

IN THE MATTER OF RICHARD MELVILLE THOMSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Mr D Glass
Mrs S Gordon

Date of Hearing: 9th January 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 Stuart Roger Turner, solicitor of Lonsdales Solicitors of 342 Lytham Road, Blackpool, FY4 1DW on 24th May 2006 that Richard Melville Thompson of Elvet Moor, Durham, County Durham, 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 think right.

The allegations were:

1. Between 1st November 2004 and 31st May 2005, contrary to Rule 19 of the Solicitors Accounts Rules 1998, the Respondent made round sum withdrawals from client account on account of costs amounting to at least £96,017, a sum in excess of the costs properly due to the firm for that period;
2. Between 1st November 2004 and 31st May 2005, contrary to Rule 22(1) of the Solicitors Accounts Rules 1998, the Respondent dishonestly and/or improperly withdrew money from client account for the benefit of himself and/or others which resulted in a cash shortage on client account;

3. Contrary to Rule 23(1) of the Solicitors Accounts Rules 1998, the Respondent allowed his bankers routinely to make transfers from his client account to his office account to avoid the credit limit on his office account being exceeded;
4. Contrary to Rule 7 of the Solicitors Accounts Rules 1998 the Respondent failed to remedy breaches of the Accounts Rules promptly upon discovery;
5. Contrary to Rules 32(1) and 32(7) of the Solicitors Accounts Rules 1998, the firm's books of account had not been kept properly up-to-date and reconciliations produced failed to show the firm's total liability to its clients.

It was also alleged that the Respondent had been guilty of conduct unbecoming a solicitor in each, any or all of the following circumstances:

6. That in some conveyancing transactions the Respondent either failed to pay at all or delayed in paying stamp duty to the Land Registry resulting in penalties being imposed;
7. That in a conveyancing transaction the Respondent failed to repay money taken from a client to pay stamp duty despite learning later that the property they purchased was exempt.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 9th January 2007 when Stuart Roger Turner appeared as the Applicant and the Respondent was represented by Gregory Treverton Jones of Queen's Counsel.

The evidence before the Tribunal included the admissions of the Respondent of all of the allegations save that he denied that he had been dishonest.

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

The Tribunal Orders that the Respondent, Richard Melville Thomson of Elvet Moor, Durham, County Durham, 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 £23,926.36.

The facts are set out in paragraphs 1 to 13 hereunder:

1. The Respondent, born in 1948, was admitted as a solicitor in 1977. At the material times he practised as a sole practitioner under the style of Thompson & Co, solicitors, at 11 Varo Terrace, Stockton-on-Tees.
2. On 25th October 2005 a Forensic Investigation Officer of The Law Society ("78hjthe FIO") began an inspection of the Respondent's firm. The FIO produced a Report dated 13th February 2006 which was before the Tribunal. The Report revealed the following matters.

3. The books of account were not in compliance with the Solicitors Accounts Rules in that:
- (a) the Respondent instigated numerous improper transfers from client to office bank account as well as improper payments from client bank account;
 - (b) no proper comparisons between client liabilities and available client cash had been undertaken for a period exceeding two years;
 - (c) the books of account had not been kept up-to-date;
 - (d) the Respondent agreed that the reconciliations finally produced failed to show the firm's total liabilities to clients as debit balances were incorrectly netted off from the total of credit client balances and that client account reconciliations included unexplained balancing amounts;
 - (e) the Respondent had allowed the firm's bankers to make round sum transfers from client to office bank account without reference to him and, whenever it was necessary to avoid exceeding his office account, overdraft limits or create a debit balance in an account where an overdraft had not been negotiated.
4. As at 31st December 2005 there was a cash shortage of £33,754.98 after taking into account £45,000 paid into client account by the Respondent in September 2005.
5. The cash shortage arose as follows:
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|---------------------------------|-------------------|
| (i) round sum transfers | £2,891.56 |
| (ii) VAT payments and transfers | 13,418.63 |
| (iii) debit balances | <u>17,444.79</u> |
| | <u>£33,754.98</u> |
6. The cash shortage had partly arisen as a result of round sum transfers being made from client to office bank account between 1st November 2004 and 31st May 2005 which had been made in lieu of the proper transfer of costs. During that period, round sum transfers had been made totalling £96,017. During an interview with the Investigation Officer the Respondent admitted that the transfers made significantly exceeded the amount properly due to the firm in respect of costs for the period examined. The Respondent also admitted that he had instructed his bank to make transfers from his client account as and when necessary in order to prevent his office account exceeding its credit limit.
7. The cash shortage had also partly arisen as a result of payments and transfers being made from the client account in connection with the firm's VAT liabilities. Those payments and transfers totalled £13,418.63.
8. Another part of the cash shortage had arisen partly as the result of fifty two debit balances (overdrawn client account ledgers) which existed at the 31st December 2005, totalling £17,444.79. The Respondent admitted that some of those debit balances

were caused by payments made in respect of stamp duty penalties incurred by late payment.

