

IN THE MATTER OF SHAHAN SHAH SARMAK KHAM, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr L N Gilford (in the chair)
Mr J P Davies
Mrs C Pickering

Date of Hearing: 15th February 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Jonathan Goodwin, Solicitor Advocate, of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 3rd March 2006 that Shahan Shah Sarmad Khan of Trinity Riverside, Salford, Greater Manchester, might be required to answer the allegations set out 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 that he had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:

- (i) that he failed to pay client money into client bank account without delay, as required by Rule 15 of the Solicitors Accounts Rules 1998;
- (ii) that he misappropriated funds, which for the avoidance of doubt was an allegation of dishonesty.

By a supplementary statement of Jonathan Goodwin dated 8th September 2006 it was further alleged against the Respondent that he had been guilty of conduct unbecoming a solicitor in that:

- (iii) he acted in a way which was fraudulent, deceitful or otherwise contrary to his position as a solicitor in that he provided a misleading representation, and or failed to disclose material information to The Law Society on his application for the removal of his name from the Roll of Solicitors dated 23rd August 2005. For the avoidance of doubt this was an allegation of dishonesty.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 15th February 2007 when Jonathan Goodwin, Solicitor Advocate, appeared as the Applicant and the Respondent did not appear and was not represented.

The Tribunal had made an Order for substituted service on 16th November 2006 and at the commencement of the hearing the Applicant gave evidence as to service. The Tribunal was satisfied that service had been duly effected.

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

The Tribunal Orders that the Respondent, Shahan Shah Sarmad Khan of address unknown (formerly of Trinity Riverside, Salford, Greater Manchester), 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 £16,392.69.

The facts are set out in paragraphs 1 to 20 hereunder:

1. The Respondent, born in 1974, was admitted as a solicitor in 2000 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent was employed as an assistant solicitor by Aaronson & Co from offices at 197a Kensington High Street, London, W8 6BA, 308 Earls Court Road, London, SW5 9BA and 282 Earls Court Road, London, SW5 9AS. The Respondent had previously been employed as a trainee solicitor with the above practice and upon being admitted as a solicitor remained with the firm until August 2001 when he tendered his resignation and his last day in the office was Friday, 7th September 2001.
3. Upon due notice to Aaronson & Co a Senior Investigation Officer of The Law Society carried out an inspection of the firm's books of account and produced a Report dated 27th June 2003.
4. The partners indicated to the Senior Investigation Officer that following the Respondent's departure from the firm clients contacted the firm to ascertain the progress of their cases. Two clients, Ms A and Mr ME stated that they had paid money on account direct to the Respondent. This was not apparent from the client matter file nor had the amounts been entered in the firm's books of account. Mr Aaronson investigated the two matters and interviewed the clients separately. The partners wrote to the Respondent about the issues but received no response. They said that upon taking advice from The Law Society Ethics Department they then reported the matter to The Law Society.
5. The partners indicated to the Senior Investigation Officer that the firm's procedures were that fee earners were not supposed to take cash from clients but rather the client should be passed over to one of the office's designated individuals who would take the

money and provide the client with a self-carbonated receipt from a receipt book. The funds would then be passed to the accounts department. The partners indicated they accepted that the clients had paid to the Respondent an amount totalling £1,200 and that in order to rectify the situation they had done work to the value of the amounts paid on each client matter file.

Ms A - £800

6. The Respondent acted for Ms A in relation to an application for leave to remain in the UK for herself and her brother. Following the Respondent's departure from the firm Ms A contacted the firm and spoke with another employee who found that a client file had not been opened but that the Respondent had initially seen the client in May 2001. Ms A stated she had paid two amounts of £400 to the Respondent (£800 in total), one in cash on 2nd July 2001 in respect of her brother's application and the other by Abbey National cheque on 30th July 2001 in respect of her own application. Ms A stated that she was unable to find the slip of paper she had been given for the payment of cash but evidence was obtained directly from Abbey National which confirmed that on 30th July 2001 a cheque was withdrawn from Ms A's savings account for £400 payable to Mr S Khan. There was no trace of the receipt of funds in the firm's books of account.

