

IN THE MATTER OF MUHAMMAD WASEEM KHAN-SHERWANI, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr D J Leverton
Mr D E Marlow

Date of Hearing: 25th May 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Gerald Malcolm Lynch, solicitor and consultant with the firm of Drysdales, Cumberland House, 24-28 Baxter Avenue, Southend-on-Sea, Essex on 8th November 2005 that Muhammed Waseem Khan-Sherwani, solicitor, whose address for service was FS Law, Solicitors and Advocates, 27 Milton Road, Gravesend, Kent, DA12 2RF 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:

- (1) that the Respondent has acted in breach of Principle 12.09 and 15.04 of the Guide to the Professional Conduct of Solicitors 1999 (8th Edition) in that he has taken unfair advantage of clients by the dishonest misappropriation, alternatively misuse, of clients' money and the utilisation thereof for his own benefit. In the alternative, the Respondent has acted with conscious impropriety in relation to dealings with clients' monies;
- (2) has acted in breach of the provisions of Rule 1 of the Solicitors Practice Rules 1990;

- (3) has acted in breach of the provisions of Rule 22 of the Solicitors Accounts Rules 1998 in the transfer from client account of clients' funds other than in accordance with the provisions of the said Rule;
- (4) by virtue of each and all of the aforementioned has been 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 25th May 2006 when Gerald Michael Lynch appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent.

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

The Tribunal Orders that the Respondent, Muhammed Waseem Khan-Sherwani of F.S Law Solicitors and Advocates, 27 Milton Road, Gravesend, Kent, DA12 2RF, 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 fixed in the sum of £6,279.18.

The facts are set out in paragraphs 1-26 hereunder:

1. The Respondent, 44 years of age, was admitted as a solicitor in 1988. At the material times the Respondent was employed as an assistant solicitor in the firm of Lewis & Dick, 443 Kingston Road, Ewell, Surrey.
2. A Forensic Investigation Officer of The Law Society ("the FIO") carried out an inspection of the accounts of Lewis & Dick. The inspection began on 20th December 2004. The FIO's Report dated 30th June 2005 was before the Tribunal.
3. The FIO's Report revealed that the Respondent was employed by Lewis & Dick as an assistant solicitor from 28th June 1999 until he was dismissed by the partners on 1st September 2004. The Respondent had been based at the firm's Ewell office and in the main he conducted conveyancing.
4. On 9th July 2004 the partners of Lewis & Dick issued a written warning to the Respondent about his negligent handling of one conveyancing matter and his use of an office stamp denoting that the witness to his signature on his own mortgage deed was a solicitor with the firm when he had in fact left.
5. While the Respondent was on holiday in August 2004 the partners of Lewis & Dick discovered that the Respondent had utilised funds received on behalf of clients for his own purposes in two matters.
6. In the first matter the Respondent acted for Mr and Mrs O in their sale and purchase of properties.
7. Completion of the sale on behalf of Mr and Mrs O took place on 19th December 2003 and the relevant client ledger account recorded that proceeds of sale totalling £562,000 were paid on the same day. The purchase transaction for Mr and Mrs O was completed on 2nd July 2004.

8. A letter in the relevant client matter file recorded that during the period between completion of their sale and their purchase, Mr and Mrs O were tenants of the Respondent. In a letter to a partner dated 19th October 2004 Mrs O stated "but through no fault of our own we had to pay the Respondent extra rent."
9. Mrs O made the following payments in respect of the purchase to the firm:

<u>Date</u>	<u>Payment type</u>	<u>Amount</u>
		£
29 January 2004	Bankers draft	300,000.00
2 July 2004	Bankers draft	210,663.76
12 July 2004	Cheque	<u>1,545.51</u>
		<u>£512,209.27</u>

10. The client ledger account recorded the receipt of funds as follows:

<u>Date</u>	<u>Amount</u>
	£
2 February 2004	49,500.00
2 July 2004	461,163.76
13 July 2004	<u>1,545.51</u>
	<u>£512,209.27</u>

11. In a letter to Mr and Mrs O dated 29th January 2004 the Respondent said:

"I thank you for attending my office today and for your bank draft for £300,000. On exchange of contracts the maximum exposure to you is £49,500 if you do not complete. You will receive interest on the sum of £300,000 at 10% gross. The funds will be held at Messrs Lewis & Dicks client account at Barclays Bank plc, 43 High Street, Sutton Sort Code----- and client account number-----".

