

IN THE MATTER OF DAVID MARK RICHARDSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Mr P Haworth
Mrs C Pickering

Date of Hearing: 6th May 2004

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 (“OSS”) by Katrina Elizabeth Wingfield, solicitor and partner in the firm of Penningtons, Bucklersby House, 83 Cannon Street, London, EC4N 8PE on 16th December 2003 that David Mark Richardson of Barnet, Hertfordshire, 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 see fit.

The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor, namely:-

- (i) that he failed to comply with the requirement of keeping accounting records properly written up under Rule 32 of the Solicitors Accounts Rules 1998/Rule 11 of the Solicitors Accounts Rules 1991;
- (ii) that he brought forward from Onyems solicitors and incorporated into the books and records of London Law solicitors a cash shortage on client account;

- (iii) that he permitted a cash shortage totalling £17,309.78 on client account, which when identified was replaced with only £14,313.61 in breach of Rule 7 of the Solicitors Accounts Rules 1998;
- (iv) that he transferred from client to office account monies totalling £6,150 in breach of Rule 22 of the Solicitors Accounts Rules 1998/Rule 7 of the Solicitors Accounts Rules 1991;
- (v) that he made overpayments in respect of four client matters totalling £8,267.18 by lodging client money in the office account in breach of Rule 15 of the Solicitors Accounts Rules 1998/Rule 3 of the Solicitors Accounts Rules 1991 and then made payments out of the client account instead of office account;
- (vi) that he failed to file Accountant's Reports as required under Section 34 of the Solicitors Act 1974 (as amended) for his practice for the period from 1st August 2000 until 31st July 2001 and a Cease to Hold Accountant's Report from 1st August 2001 until 19th November 2001.
[as amended with the consent of the Tribunal];
- (vii) that he defaulted in respect of insurance premiums to the Solicitors Indemnity Fund in the sum of £2,103.38 in respect of his "run-off" policy for 2000/2001;
- (viii) by virtue of the aforementioned the Respondent has brought the profession into disrepute and is guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 6th May 2004 when Katrina Wingfield appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent to the allegations, allegation (vi) having been amended with the consent of the Tribunal. The Respondent's admission to allegation (iii) was qualified as set out in paragraph 15 below. The Respondent denied dishonesty.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Order that the Respondent, David Mark Richardson of Barnet, Hertfordshire, solicitor, be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,019.03.

The facts are set out in paragraphs 1 to 14 hereunder:-

1. The Respondent, born in 1967, was admitted as a solicitor in 1995 and his name remained on the Roll of Solicitors. The Respondent did not hold a current Practising Certificate. His practice had been intervened in November 2001.
2. The Respondent practised in partnership as "Onyems" from 13th October 1997 to 1st August 1999. From 26th July 1999, he practised on his own account as London Law Solicitors at 1 Royal Exchange Avenue, London EC3V 3LT until 19th November 2001.

3. Authorisation was granted to inspect the books of account of the Respondent under the Solicitors Accounts Rules and on 4th July 2001 inspection at the Respondent's premises, 1 Royal Exchange Avenue, London, EC3V 3LT was commenced by Mr S, Investigating Officer, whose report (the "Report") was before the Tribunal. The Respondent stated on the commencement of the investigation that he personally maintained a manual bookkeeping system for the firm and that he exercised overall control over the clients' ledgers.
4. The Respondent claimed that the books and records of his firm were written up to date and there were no overdrawn client ledger accounts. The Investigating Officer reviewed the books and records of the firm and established that they had not been properly written up since 26th July 1999 when the Respondent commenced his own practice. The investigation was suspended so that the Respondent had time correctly to complete correctly the writing up of his books and records. Upon resumption of the investigation on 6th July 2001 the Investigating Officer established that the Respondent had only partially completed the writing up of the books and records and after a review of the books and reconciliations to 31st May 2001 concluded that the Respondent was not in compliance with the Solicitors Accounts Rules in that he had:-
 - (i) not maintained proper books and records since he began to practise on 26th July 1999;
 - (ii) improperly transferred clients' monies to the firm's office bank account;
 - (iii) incorrectly overpaid monies from client bank account;
 - (iv) incorrectly brought forward from Onyems, Solicitors, and incorporated into the books and records of London Law Solicitors a cash shortage on client account;
 - (v) incorrectly lodged clients' monies in office bank account.
5. The Respondent agreed at a meeting on 9th July 2001 that he had not maintained books and records since 26th July 1999 and he said that he had "failed to apply sufficient time and priority in dealing with the matter".
6. The Respondent agreed that, subject to a full reconciliation of the client's ledger at 31st May 2001 a cash shortage of £17,309.78 existed at that date. The Respondent on 3rd July 2001 had introduced capital from various sources and the utilisation of an undrawn costs remaining in client bank account to reduce this shortage to £2,996.17.
7. The Respondent admitted that he had improperly transferred clients' monies, amounting in total to £6,150 to the firm's office bank account. The Respondent explained that the transfer had been undertaken in order to "prop up the firm's office bank account". The Respondent subsequently stated in his letter dated 15th August 2001 in response to the Forensic Investigation Unit report that "the transfers were in order to pay rent and to pay staff".

