

IN THE MATTER OF MARTIN DAVID TUCKER, solicitor
AND ABBOT STANWICK LLP, a recognised body

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs K Todner (in the chair)
Mr W M Hartley
Mrs V Murray-Chandra

Date of Hearing: 27th June 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

As application was duly made on behalf of The Law Society by Stuart Roger Turner, solicitor of Lonsdales, Solicitors, 5 Fishergate Court, Fishergate, Preston, PR1 8QF on 21st March 2005 that Martin David Tucker of Abbot Stanwick LLP, 12 Station Road, St Ives, Cambridgeshire, PE27 5BH, solicitor, and Abbot Stanwick LLP, a recognised body, of 12 Station Road, St Ives, Cambridgeshire, PE27 5BH 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 were that Mr Tucker had been guilty of conduct unbecoming a solicitor and that Abbot Stanwick LLP had failed to comply with the Rules and/or Regulations applicable to it in each, any or all of the following circumstances.

Allegations against both Respondents

1. That contrary to Rule 22(1) of the Solicitors Accounts Rules 1998 they have withdrawn money from client account other than as permitted;

2. That contrary to Rule 32(1) of the Solicitors Accounts 1998 they failed to keep accounts properly written up;
3. That contrary to Rule 32(7)(c) of the Solicitors Accounts Rules 1998 they failed to prepare proper reconciliation statements;

Allegations against Mr Tucker alone

4. That he misappropriated client funds, which for the avoidance of doubt is an allegation of dishonesty;
5. That he falsely created a credit entry on a client matter to support a false bill of costs.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Stuart Roger Turner appeared as the Applicant and the Respondent was represented by Nigel Brockley of Counsel.

The evidence before the Tribunal included the admissions of the Respondent save that Mr Tucker denied that he had been guilty of dishonesty. The Tribunal had before it a witness statement of Mr Tucker and witness statements of Ms Rule, Mr Bradley and Mr Yates.

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

The Tribunal Orders that the Respondent, Martin David Tucker of Park Street, St Albans, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The facts are set out in paragraphs 1 - 11 hereunder:

1. Mr Tucker, born in 1967, was admitted as a solicitor in 1992. Abbot Stanwick LLP was a recognised body.
2. At all material times Mr Tucker carried on practice at Abbot Stanwick LLP of 12 Station Road, St Ives, Cambridgeshire, PE27 5BH and was a member of Abbot Stanwick LLP.
3. On 23rd November 2004 Mr L, a member of Abbot Stanwick LLP since 4th November 2004, reported to The Law Society the discovery of the misappropriation of £98,500 of client monies by Mr Tucker.
4. On 26th November 2004 a "walk in" inspection of the Respondents' firm by a Senior Inspection Officer of The Law Society ("the SIO"). The SIO prepared a Report dated 1st December 2004, which was before the Tribunal.
5. The Report dealt with the following matters:
 - (i) the inspection was limited to the reported misappropriation of client funds;

- (ii) Mr Tucker was not present at the inspection as he was on medication after an attempted suicide;
 - (iii) the books of account were not in compliance with the Solicitors Accounts Rules as there was a client shortage shown by the books of £241,359.38. The reason for the shortage was not determined, however contributory factors were:
 - (i) misappropriation of client funds of £98,113.75;
 - (ii) unallocated payments of £15,359.56;
 - (iii) unpaid disbursement in office account of £7,000.
6. Mr Tucker had misappropriated client money held in connection with a residential conveyancing matter. His actions were as follows:
- (i) the balance on the file ledger from 23rd September 2004 to Friday 22nd October 2004 was nil. On Sunday 24th October 2004 he made an entry in the computerised records to post a client credit of £98,500 "on account" as at 22nd October 2004. That entry was not supported by the receipt of funds.
 - (ii) on 22nd October 2004, with the ledger showing a credit balance of £98,500, that sum was withdrawn from client to office account to cover costs of £163.75 and a client payment of £97,950 described as "proceeds" left a credit balance of £386.25.
 - (iii) the true balance on this ledger was £98,113.75 debit.
7. The sum of £97,950 was paid in to a Halifax plc account in Mr Tucker's name on 26th October 2004. Between 26th October 2004 and 26th November 2004 Mr Tucker had introduced into the firm's office bank account from that Halifax account a total of £81,250.
8. On 29th November 2004, Mr Tucker wrote to all the staff at Abbot Stanwick LLP advising them that he had made an unauthorised transfer out of client account and then made payments back into the business. He stated:
- "...in so doing I knew that it would eventually be discovered and I would get into serious professional difficulties.
- and
- "The only amount used for my own personal benefit was to pay for the IVF bill and the intention was to repay that as well as soon as I could."
9. On 3rd December 2004 The Law Society resolved to intervene into the firm of Abbot Stanwick LLP.