Mr ME - £400

7. The Respondent acted for Mr ME in relation to an application for an extension to stay in the UK with his partner, a British citizen. The matter file showed that the Respondent interviewed the client on 18th August 2001. On file there were copies of two completed forms which indicated that the client and his partner were working in the UK and were in receipt of £1,000 and £800 per month respectively. There was a second form entitled "Legal Help and Help at Court" which was dated 18th August 2001. The form had been completed asserting that the client or his partner were in receipt of benefits and that the total weekly disposable income was said to be "nil".
8. Following the Respondent's departure from the firm another employee looked at the file and noted that the legal help form should not have been completed as there was a joint income of £1,800 per month. In October 2001 the client provided a copy of a compliments slip, used as a receipt and signed by the Respondent for the amount of £400, which the client stated was dated 17th August 2001. There was no trace of this receipt of funds either on the client matter file or in the books of account.
9. By letter dated 7th January 2002 the client stated that the signature on the legal help form was not his own.
10. Following the complaint by the partners, Mr and Mrs Aaronson, to The Law Society, the Respondent was interviewed by the Senior Investigation Officer on 28th January 2003 and 21st February 2003 and again by telephone on 9th June 2003. The Respondent said that if a fee earner received cash from a client then they would fill in a receipt slip and place it on the file and provide the client with a compliments slip as a receipt. The cash would be placed in an envelope and would be sent by whoever was going over to the accounts department at the firm's head office.

11. The Respondent agreed that he received the funds from the above mentioned clients. In respect of the cheque for £400 he accepted that the cheque was made out to him personally and suggested that because time was of the essence he took advice from a senior solicitor staff member, TM, who agreed it would be acceptable to pay the cheque into his own account and then draw the cash and pass it on. The Respondent produced copies of his personal bank statement identifying an amount of £400 being paid into the account on 1st August 2001 and a withdrawal of £550 on 10th August 2001. The Respondent suggested that £150 was retained for himself and the amount of £400 was handed to whoever was going over to the head office, namely B (admin), SS (solicitor) or TM (solicitor) but he could not remember to which person he had given the funds. The Respondent denied that he misused client's funds.
12. The Senior Investigation Officer spoke with TM on 15th May 2003. TM confirmed that the procedure for dealing with cash received was as outlined by the partners and not the procedure described by the Respondent in that the fee earners would not receive cash, and designated individuals would and those individuals would then complete receipts, not the fee earners. TM also indicated that at no time did the Respondent hand her cash, nor had she ever had a conversation with the Respondent about whether it was acceptable to pay a client cheque into his personal bank account. TM said if asked such question she would not have advised him anyway.
13. By letter dated 13th August 2003 The Law Society wrote to the Respondent enclosing a copy of the Forensic Investigation Report and seeking his explanation. The Respondent replied by letters dated 17th August 2003 together with enclosures and 19th September 2003.
14. The partners of Aaronson & Co were also asked to comment and provide an explanation. Mr Andrew Hopper QC replied on their behalf by letters dated 24th September 2003 and 19th January 2004 and provided witness statements from SS dated 23rd September 2003 and BD dated 24th October 2003. An extract from the firm's office manual was provided which stated the procedures for receipt of cheques and cash. The partners of the practice stated that the Respondent was subject to regular supervision. His post was checked daily, meetings were held weekly as a matter of standard routine, albeit, in practice they occurred more frequently. Memoranda and telephone calls were regularly exchanged on every aspect of his work and meetings with the immigration department supervisors and partners were held monthly. The partners indicated that the reason given to them for the Respondent's failure to return to the office on 10th September to work out the rest of his notice period was that his father had had a heart attack on 8th September 2001 and had been taken seriously ill. The Respondent suggested he should travel home and spend time assisting his father's business. However, when he left the firm on Friday, 7th September 2001 the Respondent had taken with him his practising certificate and all other personal effects from the office.
15. Ms SS was a solicitor employed at Aaronson & Co. Ms SS confirmed in a witness statement dated 25th September 2003 confirmed on 1st September 2006 that at no time did the Respondent hand to her or attempt to hand to her any cash with a payment slip and said she would not have accepted it even if he had. Further, Ms SS said that she

never discussed the subject with him and that the procedure for dealing with cash was as detailed by the partners in the office manual. In a statement dated 24th October 2003 Ms BD confirmed that she was employed as an administrator in Aaronson & Co at the time the Respondent commenced working there until he left the firm. Ms BD stated that she was the only employee who could be referred to as "B" in accordance with the Respondent's statement. Ms BD confirmed that the Respondent never gave her any cash or other payment nor did he make any attempt to do so. Ms BD confirmed that she would not have accepted it in any event and would have followed the procedure for dealing with cash in accordance with the office manual. Ms BD was not a designated fee earner to whom such payments should be made. In his letter of 17th August 2003 the Respondent suggested that Ms BD took the money instead of him and then disappeared.

16. In the course of representations by Mr Hopper QC on behalf of the partners of Aaronson & Co he commented upon the complaint by the Respondent against Aaronson & Co. He said:

"In the course of his representation Mr Khan makes a number of complaints about the firm and the partners, concerned with alleged promises as to his expected case load (which complaint has actually been answered by the material we have already provided), the administration of the practice and its service to clients.

