

IN THE MATTER OF MOHAMMED ABDUL AZIZ and TERRY TERIANE OKPOKO,
solicitors, and STEPHEN ANTHONY JOHN-CYRUS, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mr P Kempster
Mr G Fisher

Date of Hearing: 26th October 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 Stephen John Battersby, solicitor and partner in the firm of Jameson Hill Solicitors of 72-74 Fore Street, Hertford, Hertfordshire, SG14 1BY on 6th March 2006 that Mohammed Abdul Aziz and Terry Terione Okpoko (solicitors) of Chiltons Solicitors, 2nd Floor, Borough House, 80 Borough High Street, London, SE1 1LL, should appear before the Solicitors Disciplinary Tribunal to answer the allegations contained in the statement which accompanied the application and that the Tribunal should make such order as it thought right.

Also on 6th March 2006 Stephen John Battersby made application on behalf of The Law Society that an order be made by the Tribunal directing that as from a date to be specified in such order no solicitor should except in accordance with permission in writing granted by The Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission employ or remunerate in connection with the practice as a solicitor Stephen Anthony John-Cyrus of West Ealing, London, W13, a person who was or had been a clerk to a solicitor or that such other order might be made as the Tribunal should think right.

The allegations against Mr Aziz and Mr Okpoko were that they had been guilty of conduct unbecoming a solicitor in each of the following particulars:-

- (i) That they failed to keep their accounts properly written up;
- (ii) That they withdrew monies from client account other than as permitted by the Solicitors Accounts Rules;
- (iii) That they failed to provide material information to lender clients in conveyancing transactions;
- (iv) That they failed to exercise proper and adequate supervision over Stephen Anthony John-Cyrus, an unadmitted member of staff.

The allegation against the Respondent Mr John-Cyrus was that he, being a person who was employed or remunerated by a solicitor in connection with his practice, not himself being a solicitor, had in the opinion of The Law Society occasioned or been a party to, with or without the connivance of the solicitor by whom he was employed or remunerated, acts or defaults in relation to that solicitor's practice which involved conduct on his part of such a nature that in the opinion of The Law Society it would be undesirable for him to be employed or remunerated by a solicitor in connection with his practice.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 26th October 2006 when Stephen John Battersby appeared as the Applicant, Mr Aziz and Mr Okpoko were represented by Geoffrey Williams of Queen's Counsel, and Mr John-Cyrus did not appear and was not represented.

The evidence before the Tribunal included the admissions of Mr Aziz and Mr Okpoko, save that with regard to allegation (iii) it had been established that in a number of the conveyancing transactions referred to, deposits had been paid to a firm of estate agents, as was permitted.

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

The Tribunal Orders that the Respondent Mohammed Abdul Aziz of Chiltons Solicitors, 2nd Floor, Borough House, 80 Borough High Street, London, SE1 1LL, solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay one third of the costs of and incidental to this application and enquiry on a joint and several basis fixed in the sum of £8,000 inclusive.

The Tribunal Orders that the Respondent, Terry Teriane Okpoko of Chiltons Solicitors, 2nd Floor, Borough House, 80 Borough High Street, London, SE1 1LL, solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay one third of the costs of and incidental to this application and enquiry on a joint and several basis fixed in the sum of £8,000 inclusive.

The Tribunal Orders that as from the 26th day of October 2006 no solicitor, Registered Foreign Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by The Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate

in connection with the practice as a solicitor, Registered Foreign Lawyer or member, director or shareowner of an incorporated solicitor's practice Stephen Anthony John-Cyrus of West Ealing, London, W13, a person who is or had been a clerk to a solicitor and the Tribunal further Orders that he do pay one third of the costs of and incidental to this application and enquiry on a joint and several basis fixed in the sum of £8,000 inclusive.