10. On 13th December 2004 The Law Society wrote to Mr Tucker seeking an explanation. In his reply of 14th December 2004 Mr Tucker admitted that his actions had been dishonest; that he had created a false entry on the client account for Mr and Mrs B; had requested a payment out; and had created a false bill "... to make it look like a genuine completion to the accounts manager". He also admitted that the payment went into his own Halifax Account. He had arranged to pay the whole amount into the firm's office account in tranches, "... so that my dishonesty would not be apparent to the accounts manager". He also admitted that some of the funds were used to clear a credit card that was being used to meet an IVF treatment bill.
11. Abbot Stanwick LLP had been put into liquidation on the 17th February 2003.

The Submissions of the Applicant

12. The Respondent had made a clear and deliberate decision to take clients' money. His intention had been to transfer the monies paid to his own account back to the firm's office account in tranches so as not to raise suspicion and he had sought to disguise his dishonest action within the firm's books by making it appear that the transfer of funds was part of a genuine conveyancing transaction.
13. The Respondent had used clients' money for his own purposes and in particular to pay off credit card debt. That was a serious situation.
14. The appropriate test to be applied to establish dishonesty on the part of the Respondent was that in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12, first did Mr Tucker act dishonestly by the ordinary standards of reasonable and honest people and if so, secondly was he aware that by those standards he was acting dishonestly. In the submission of the Applicant both the objective and the subjective tests were satisfied in this matter.
15. Mr Tucker had expressed the wish to retain his practising certificate. The action of Mr Tucker had been dishonest and although it was hard on individuals, it was right that a solicitor who has acted dishonestly had a severe sanction imposed upon him in order to protect the interests of the public and to ensure that the good reputation of the solicitors' profession was maintained.
16. The Applicant sought the costs of and incidental to the application and enquiry and, as the Respondent was in an insolvency voluntary arrangement, he was not in a position to negotiate quantum. The Tribunal was invited to award The Law Society its costs to be assessed if not agreed.

The Submissions of the Respondent

17. The Respondent admitted his action and accepted that what he did was wrong. On behalf of Mr Tucker it was accepted that no formal medical evidence had been provided to the Tribunal to demonstrate the state of Mr Tucker's health at the material time. The Tribunal was invited to take into account the witness statements provided and in particular to note that Mr Tucker had attempted suicide. Mr Tucker had suffered severe depression and his judgement had been seriously impaired.

18. The Respondent's firm had had humble origins and had expanded. Mr Tucker was the sole equity partner. There were two other partner members who were salaried. As the sole equity member Mr Tucker had been responsible for the financial well being of the firm and its employees and that was stressful. He enjoyed and thrived upon the challenge until events outside work contrived to make him ill. His wife, who had been practice manager, had been seriously ill. Not long after his wife's recovery his father fell ill and at the same time another close relative had been diagnosed with cancer. Mr Tucker had collapsed into an unconscious state regularly whenever put under pressure, sometimes up to four or five times in a day. He was prescribed anti-depressants and medication to help with anxiety.
19. Mr Tucker and his wife cared for his terminally ill father at their home. Their 24 hour care was relieved only by the attendance of a Marie Curie nurse two nights a week. The strain and lack of sleep caused Mr Tucker's depression to deepen. The death of his father caused Mr Tucker distress and in the month that followed, coping with work became a massive struggle. At that time Mr Tucker's wife commenced IVF treatment. Mr Tucker worked harder than ever as a "defence mechanism". He borrowed more money to fund the expansion of the firm, mostly secured on property left to him by his father.
20. In the summer of 2004 a venture commenced in Bury St Edmunds failed and the firm lost important sources of work largely because Mr Tucker was physically and emotionally unable to provide the supervision required and appropriate standards of service.
21. The Inland Revenue was pressing for payment and Mr Tucker had found himself unable to get borrowing in place before the Inland Revenue deadline and the date when the next salaries payment fell due. Mr Tucker's staff was like an adopted family to him.
22. Mr Tucker recalled thinking that the only way he could pay the staff was to borrow a sum from client account. He made a false entry in the accounts with the intention of reversing it when the loan came through. He hoped the entry would not be evident to the accounts manager but it was inevitable that the accounts manager would detect the error fairly quickly and find out what had happened. The false entry created the opportunity of transferring a sum of money into a personal account and then back to the office account to meet pressing payments. Only someone so overcome with depression as to be blind to reason or good judgement would have undertaken such a stupid exercise.
23. Mr Tucker said that in making the false entry and transfer he recalled recognising that it was in breach of the Rules of Professional Conduct but he did not feel that it was the wrong thing to do – he felt obliged to protect his employees. He knew the money would be repaid within a couple of weeks. He was unable rationally to consider his actions and recognised the full implication of them.
24. A few days later Mr Tucker became slightly more rational and began to recognise that the well being of his staff did not justify what he had done. He knew the money was to be repaid shortly but he began to come to terms with having to lay off some of the staff.