It should be recorded that these allegations are untrue, and if corroboration is needed it is to be found in the complete absence of any justified client complaints against the firm in the 22 years it has been in practice. However, we take the view that the Adjudicator's function is to decide whether there is a prima facie case of misconduct against Mr Khan such as to justify a referral to the Tribunal, in consequence of his actions in relation to client money....

....The evidence as to that is in the form of Mr Khan's own acceptance that he received the funds in question, and the non-receipt of those funds by the firm, coupled with the fact that in one case a client was invited to make out a cheque in favour of Mr Khan which he deposited in his own bank account, for no reason that can be discerned (none of which is in issue). Mr Khan's explanation as provided to [the Senior Investigation Officer] identified three possible persons to whom he could have passed on the money. All three contradict him, both as to the specific facts (that they did not receive the money and would have declined to receive it) and as to the systems which were followed."

17. On 23rd August 2005 the Respondent completed and signed an application form to The Law Society seeking the removal of his name from the Roll of Solicitors.

18. The application form contained a declaration that:

"I am not aware of any disciplinary proceedings brought or to be brought against me in my capacity as a solicitor and do not know of any cause for such proceedings to be brought and I am not in breach of any of the Rules."

19. On 22nd June 2005 an Adjudicator resolved to refer the Respondent's conduct in respect of the matters to which allegations (i) and (ii) relate to the Tribunal. A letter dated 30th June 2005 was sent to the Respondent notifying him of the Adjudicator's decision. The Respondent made no reference to the Adjudicator's Decision nor to the investigation when completing the form referred to above.
20. By letter dated 18th April 2006 The Law Society wrote to the Respondent seeking his explanation but no reply was received.

The Submissions of the Applicant

21. The Applicant had heard nothing from the Respondent save that the Respondent had completed the Tribunal's pre-listing questionnaire in which he indicated that he denied the allegations.
22. The Applicant had filed witness statements from Mr and Mrs Aaronson, Ms SS (now Mrs B) and TM. Those witnesses could be present at short notice if required. The Senior Investigation Officer was in attendance.
23. The Tribunal was asked to note that there had been an initial investigation by The Law Society in relation to the complaint by Mr and Mrs Aaronson and the Respondent had been told in 2002 that the investigation had been closed. That letter had been premature as the matter had been referred to the Forensic Investigation Department. Mr Hopper on behalf of Mr and Mrs Aaronson had made observations about the apparent closure of the matter to which the Tribunal was referred.
24. During the period between the Investigator's Report and the Adjudicator's decision there had been correspondence on various matters. The delay was not of such severity as to raise any issues under Article 6.
25. The witness statements from the three staff members named by the Respondent as persons to whom he would have handed the money contested his assertion. The witness statement by Ms BD dated 24th October 2003 had been produced by Mr Hopper on behalf of Mr and Mrs Aaronson. It had not been possible to locate Ms BD for the present hearing. It appeared that the Respondent had taken the money. The Respondent's assertion that a cashier at the firm had been in some trouble at a former firm was not a reference to any of the witnesses.
26. In the absence of the Respondent the Applicant referred the Tribunal to the Respondent's written explanations contained in the documentation.
27. The Tribunal was asked to note however that the Respondent's removal of his practising certificate and personal effects from the office was inconsistent with his suggestion that he had been going home for the weekend with the intention to return the following week. Further, while the Respondent sought to attribute blame to the firm in a number of respects, the partners had provided copy documents to include the Respondent's original letter on joining the firm, his letter terminating his contractual relationship with the firm, a thank you card to the firm, a memorandum regarding attempts to contact the Respondent following his departure from the office and

photocopies of recorded delivery letters that were sent to the Respondent at his new address which were inconsistent with his criticism.