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

1. Mr Aziz was born in 1971 and admitted as a solicitor on 1st June 1999. Mr Okpoko was born in 1969 and admitted as a solicitor on 1st August 1997. Mr Aziz and Mr Okpoko practised together in partnership under the style of Chiltons Solicitors at Borough High Street, London, with a second office at Unit 405-6, Gardiner House, The Business Village, 3-9 Broom Hill Road, London, SW18 4JQ where Mr John-Cyrus was employed to carry out conveyancing work from 30th September 2003 until he was dismissed on 18th October 2004. At the time of his employment the Respondents believed Mr John-Cyrus to be a licensed conveyancer.
2. On 2nd June 2004 a Law Society Practice Standards Advisor (the PSA) visited the Respondents' firm. She produced a report dated 1st July 2004 which was before the Tribunal.
3. On 13th July 2004 a Law Society Senior Investigation Officer (the SIO) commenced an inspection of the Respondents' books of account and other documents. His Report dated 4th November 2004 was also before the Tribunal.

Allegation (i)

4. The PSA identified failures in the way in which the Respondents' accounts had been kept. She pointed out that there was a lack of information on one file relating to movements of money which resulted in an improper overdraw on client account. On one file a client ledger was missing, as was a cash book, and relevant payments could not be traced on client account bank statements. There were four files on which funds belonging to clients and lenders were not clearly identified, bank statements and cash book accounts were missing and there was insufficient information on the file to audit the transactions. There were two files upon which client ledgers had not been opened. There had been failure to record names of clients and payees in some transactions. There had been a failure to carry out proper reconciliations. Lists of client ledger balances, bank statements and cash book statements were missing. There were 45 un-presented cheques drawn on client account dating back to August 2003 totalling £84,000 which had not been written back into the client account.
5. In his Report, the SIO recorded the following further accounting deficiencies. As at 31st August 2004 there had been no client account reconciliation since 30th June 2004. One should have been carried out at least every five weeks. There was no record on the relevant client ledgers of deposits said to have been paid direct in specified purchase transactions. There were eight such transactions involving a total amount of £246,000. At the hearing the Tribunal had before it a letter from Maida Vale Estate Agents confirming that the deposits had been paid to them in seven of the eight transactions.

Allegation (ii)

6. The SIO reported that liabilities to clients as at 30th June 2004 exceeded cash available by £181,074.44. This shortage, which was rectified during September 2004, had arisen because overpayments had been made in four client matters. In the matter of the client Miss LAJ, the shortage of £86,175 was in existence from 28th June 2004 until 13th September 2004. In the matter of the client Mr KS, the shortage was £79,399.01 and had remained in existence for over four and a half months from 15th April 2004.
7. Mr Cyrus-John had had conduct of both of these matters.

Allegation (iii)

8. In a conveyancing transaction relating to a property in London SE22, the firm was acting for the vendor (Mr CD), the purchaser (Mr BB) and the lender (HBOS). There was no indication that the lender clients had been informed of the situation as they ought to have been. Mr John-Cyrus had conduct of this matter.
9. It appeared from the files that deposits in conveyancing transactions had been paid direct that ought to have been reported to the lender clients but there was no indication that this had been done. Mr John-Cyrus was acting in one of these transactions. Messrs Aziz and Okpoko said that the deposits in matters of which they had conduct had been paid to an estate agent and they were not required to report this to the lender. They produced a letter from the estate agent confirming this.

Allegations (iv) and (v)