8. The Respondent admitted that in respect of three clients he had incorrectly lodged £8,250.00 in the office account rather than the client account. The Respondent then paid money out of the client bank account instead of the office bank account. The Respondent admitted that he had overpaid clients' monies amounting in total to £8,267.18 and that he had failed to transfer £8,250.00 from office account to client account to rectify the overdrawn position on the three client ledgers.
9. The Respondent admitted that he had overpaid clients' monies in amounting in total to £2,388.65 which had been transferred from his previous firm Onyems and that the position was still overdrawn some 22 months after the transfer.
10. The Respondent failed to submit an Accountant's Report for the period ending 31st July 2000 that had become due for delivery by 31st January 2001. The Respondent admitted to the Investigating Officer that he had not submitted an Accountant's Report since he commenced practice alone on 26th July 1999 as he had been under the impression that he need not submit Accountant's Reports for up to two years from the date that he commenced practice. A reminder letter had been sent to the Respondent on 19th February 2001 but the Respondent claimed that he had not received this letter. A further Accountant's Report for the period ending 31st July 2001 was due by 31st January 2002 and a Cease To Hold Accountant's Report for the period ending 19th November 2001 was due by 19th May 2002. The Respondent submitted the Accountant's Report for the period ending 31st July 2000 on 20th October 2001.
11. The Respondent was sent a copy of the Report under cover of a letter dated 2nd August 2001 requesting a full explanation. The Respondent replied with his letter dated 15th August 2001.
12. The Respondent was informed by letter on 12th October 2001 that the matter was being referred for a formal adjudication and was asked for any representations within the next 14 days. The Respondent replied with his letter and enclosures on 26th October 2001.
13. The matter then went before a Compliance and Supervision Committee who resolved inter alia on 15th November 2001 to refer the conduct of the Respondent to the Tribunal.
14. The further Accountant's Report required by the Respondent for the period ending 31st July 2001 and the Cease To Hold Accountant's Report for the period ending 19th November 2001 were added to the existing disciplinary proceedings by the, Head of Investigation & Enforcement on 11th September 2002.

The Submissions of the Applicant

15. The Respondent had admitted the allegations in principle but in relation to allegation (iii) he admitted that he had permitted a cash shortage but said that this had been identified by the Investigation Accountant in two tranches and that he had replaced the balance at a later date. The Respondent denied dishonesty which the Applicant alleged.

16. It was submitted that the responses given by the Respondent during the investigation and subsequently could be taken to show conscious impropriety in dealing with his client account. In the submission of the Applicant that constituted dishonesty.
17. The Respondent's Accountant's Reports for the period ending 31st July 2001 and the Cease To Hold Report remained outstanding.
18. It was accepted by the Applicant on behalf of the OSS that there had been a delay in the progressing of this matter.

The Submissions of the Respondent

19. The Respondent denied any dishonesty. He said he would demonstrate the background factors which had led to the improper transfers.
20. The Respondent referred the Tribunal to the case of Bolton -v- The Law Society which, he said, had two limbs:-
 - (i) to make sure that the offender did not repeat the offence, ie to protect the public;
 - (ii) to maintain the reputation of the solicitors' profession.
21. In the submission of the Respondent the first limb was much the stronger. The proceedings before the Tribunal would not attract publicity other than in the legal press and part of the case of Bolton was therefore based on a legal fiction. In a jurisdiction where there could be a loss of livelihood and a potential loss of millions of pounds such jurisprudence was shaky.
22. The Respondent had since the intervention been involved in the recovering of the work in progress costs of his former practice and had been involved in businesses outside the law. He had no present intention of returning to the provision of legal services but submitted that when the surrounding circumstances were understood and it was clear that there was no dishonesty it would be just and possible for his right to practise in the future to be preserved.
23. The Respondent spoke of his family responsibilities and said that he might not find a business career to be right for him and might return to being an employed solicitor. He submitted that the Tribunal could protect the public while at the same time acting in a just manner to preserve his right to practise.
24. The Respondent submitted that it was in the power of the Tribunal under section 47 to order an indefinite suspension on terms. The terms suggested by the Respondent were that should he apply for a Practising Certificate and could show that he wished to be employed or be a partner in a reputable firm then he should be required to show:-
 - (i) that he had capital of £100,000;
 - (ii) that he had a business plan approved by a bank or management consultants;

(iii) that he would file accountant's reports every three or six months.

If those stipulations were followed the protection of the public would be assured.

