supervision.
65. He had tried to get a job but this was difficult given his age. The respondent thought that he would get his name cleared and then firms would try to accommodate him.
66. In cross-examination the respondent said that he lived half a mile from his office and would attend every day going to open the mail and date stamp it at about 9.30 a.m. He would stay for two to two and a half hours then go home for lunch to take his medication and rest. He would come back at about 4.30 p.m. to 5.00 p.m. when letters were dispatched.
67. He would go through files and sign cheques and if an affidavit needed to be prepared and his assistants were busy he would do it.
68. The respondent had had conduct of transactions.

69. The book keeping was done by an accountant Mr D who dealt with the client account and by the respondent's daughter who did the office account.
70. Mr Sabharwal maintained accounts in relation to the office account and the respondent maintained accounts in relation to the client account. The staff had been told that any financial matters had to be done through the respondent. The question of undertakings had not arisen. The respondent had told staff no undertakings should be given.
71. In conveyancing matters the firm would not give undertakings.
72. The respondent's health had deteriorated and he was on strict medication.
73. While the respondent was away Mr S, the principal of another firm, had run the practice.
74. It was correct that the respondent only supervised Mr Sabharwal now and then. Supervision had been done earlier to test how the work was going. Mr Sabharwal had then said there would be no further need as his work would be to the respondent's satisfaction.
75. The respondent understood The Law Society's warning card on property fraud. There had been no need to instruct staff on it at that time as the work was going very smoothly.
76. In re-examination the respondent said that he had had no reason to suspect that Shaizir & Co was a non-existent firm.
77. After the Tribunal had made its decision on the facts, the following further submissions were made on behalf of the respondent by way of mitigation.
78. The respondent's main concern was that he should not be struck off the Roll.
79. The aim of the Tribunal was the protection of the public but the respondent did not propose and The Law Society could ensure, that he did not practise except in an employed capacity. The Tribunal could achieve the protection of the public without a strike off.
80. The respondent apologised to the Tribunal for his failings as a solicitor.
81. There had been no dishonesty on his part and he may have been a victim of a rogue practitioner.
82. Although a strike off was not appropriate the respondent accepted that he must be punished. He was unable to pay a fine and a reprimand would be too lenient and it was therefore suggested that a short suspension would be appropriate to mark the Tribunal's displeasure.
83. The respondent needed a job in order to be joined by his wife. The respondent was particularly concerned regarding the stigma of this matter as he treasured his reputation.

84. The Tribunal heard submissions as to costs.

The Findings of the Tribunal

The Tribunal found all of the allegations to have been substantiated. Allegations b) to f) were not contested. In relation to allegation a) the respondent's failure to provide any kind of effective supervision of his practice and in particular his failure to supervise the work of an unadmitted member of staff to such an extent that a significant shortfall on client account had occurred without any meaningful checks by the respondent on the transfer of funds from client to office account, together with the fact that a significant number of breaches of undertakings had occurred meant that the respondent had clearly compromised or impaired or had been likely to do so his independence or integrity. The respondent had effectively passed his independence to his unadmitted practice manager.

The Tribunal accepted that the respondent may have been misled but the respondent had clearly failed to understand the requirements imposed on a solicitor, his duty to his clients and his duty to ensure that client monies were treated as sacrosanct by all members of his staff. The Tribunal had listened carefully to the points put in mitigation on behalf of the respondent but the Tribunal considered that the respondent's complete abrogation of his duty as sole principal had been such that it was no longer appropriate for him to remain in the profession. Even in the giving of his evidence before the Tribunal the respondent did not appear to have understood the seriousness of what had occurred and in particular his responsibility for that. The Tribunal had a duty to protect the public from such conduct and to preserve the confidence of the public in the profession.

The Tribunal therefore ordered that the respondent Sivasubramaniam Sivananthan of Deansbrook Road, Edgware, Middlesex, be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £3,172.50.

DATED this 19th day of March 2002

on behalf of the Tribunal

W M Hartley
Chairman