9. The FIO examined ten conveyancing files. It was found that the Respondent had not paid the stamp duty due in nine transactions.
10. On one file, the duty had been paid but more than 17 months late and a penalty of £405 had been incurred. Payment of the penalty contributed to the client account becoming overdrawn by £641.25. The Respondent agreed with the FIO that the failure to pay stamp duty and the consequent failure to register property transactions meant that he had failed to protect lender clients' interests.
11. On another conveyancing file the Respondent had acted for Mr B in the purchase of a property for £74,000. The purchase was completed on 4th July 2003. The Respondent had collected from the client £740 in respect of stamp duty. Prior to completion correspondence was exchanged between the vendor's solicitor and the Respondent's firm about the property being stamp duty exempt. It was confirmed on 1st July, three days prior to completion, that the property was exempted. The FIO noted that the stamp duty money had not been returned to the client two years and four months after completion. The Respondent was informed about this but did not return the money due to the client.
12. When the FIO left the firm on 9th December 2005 the books of account had been brought up-to-date and demonstrated a cash shortage on client account of £14,004.09.
13. When the inspection was resumed on 23rd January 2006 the FIO noted that no funds had been introduced to client bank account to replace that shortage and that the shortage as at 31st December 2005 had increased to £33,754.98.

The submissions of the Applicant

14. The Respondent had admitted to the FIO that he had misused substantial client funds to meet his own salary, staff wages, council tax payable on his home, payments in connection with his own and his firm's finance agreements, his professional indemnity insurance premium and his VAT liabilities.
15. On 21st February 2006 The Law Society resolved, inter alia, to intervene into the Respondent's practice on the ground of suspected dishonesty on his part and to refer the Respondent's conduct to the Tribunal.
16. Following the intervention a number of clients, friends and business associates of the Respondent wrote letters to The Law Society in his support.
17. The Applicant put his case against the Respondent on the basis that the Respondent's actions and handling of client money had been dishonest.

The submissions and mitigation of the Respondent

18. The Tribunal frequently had to consider broadly similar cases where a solicitor had wrongly used clients' money. The Respondent in this case was a thoroughly decent Christian man. He was a married man with six children ranging in age between 5 and 22. He was 58 years of age and appeared before the Tribunal as a ruined man.
19. Until the end of 2002 the Respondent had enjoyed an unblemished career in the law having worked for a number of firms until 15 years ago. He set up his own firm and had run it without incident until the end of 2002. It was then that the Respondent began "to lose the plot".
20. Things began to go wrong when he employed a female conveyancer. He, of course, also had all of the problems common to a sole practitioner.
21. The Respondent had worked extremely hard, working seven days a week. He was not able to take a holiday as he had nobody to cover for him.
22. The FIO's Report made it clear that he considered that the female conveyancer had acted dishonestly. She had stolen money and had lied about her qualifications, in particular when she sought insurance to cover loss of earnings should she become ill.
23. At the material time the Respondent firmly believed that he was entitled to fee income which was held in client account which was more than enough to cover any temporary shortfall. His was a busy and thriving practice. He had never understood why the income generated had been so much lower than he believed it should have been.
24. Prior to the FIO's visit to the Respondent's firm the Respondent had arranged a second mortgage secured on his home that would provide him with £45,000 to cover any shortfall. It was significant that the Respondent had been aware of the problem and had taken steps to remedy it before The Law Society's formal inspection.
25. At the time of the hearing before the Tribunal the whole of the shortfall on client account had been remedied, first by a payment utilising the beforementioned £45,000 and the second by a payment of £23,000 which the Respondent was able to find with assistance from his family.
26. The Respondent had replaced the whole of the missing money. No client had been out of pocket and no claim had been or would be made on The Law Society's Compensation Fund.
27. The Law Society had intervened into the Respondent's practice and the consequences of that action were well known. The Respondent had lost his practice, his goodwill and the value of his work in progress. He was instantly ruined. He had not been able to claim fees due to him and in addition he was required to pay the very large costs of the intervention.