25. At the commencement of his former partnership and of his sole practice most of his sources of work had come from his connections arising from extensive pro bono work with a number of voluntary bodies including Citizens Advice Bureaux. The referrals he had received had been for personal injury work. Once the "claims farmer" system had come into being people no longer went to those bodies in respect of personal injury and his work reduced. He therefore became involved with the now defunct Accident Group.
26. The Respondent explained how the system with The Accident Group had worked, including the fact that he was required to pay £400 for every case sent to him. The idea was that money would be recoverable at the end but the Court of Appeal had now said that that money was not recoverable. The Accident Group had put pressure on the Respondent to take on more cases and the resulting pressure on cashflow had caused him financial difficulties.
27. The Respondent had not been from a wealthy background and had no property so had only been able to obtain limited unsecured loans.
28. Some solicitors might have put pressure on clients in such circumstances to accept offers of compensation in order to unlock the costs. The Respondent had not done this.
29. The Respondent accepted that the transactions he had carried out at this time were wrong but asked the Tribunal to note the circumstances in which he had first carried out those transactions.
30. The Respondent had then stabilised his business but some months later had again had financial difficulties. The insurance industry was refusing to pay the costs of The Accident Group cases pending appeal. The Respondent had been caught in the crossfire of a battle between claims farmers and the insurance industry.
31. This was not however a case of mortgage fraud or of attempting to rob clients of money or of seeking to prejudice clients' interests.
32. The Respondent admitted that in his letter of 15th August 2001 he had said that he had used client money to pay rent and staff. He said that there had however been no intention permanently to deprive clients of money. He accepted that he should not have used client money but said that the issue turned on the definition of dishonesty.
33. The Respondent said that he had found it difficult to find a test for dishonesty in considering case law and he was referred by the Tribunal to the cases of Twinsectra -v- Yardley and Royal Brunei Airlines -v- Tan.
34. The Respondent submitted that a reasonable person would not see his actions as dishonest and would see and understand the predicament the Respondent had been in.

A reasonable person would know that no clients were being prejudiced and that clients had received their cheques. No clients had complained.

35. The Tribunal was asked to infer the Respondent's general honesty from the fact that he had immediately highlighted to the Investigation Accountant the improper transfers.
36. The Respondent had replaced the shortage in the figure first indicated by the Investigation Accountant. The Investigation Accountant had then discovered a further shortage which was replaced shortly afterwards.
37. The Respondent asked that his frankness, openness and honesty after the facts could be taken into account together with the circumstances to show that he had no dishonest intent. He accepted that he had difficulty with an objective test but felt that a reasonable person viewing matters from the outside would need to have all the information.
38. This was the Respondent's first appearance before the Tribunal and he submitted that in the case of Katz the Tribunal had taken into account the fact that this was the fourth appearance of that Respondent.
39. If the Tribunal applied the conditions referred to at paragraph 24 above to an indefinite suspension there would be little risk of the Respondent re-offending and the Tribunal would fulfil its primary function of protecting the public. If the Respondent had had £100,000 to start his former business he would not be before the Tribunal today.

The Findings of the Tribunal

40. The Respondent had admitted the allegations as amended and subject to his explanation in relation to allegation (iii) and the Tribunal found the allegations substantiated. The Respondent had denied dishonesty. The Tribunal had considered carefully the documentation and the submissions. The Respondent had submitted that a reasonable person knowing all the circumstances would not consider his use of clients' money to be dishonest. The Tribunal did not accept that submission. The use of clients' money to "prop up" the Respondent's business and to pay his rent or his staff would be perceived as dishonest by a reasonable person and must have been subjectively dishonest on the part of the Respondent. Dishonesty in this context was not limited to an intention permanently to deprive clients of money. Client funds were sacrosanct and all solicitors knew or should know that client funds could not be used in the way the Respondent had done. The Tribunal was satisfied applying the test in Twinsectra -v- Yardley that the Respondent's conduct had been dishonest.
41. The Tribunal had noted the Respondent's submissions as to penalty. The Tribunal's duty however was to protect the public and to protect the reputation of the profession. The Respondent's conduct in dishonestly using clients' money for his own purposes was simply not acceptable and severely damaged the confidence of the public in the profession. Further the Respondent had repeated the misconduct. The fact that no client had complained was not relevant. Clients had been unaware that their money was being misused. The Respondent had also failed in respect of various regulatory

requirements as specified in the allegations and these requirements were essential for the proper regulation of the profession. The Tribunal was satisfied that the Respondent should not be allowed to remain as a member of the profession.

42. The Tribunal made the following Order:-

The Tribunal Order that the Respondent, David Mark Richardson of Barnet, Hertfordshire, solicitor, be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,019.03.

Application for a stay of the Order

43. The Respondent requested that the Tribunal's order be stayed pending his appeal. The Tribunal declined the application. It was not the usual practice of the Tribunal to grant such requests although it was of course open to the Respondent to make such application as he saw fit to the appropriate court.

Dated this 15th day of July 2004
on behalf of the Tribunal

D J Leverton
Chairman