12. The firm maintains a system of chits to record receipts and payments on client account. The chit, dated 30th January 2004 initialled by the Respondent, recorded receipt of the £300,000 and showed that the funds were received from "Bowry Sherwani". The chit also recorded that the funds were for the benefit of a client ledger account in respect of Bowry Sherwani.
13. A chit of the same date and also initialled by the Respondent recorded the receipt of £49,500 from Mr and Mrs O.
14. Mr and Mrs O's £300,000 posted to the Bowry Sherwani client ledger account, were used to complete the purchase of a property at the price of £284,646.87. The client ledger account for this matter recorded the transfer of completion monies of £269,896.87 on 30th January to the vendor's solicitors leaving the Bowry Sherwani client ledger account showing a debit entry for £14,750 dated 8th January 2004 which accounted for the balance of the purchase price.

15. The sum of £461,163.76 was paid into the firm's client bank account by the Respondent attending the bank in person. It was usual for the firm's probate manager to attend to the banking although there had been occasions when the Respondent would attend to it.
16. The payment of £1,545.51 by Mr and Mrs O was required by the vendor as a penalty for late completion.
17. The partners had until then been unaware of the Respondent's commitment to pay Mr and Mrs O interest at 10% on the £300,000 received from them.
18. In the second matter Mr S assisted his children D and R in their respective purchases of properties. Mr S also assisted his daughter, F, in redeeming her mortgage on a property. The Respondent acted for D, R and F in these matters.
19. D's purchase was recorded in one client ledger account. R's purchase and the mortgage redemption by F were both recorded in a second client ledger account.
20. D's ledger account recorded numerous debit and credit entries relating to a sale and a purchase and following completion of these transactions on 19th December 2001 an amount of £43,203 remained to the credit of the client. On that date the client ledger account recorded a debit entry for £43,000. The corresponding narrative entry stated "Balance Account To You AL Associates".
21. On 10th September 2004 the firm sent a fax to AL Associates asking them to confirm that the monies were received and asking to what matter they related.
22. In response AL Associates stated inter alia:

"We do not have any knowledge of Mr S. We acted for the Respondent and Mr Bowry upon a purchase in Shirley. The Respondent confirmed he was arranging for the sum of £43,000 to be remitted to our client in respect of their purchase. This was duly received on 19th December 2001.
23. The client matter file contained a document that stated "I authorise Messrs Lewis & Dick [sic] to send the sum of £43,000 to Messrs ALS DX 48664 Shirley". The document was dated 19th December 2001 and was signed "S".
24. The partners replaced the £43,00 debited from the client ledger account for D.
25. On 21st September 2004 the client ledger account for D was credited with £4,765.32 received to client bank account and accorded the narrative "Refund Nat West Home Loans".

26. The position was summarised as follows:

Sum to be replaced		£43,000.00
Cheque sent to Mr S	£18,049.10	
Redemption of F's mortgage	<u>26,346.72</u>	
	<u>£44,395.82</u>	
Refund from mortgagor	<u>(4,765.32)</u>	
Balance	<u>£39,630.50</u>	£39,630.50
Shortage		<u>£3,369.50</u>

The Submissions of the Applicant

27. The Respondent had improperly utilised clients' money for his own purposes. That use might have been temporary and the money was subsequently made available when it was needed for the completion of a purchase. The money had been used by the Respondent and a colleague. Further the clients were not paid the interest which they were told they would be paid. That amounted to a fraud and dishonesty on the part of the Respondent. That was serious misconduct on the part of the Respondent and such behaviour was incompatible with the requirement that a solicitor acts with complete integrity. The Respondent had offered no explanation for his activities.

The Submissions of the Respondent

28. The Respondent told the Tribunal that he admitted the allegations and did not defend the disciplinary proceedings. He wished to explain that in the case of Mr S, Mr S had never been a client of the Respondent, and the Respondent had acted for the son and daughters of Mr S. Mr S had given the Respondent money to invest in a property venture.
29. With regard to Mr and Mrs O the Respondent acted on the sale of their property. The sale completed and the Respondent paid funds of £180,000 to Mr O on completion. Mr and Mrs O moved into a property owned by the Respondent on a temporary basis until their new house was built. The Respondent had offered Mr and Mrs O accommodation for six months. They became friendly and then Mr and Mrs O made an investment. Mr and Mrs O's new house completed some six months later and the Respondent returned the money to Mr O although he accepted he had not paid any interest.
30. The Respondent said he was sorry and appearing before the Tribunal was a sad occasion for him.
31. The Respondent had lost his job, his wife, his daughter and his property.
32. The Respondent accepted that his behaviour had fallen below the standard required by the solicitor' profession. The Respondent expressed his sincere regrets and confirmed that he would pay the Applicant's cost in the figure sought.