10. Mr John-Cyrus had been engaged in carrying out conveyancing transactions from the Broomhill Road office, which was closed following his dismissal. The SIO reported on matters of concern relating to the conduct of Mr John-Cyrus. In the transaction relating to the property in London SE22 (referred to in paragraph 8 above) the client ledger showed the client's name as Mr John-Cyrus. The receipt from Halifax plc on 23rd December 2003 of £288,000 had been in respect of the borrower Mr BB. The payment out of £223,382.29 made on the following day to Handf Finance related to the discharge of a loan in the name of Mr John-Cyrus. In a letter to Mr John-Cyrus dated 27th November 2003 the vendor, Mr CD, requested him to discharge his mortgage with Mortgage Express. That appeared to have been done only on 6th May 2004 and was referred to on a ledger relating to a remortgage of another property again in the name of Mr John-Cyrus.
11. The monies from which the Mortgage Express mortgage was discharged came from £268,000 provided by the lender, Standard Life, which was received on 5th May 2004. £50,528.32 of these monies were paid out on 6th May to Mr KS, who appeared to have no connection at all with the matter. Mr John-Cyrus applied for the Standard Life loan in his own name and on the matter file there were two letters from Chiltons to Standard Life, clearly in response to a request which the lenders made on 16th March 2004 for further information about the borrower, Mr John-Cyrus. It was suggested that the later of the two letters (that dated 25th March 2004) was the one more likely to have been used but both letters were misleading in that they claimed that Mr John-Cyrus had been employed with Chiltons for three years. At that time he

had been with them for less than six months and they bore the reference AA/John-Cyrus, suggesting they had been prepared by Mr Aziz, which was not the case.

The Submissions of the Applicant

12. Mr Okpoko and Mr Aziz had admitted the allegations. The Applicant did not put the case against them as one involving dishonesty. He noted that with regard to allegation (iii) in seven conveyancing transactions deposits had been paid to a firm of estate agents and it was accepted that this was not information that should have been passed to lending clients.
13. The Applicant also accepted that the SIO's inspection began very shortly after the PSA's inspection and the Respondents had been given little time to put right the matters pointed out to them by the PSA.
14. The Applicant did invite the Tribunal to find that Mr John-Cyrus had behaved dishonestly. The way in which he carried out the conveyancing transactions referred to and his conduct in preparing letters to Standard Life as well as overpayments made by him amounted to disturbing misconduct on his part. That behaviour had in the submission of the Applicant been dishonest.
15. Mr John-Cyrus might well have been prevented from perpetrating such dishonest behaviour had he been properly supervised by Mr Aziz and Mr Okpoko.

The Submissions of Mr Aziz and Mr Okpoko

16. Mr Aziz and Mr Okpoko both admitted the allegations and they had made that clear to the Applicant from the outset. There had been no question of any dishonesty on their part.
17. Both of the Respondents were contrite and ashamed to be appearing before their professional disciplinary Tribunal. There had been no question of either of these gentlemen gaining from what had occurred, although the opposite position related to Mr John-Cyrus.
18. Mr Aziz and Mr Okpoko were both of good character. They continued to practise in partnership and hoped that they might so continue in the future.
19. The Law Society had already imposed a condition on each of their Practising Certificates that they submit half-yearly Accountant's Reports. They accepted that that was a proper condition in the circumstances and they had complied with it. Their Accountant's Reports filed with The Law Society had been unqualified.
20. The SIO had re-inspected the firm's books of account and found that its client account had been maintained in accordance with the Solicitors Accounts Rules and in accordance with the client ledger balances.
21. Mr Aziz and Mr Okpoko were in their mid 30s. Mr Okpoko started to practise on his own in August 2000 and was joined by Mr Aziz in partnership in 2001. They were

equal equity partners in a small general practice. Mr Aziz undertook conveyancing work and Mr Okpoko undertook both conveyancing and immigration work. They did not undertake any legally aided work.