28. The Respondent had entered into an Individual Voluntary Arrangement in which The Law Society was shown to be the biggest creditor being owed £91,000. It was assumed that this figure represented the costs of the intervention.
29. The Tribunal was invited to note that The Law Society had been inundated by a large number of letters of support. All of them spoke highly of the Respondent's competence and integrity. They demonstrated that the Respondent was highly thought of, in particular in his local Muslim community, and he had carried out pro bono work. The reality was that the Respondent really cared about people and not about money.
30. The Respondent himself had always enjoyed a modest standard of living. His family was described by his supporters very warmly.
31. The tragic circumstances of what had happened to the Respondent professionally included the fact that he and his wife had separated. The two smallest children were living with her in the family home. The Respondent had lost his home and was currently living in bed and breakfast accommodation. He had lost his decent but modest income and was at the time of the hearing working for Mr S, a gentleman who had shown him great kindness and support. Mr S was a former client of the firm, a property dealer.
32. Although the Respondent's practising certificate had automatically been suspended following The Law Society's intervention, it had been restored to him subject to conditions. The Respondent was working for Mr S having regard to those conditions. He was working on a part time basis and earning modest salary.
33. The Respondent's costs in connection with his representation before the Tribunal were being paid by a relative.
34. Perhaps surprisingly in the light of all of the difficulties faced by the Respondent, his health had held up pretty well but he was being treated for stress.
35. Mr S was aware of the disciplinary proceedings and was willing to continue to employ the Respondent although he would not do so should the ultimate sanction be imposed upon the Respondent.
36. The Respondent recognised that what had happened had been very serious. The Tribunal was invited to consider that the imposition of the ultimate sanction was not necessary. The Tribunal was invited to take into account the fact that the Respondent had taken steps to rectify the shortage on client account before the commencement of The Law Society's inspection. The Respondent had indeed rectified the shortage on client account and this was not a case where a man had helped himself to clients' money but rather where he had inadvertently over-transferred money to keep his business going believing that such money was properly due to him.
37. The Respondent was genuinely remorseful. He had made full and frank admissions and had adopted a realistic attitude and realistic submissions. The Respondent had already considerably suffered the massive impact of The Law Society's intervention.

38. The Tribunal was reminded that it was open to it to impose practising conditions upon the Respondent. It was considered that The Law Society had already imposed appropriate conditions on the Respondent's practising certificate.
39. In answer to a question by a member of the Tribunal it was confirmed that the Respondent had paid stamp duty penalties from client account with a view to replacing the money as soon as possible.
40. In answer to a further question by a member of the Tribunal, it was confirmed that the Respondent filed annual Accountants Reports with The Law Society. It appeared that the matters discovered by the FIO had not been dealt with within those Reports.
41. This was tragic case where a decent man lost control of his practice and suffered serious and tragic circumstances.

The Findings of the Tribunal

42. The Tribunal found all of the allegations to have been substantiated, indeed they were not contested.
43. With regard to the question of dishonesty the Tribunal found that the actions of the Respondent were dishonest having applied the tests in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Respondent had failed to take steps to ensure that funds drawn by him could properly be taken. These were not the actions of an honest solicitor and it was in the Tribunal's view inconceivable that an experienced solicitor could not be unaware that other members of his profession would take that view.
44. The Respondent appeared to have convinced himself that all was well or if it was not, that it could be put right in the future. In doing so, he deliberately flouted the Rules. It was not however open to the Respondent to set his own standards of honesty.

The Tribunal's decision and its reasons

45. The Tribunal has found all of the allegations to have been substantiated. Further, the Tribunal has made a finding that, in acting as he did, the Respondent behaved dishonestly.
46. The Tribunal has taken into account the Respondent's explanations and has given him credit for his early frank admissions. The Tribunal has taken into account the mitigating circumstances placed before them and, indeed, the wealth of written testimonials which were unsolicited and described the competence and probity of the Respondent in glowing terms. It was clear that the Respondent was highly thought of by all of those who had dealings with him whether professionally or in other spheres of life.
47. The Tribunal also notes that the Respondent has suffered greatly as a result of his actions and The Law Society's intervention into his practice. The Tribunal recognises that what occurred represents a tragedy for the Respondent and, indeed, his family and even the wider community.

48. Having taken all of these factors into account the Tribunal is not able to ignore the fact that the Respondent misused client money for his own and others' purposes in circumstances which the Tribunal finds were dishonest.
49. Solicitors have particular and onerous duties with regard to moneys entrusted to them and must expect the most serious view to be taken if they fail to adhere to the highest standards of probity. This solicitor fell far short of the requirement that client moneys be properly safeguarded.
50. The Tribunal Ordered that the Respondent be struck off the Roll of Solicitors. The Tribunal was informed that the parties had discussed the question of costs. The Respondent accepted that he must bear the costs of and incidental to the application and enquiry and accepted the figure put forward by the Applicant. The Tribunal therefore Ordered the Respondent to pay the Applicant's costs in the agreed fixed sum.

DATED this 9th day of March 2007
on behalf of the Tribunal

A H Isaacs
Chairman