28. In relation to Ms A's cheque, if time had been of the essence as asserted by the Respondent he could have asked her to make the cheque payable to the firm.
29. It was for the Applicant to prove the allegations to a high standard. In the submission of the Applicant however it had been easy for the Respondent to "point the finger" at someone else. All those he named had denied his assertions both as to facts and as to the systems followed by the firm.
30. The Tribunal was referred to the combined test set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. If the Tribunal was satisfied on the facts that the Respondent had kept the funds, then the Tribunal could be satisfied on the combined test that allegation (ii) was substantiated.
31. In relation to allegation (iii), it was open to the Tribunal to find the allegation substantiated in the alternative as contrary to the Respondent's position as a solicitor if the Tribunal was not satisfied that dishonesty was substantiated.
32. The Respondent had however signed the application form and the declaration he had made was misleading and inaccurate. He was aware that his conduct had been referred to the Tribunal and/or that his conduct was being called into question.
33. In addition to the Adjudicator's decision on 22nd June 2005 of which the Respondent was or should have been aware, he had been interviewed by a Senior Investigation Officer on 28th January 2003 and 21st February 2003 and by telephone on 9th June 2003. By letter dated 13th August 2003 the Society wrote to the Respondent enclosing a copy of the Forensic Investigation Report and seeking his explanation in respect of same. The Respondent replied by letter dated 17th August 2003 together with enclosures and 19th September 2003.
34. The letter dated 30th June 2005 notifying the Respondent of the Adjudicator's decision had been sent to the same Manchester address, albeit in a slightly different order and the same postcode as were subsequently given by the Respondent on his application form for the removal of his name from the Roll. It was reasonable to assume that the letter of notification would have come to his attention and that he would have been aware of the referral to the Tribunal when he completed the form.
35. The Respondent was aware that it was alleged that he had misused clients' funds which in itself was a matter he should have made reference to within his application. In signing the form confirming that he was not aware of any disciplinary proceedings brought or to be brought against him in his capacity as a solicitor and not knowing of any cause for such proceedings to be brought, the Respondent misrepresented the position.
36. He was well aware that his conduct had been called into question. Further the form referred to an Applicant not being in breach of any of the Rules. The Respondent was aware from interviews, the Forensic Investigation Report and the letter that it was being said that he was in breach of the Rules.

37. Solicitors had a duty to be entirely frank with the Regulator. The relevant paragraph of the application form was all embracing.
38. The Applicant had served the relevant Notices to Admit and Civil Evidence Act Notices.
39. The Applicant sought his costs in the sum of £16,392.69. Although the Respondent was not present at the proceedings the Applicant sought his costs in a fixed sum as the Respondent's whereabouts were unknown. More costs would be incurred pursuing an assessment when the possibility of enforcement might be remote.

The Findings of the Tribunal

Allegations (i) and (ii)

40. The Respondent did not deny that clients had paid money to him in two cases in cash and in one case by cheque which he had paid into his personal account. He had signed a compliments slip as a receipt for one of the cash payments. The Respondent had said that he gave it to one of three people who must have passed it to a cashier whom he asserted must have taken the money. All the three people to whom he said he had passed the money had however denied receiving it from him. Their witness statements were before the Tribunal. The Respondent had not filed any evidence in rebuttal nor had he attended the hearing. There was also evidence before the Tribunal that the office procedures for the handling of cash received were not those which the Respondent asserted in his explanations to The Law Society.
41. The Tribunal was satisfied applying the test set out in the case of Twinsectra Ltd v Yardley that the allegation of dishonesty in allegation (ii) was substantiated. The Respondent had taken the money and would have known that this was dishonest conduct. The Tribunal was also satisfied from the documentation that allegation (i) was substantiated.
42. In relation to allegation (iii) the Tribunal was aware of the high standard of proof required to substantiate an allegation of dishonesty. The documentation before the Tribunal referred to interviews and an investigation in 2003 and correspondence with the Respondent in 2003 of which the Respondent was aware. For allegation (iii) to be substantiated as an allegation of dishonesty however the Tribunal would need to be satisfied that the Respondent had in fact received the letter dated 30th June 2005 notifying him of the decision of the Adjudicator on 22nd June 2005 to refer his conduct to the Tribunal.
43. The Tribunal had noted and considered carefully the submissions of the Applicant that the letter of notification had been sent to substantially the same address as that which the Respondent had put on his Application form for the removal of his name from the Roll. The Tribunal could not however be as certain as was necessary for such a serious allegation that the letter had actually arrived. The Respondent had however been less than frank in not referring to the 2003 investigation and the Tribunal found allegation (iii) substantiated to the extent that the Respondent had acted contrary to his position as a solicitor.

44. An allegation of dishonesty had been substantiated against the Respondent and indeed of dishonesty involving clients' money. Such conduct would have undermined the confidence of the clients involved and the public in the reputation of the profession. To protect that reputation and to protect the public it was right that the Respondent be struck off the Roll of Solicitors.
45. Although dishonesty had not been established to the high standard required in relation to allegation (iii) the application had been properly brought. Allegations (i) and (ii) had been fully substantiated and allegation (iii) had been substantiated in the alternative. The Tribunal was satisfied that it was right that the Respondent pay the costs of the Applicant which included the costs of the Senior Investigation Officer of The Law Society and the costs of effecting substituted service. The Tribunal accepted the submissions of the Applicant that in this case it was appropriate for an Order for fixed costs to be made.
46. The Tribunal Ordered that the Respondent, Shahan Shah Sarmad Khan of address unknown (formerly of Trinity Riverside, Salford, Greater Manchester), 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 £16,392.69.

DATED this 5th day of April 2007
on behalf of the Tribunal

L N Gilford
Chairman