The Findings of the Tribunal

33. The Tribunal found the allegations to have been substantiated and found that in relation to allegation (1) that the allegation of dishonest misappropriation of clients' money and its utilisation for his own benefit, had been substantiated.

Previous Findings of the Tribunal

34. On 9th January 1996 the Tribunal found substantiated against the Respondent an allegation that he had acted in breach of Rule 11 of the Solicitors Accounts Rules 1991 in that he failed to keep his books in compliance with the said Rule and consequently had been guilty of conduct unbecoming a solicitor.
35. The Tribunal said on that occasion that it could not emphasise too strongly the importance of compliance with Rule 11 of the Solicitors Accounts Rules. To ensure that clients' money was being dealt with fairly and was not placed in jeopardy, clear and accurate book-keeping was essential as indeed was attention to regular reconciliations of client bank account. It appeared that the Respondent, a young solicitor entering practice on his own account for the first time had perhaps not been well-served by the advice given to him by his accountants. The Tribunal hoped the Respondent was right when he said he had learned his lesson. He appeared to have taken steps to ensure that a similar situation would not arise again. In order to mark the seriousness that the Tribunal regarded a failure to maintain books of account they imposed a fine of £1,500 upon the Respondent and further ordered him to pay the costs of the application and enquiry, to include the costs of the Investigation Accountant of The Law Society.
36. At a hearing on 20th May 1997 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations were that the Respondent had:
- (i) failed to honour the terms of an undertaking given by him in the course of his practice as a solicitor;
 - (ii) failed to reply to correspondence and enquiry addressed to him by other solicitors, a client and the Solicitors Complaints Bureau;
 - (iii) deceived alternatively improperly misled the Solicitors Complaints Bureau in connection with the above matters;
 - (iv) failed to reply to correspondence and enquiry addressed to him by other solicitors and by the Solicitors Complaints Bureau;
 - (v) failed to act in accordance with a direction given to him by the Adjudication & Appeals Committee of the Solicitors Complaints Bureau;
 - (vi) by virtue of the aforementioned, been guilty of conduct unbecoming a solicitor.
37. In its Findings dated 16th September 1997 the Tribunal said:

"The Tribunal was concerned that the Respondent should appear before them on a second occasion to face allegations which in reality related to his failure to recognise his responsibilities and "grasp the nettle" in his position as a sole practitioner. Although the allegations appeared to be of the most serious nature, the Tribunal was able to accept that the breach of undertaking was at the lower end of the scale relating as it did in the main to considerable delay rather than to refusal to comply. The Tribunal was satisfied that the Respondent had not been guilty of dishonesty and took the view that he had "bitten off more than he could chew".

The Tribunal noted that The Law Society had issued a Practising Certificate to the Respondent subject to the condition that he practise only in employment first approved by The Law Society. It was clear to the Tribunal that the Respondent was not equipped to be a sole practitioner and they recommend to The Law Society that he should not be permitted so to practise for the foreseeable future. Despite the fact that the Respondent had already received a rebuke, the Tribunal could not disregard the Respondent's unacceptable and unprofessional behaviour and they imposed a fine upon him of £2,000 and ordered him to pay The Law Society's costs in a fixed sum."

38. On 25th May 2006 the Tribunal was concerned to note that the Respondent was appearing before the Tribunal on a third occasion.
39. Whilst the Tribunal gave the Respondent credit for attending the hearing and addressing the Members of the Tribunal and expressing his regret he had nevertheless been found guilty of dishonest misappropriation of clients' money and its use for his own benefit. The Tribunal noted the Respondent's explanation that Mr S was not a client but nevertheless been found guilty of the money had been paid to the Respondent to be used for the purposes of Mr S's three children who were clients of the Respondent. The money was to be applied for the purposes of those three clients and the Tribunal does not consider that Mr S's status in any way ameliorated the situation which arose.
40. The Tribunal finds, having applied both the objective and the subjective tests in the case of Twinsectra v Yardley and Others [2002] UKHL 12 that the Respondent had behaved dishonestly and such behaviour could not be tolerated on the part of a member of the solicitors' profession. The Tribunal Ordered that the Respondent be struck off the Roll of solicitors. It further Ordered that he should pay the costs of and incidental to the application and enquiry, to include the costs of the Forensic Investigation Officer of The Law Society such costs to be fixed in the sum agreed by the Respondent, namely £6,279.18.

DATED this 27th day of July 2006
on behalf of the Tribunal

A G Ground
Chairman