25. When the firm's accounts manager discovered what had happened, Mr Tucker felt total despair and shame. He could not face his accounts manager and instead took every tablet in the medicine cupboard including sleeping pills, paracetamol and other pain killers with a bottle of wine. Mr Tucker's wife found him and she was able to call an ambulance and Mr Tucker received life saving treatment.
26. Mr Tucker was significantly better at the date of the hearing than he had been in the second half of 2004. He was still prescribed drugs to combat both depression and anxiety. He had regular appointments with his general practitioner and fortnightly meetings with a cognitive behavioural therapist and counselling. Mr Tucker expected that he would require to be on medication for some time into the future.
27. Mr Tucker valued his professional qualification and was proud of being a solicitor. He was currently working for a firm of solicitors in High Wycombe, consent to that employment having been obtained from The Law Society. A conditional practising certificate had been granted to Mr Tucker. Mr Tucker undertook conveyancing work but did not have a caseload of his own. He had limited contact with clients and had no supervisory role. He shared an office with a partner at the firm and was closely supervised.
28. The Tribunal was referred to case law. In particular, *Royal Brunei Airlines v. Tan*, *Re a Solicitor Bultitude v. The Law Society* and a Tribunal's case of *Gilbert* in which the respondent misappropriated client money to assist with the treatment of his terminally ill child.
29. It was Mr Tucker's submission that he had not acted dishonestly at the time of making the transfer of funds from client account and the Tribunal need not impose the ultimate sanction.
30. The Tribunal was invited to take into account the statements filed with the Tribunal in support of Mr Tucker from those who worked with him, explained his depression and that what he did was out of character. His present employer explained the nature of Mr Tucker's employment and his understanding of his current mental ill health and the problems he had previously suffered.

The Findings of the Tribunal

31. The Tribunal found all of the allegations to have been substantiated and found that Mr Tucker had behaved dishonestly.
32. The Tribunal had before it no evidence that at the time Mr Tucker took client money for his own purposes he did not know that what he was doing was wrong. Indeed he made false entries in the firm's books of account on a Sunday when the office was shut and he sought to disguise what he had done by making the transfer of funds appear to be part of a conveyancing transaction. He then made a number of payments into office account using that money so that the source of the payments in could not readily be identified. This could not be said to have been an aberration as it amounted to a series of transactions which had been planned in advance.

33. The Tribunal has taken into account the background circumstances and Mr Tucker's anxiety and depression. None of these excuses Mr Tucker's dishonest action and the Tribunal deprecates his failure to recognise the sacrosanct nature of client money and his failure to meet the high duty that a solicitor has to exercise a proper, and indeed an honest, stewardship of client money.
34. The Tribunal found that Mr Tucker had been dishonest having applied the two part test in the case of *Twinsectra v. Yardley*. The Tribunal was in no doubt that an ordinary member of the solicitors' profession would consider that what Mr Tucker did was dishonest and Mr Tucker did not at the time of his action fail to recognise that that would be the opinion of his peers.
35. Whilst the Tribunal accepted that Mr Tucker's judgement might not have been entirely sound at the material time, the dishonest misappropriation of client money for a solicitor's own personal use amounted to a more serious state of affairs than a mere example of poor judgement.
36. In all of the circumstances the Tribunal considered that it was both appropriate and proportionate both in the interests of protecting the public and the good reputation of the solicitors' profession to order that Mr Tucker be struck off the Roll of Solicitors. It was further right that the costs of and incidental to the application and enquiry should be met by Mr Tucker, such costs to be subject to a detailed assessment unless agreed between the parties.
37. The Tribunal made no order in respect of Abbot Stanwick LLP having been told that it was in liquidation. It would in due course cease to be registered at Companies House under the provisions of the Limited Liability Partnerships Act 2000 which would lead to the automatic expiry of the recognition of that body by The Law Society. The Tribunal also noted that it was another member of Abbot Stanwick LLP that reported the actions of the Respondent to The Law Society. The actions completely related to an individual and not to the limited liability partnership itself.

DATED this 4th day of August 2006
on behalf of the Tribunal

K Todner
Chairman