22. The practice had suffered some disruption when it had moved from its earlier premises in Enfield to its current premises close to London Bridge.
23. Mr Aziz and Mr Okpoko had responded fully and carefully to The Law Society's PSA explaining what had happened in some instances and explaining the improvements put in place. Mr Aziz and Mr Okpoko demonstrated that they were responsible solicitors who cared about the welfare of their clients. A bank reconciliation had not been undertaken in July 2004 and that was the only one which had been overlooked. That deficiency had been put right.
24. It transpired that the assurances of Mr Aziz and Mr Okpoko were correct that, where it appeared from the files in seven transactions that deposits had been paid direct in conveyancing transactions and that fact had not been notified to institutional lending clients, those deposits had in fact been paid to a firm of estate agents. Confirmation of that had been placed before the Tribunal. There was nothing suspicious and that fact was not one which needed to be reported to the lender client. In the one case where it had not been confirmed that the deposit had been paid to an estate agent it was Mr John-Cyrus who had handled the matter.
25. There had been no shortages on client account in relation to matters of which Mr Aziz and Mr Okpoko personally had conduct. The identified shortages had been on matters handled by Mr John-Cyrus.
26. The Respondents accepted that Mr John-Cyrus's actions might well have been prevented had the Respondents undertaken proper supervision of him.
27. Mr Aziz and Mr Okpoko had employed Mr John-Cyrus believing him to be a licensed conveyancer. He had come with a recommendation and the curriculum vitae he produced had been impressive.
28. Mr Aziz and Mr Okpoko believed that Mr John-Cyrus had much experience and was competent and did not require close and careful supervision.
29. The Respondents recognised that they were vicariously liable for the actions of their staff.
30. The Respondents were still quite young. They were subject to a requirement for the production of half-yearly Accountant's Reports. The Tribunal was invited to give due weight to the testimonials written in their support and they hoped they might continue to practise in partnership together.

The Tribunal's Findings

31. The Tribunal found all of the allegations against Mr Aziz and Mr Okpoko to have been substantiated. Indeed, they were not contested. The Tribunal noted that in only one conveyancing transaction had it appeared that a deposit paid direct had not been notified to the institutional lending client in the transaction.
32. The Tribunal found the allegations against Mr John-Cyrus to have been substantiated. The Tribunal was in no doubt that Mr John-Cyrus's actions demonstrated dishonesty on his part.

The Tribunal's Decision and its Reasons

33. The Tribunal concluded that Mr John-Cyrus had taken advantage of the fact that he had been working in a separate office and had not been closely supervised by the Respondents. He used that situation to perpetrate his dishonest actions. Such dishonesty within a solicitor's practice could not be tolerated and it was right that an order be made restricting Mr John-Cyrus's employment by any firm of solicitors without the consent of The Law Society being first obtained.
34. With regard to Mr Aziz and Mr Okpoko, the Tribunal accepted that those Respondents had learned their lesson. They were to be given credit for the way in which they dealt with the situation. It appeared that they had been duped by an employee who was older than them and whom they believed to be a licensed conveyancer. That employee had let them down very badly.
35. The Tribunal were of the opinion that Mr Aziz and Mr Okpoko were honest and decent solicitors who had not set out to be in breach of any of the rules and requirements of professional practice. When they found themselves to have been in breach they readily accepted the position, put matters right, and expressed their contrition.
36. Any breach of the Solicitors Accounts Rules is a matter to be regarded as serious. Whilst the Tribunal had some sympathy for the position in which Mr Aziz and Mr Okpoko found themselves, it concluded that it would not be right or proportionate to make a finding that they had been guilty of breaches of the Solicitors Accounts Rules associated with inadequate supervision and yet not impose a financial sanction. The financial sanction imposed by the Tribunal was mitigated by the particular circumstances of this case and the Respondents' approach when the breaches had been drawn to their attention.
37. The Tribunal ordered that Mr Aziz and Mr Okpoko should each pay a fine of £1,000.
38. The Tribunal noted that Mr Okpoko and Mr Aziz had agreed that the Applicant's costs should be fixed in the sum of £8,000.
39. It was right that an order restricting Mr John-Cyrus's employment within the solicitors' profession should be made.

40. It was further right that the three Respondents should bear the costs of and incidental to the application and enquiry. The Tribunal noted that Mr John-Cyrus had not expressed a view as to the quantum of the Applicant's costs but as the other two Respondents had agreed the figure the Tribunal considered it right that each of the Respondents should bear one third of the Applicant's costs fixed in the sum of £8,000. In the particular circumstances of this case it would not be right that The Law Society should not recover the whole of its costs, and the Tribunal further ordered that such costs be awarded against all of the Respondents on a joint and several basis.

Dated this 12th day of January 2007
On behalf of the Tribunal

A H B Holmes
Chairman