

IN THE MATTER OF ANNABELLA SAU FUNG LAI-BURKE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs J Martineau (in the chair)
Mr K W Duncan
Lady Bonham Carter

Date of Hearing: 25th November 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was made on behalf of the Solicitors Regulation Authority (SRA) by David Elwyn Barton, solicitor, of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX (previously of 5 Romney Place, Maidstone, Kent ME15 6LE) on 30th November 2006 that Annabella Sau Fung Lai-Burke, solicitor, might be required to answer the allegations contained in the statement that accompanied the application together with the allegations contained in the First Supplementary Statement dated 9th March 2009 and that such Order might be made as the Tribunal should consider appropriate.

Statement dated 30th November 2006

The allegations were as follows that Annabella Sau Fung Lai-Burke (the Respondent) had:-

1. Contrary to the provisions of Rule 32(1) (a) of the Solicitors' Accounts Rules 1998 failed to keep accounting records properly written up to show dealings with client money received, held or paid.

2. Contrary to the provisions of Rule 32(1) (c) of the Solicitors' Accounts Rules 1998 failed to keep accounting records properly written up to show dealings with office money relating to client matters.
3. Contrary to the provisions of Rule 34(1) of the Solicitors' Accounts Rules 1998 failed to produce to the Society's Investigation Officer, Mr Shorof Uddin, documents requested by him to enable the preparation of a report on compliance with the said Rules.
4. Contrary to the provisions of Rule 7 of the Solicitors' Accounts Rules 1998 failed to remedy Accounts Rules breaches promptly upon discovery.
5. Been guilty of conduct unbefitting a solicitor having failed to deliver to the Society the Accountant's Report for the year ended 31st December 2005, due by 30th June 2006.
6. Contrary to Rules 1(c) and (e) of the Solicitors' Practice Rules 1990 compromised or impaired her proper standard of work and had failed to act in the best interests of the following clients in relation to the conduct of their immigration matters; JL-T, PMML and PCGL.
7. Compromised or impaired both her integrity and her good repute and that of the solicitors' profession contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 by virtue of her delay in complying with decisions of the Adjudicator dated 16th and 17th March 2006 which had directed her to pay compensation to JL-T of £2905.00 and of £1005.00 to each of PMML and PCGL.

Supplementary statement dated 9th March 2009

8. Contrary to Rule 34 of the Solicitors' Accounts Rules 1998 failed to produce to a person appointed by the Society records, papers and other documents necessary to enable preparation of a report on compliance with the said Rules.
9. Failed to deliver her accountant's report for the period ended 30th June 2006, due by 31st August 2006.
10. Failed to deliver her accountant's report for the period ended 31st December 2006, due by 30th April 2007.
11. Failed to deliver her accountant's report for the period ending 31st December 2007, due by 29th February 2008.
12. Failed to deliver her cease to hold accountant's report for the period 1st - 11th January 2008, due by 11th March 2008.
13. Contrary to Rule 32 of the Solicitors' Accounts Rules 1998 failed to keep accounting records properly written up.

14. Contrary to Rule 32(7) of the Solicitors' Accounts Rules 1998 failed to carry out reconciliations of her client account.
15. Contrary to Rule 22(5) of the Solicitors' Accounts Rules 1998 withdrawn money from client account on behalf of a client in excess of the amount held on behalf of that client. She had done so knowing that it was improper because she had known that she had not had sufficient funds to cover the payment. The withdrawal had been accordingly dishonest.
16. Contrary to Rule 23 of the Solicitors Accounts Rules 1998 withdrawn or caused to be withdrawn money from client account when she had not held a current practising certificate.
17. Withdrawn money from client account other than as permitted by Rule 22 of the Solicitors' Accounts Rules 1998 and had utilised the same for her own benefit and/or for the benefit of others not entitled thereto. In addition the Respondent had been dishonest.
18. Acted in breach of Rule 1 of the Solicitors' Code of Conduct 2007 in each and all of the following respects.
 - (a) She had failed to act with integrity.
 - (b) She had failed to act in the best interests of her client.
 - (c) She had behaved in a way that was likely to diminish the trust the public placed in her or the profession.

The Respondent had also been dishonest.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 25th November 2009 when David Elwyn Barton appeared on behalf of the Applicant. The Respondent was neither present nor represented.

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

The Tribunal ORDERS that the Respondent, ANNABELLA SAU FUNG LAI-BURKE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £28,121.75, such Order not to be enforced without the leave of the Tribunal.

The facts are set out in paragraphs 1 – 33 hereunder:-

1. The Respondent, born in 1958, was admitted to the Roll of Solicitors in 1989. As at the date of the hearing her name remained on the Roll of Solicitors.
2. At the material times the Respondent had practised in partnership with her husband as Lai-Burke and Co (the firm) of 55 Conduit Street, London W1S 2YE. The partnership had commenced in August 1999.

3. Paul Vincent Lai-Burke, who had initially been included in the proceedings as the Second Respondent, had died on 16th June 2007.
4. An inspection of the books of account and other documents of the firm had commenced on 31st August 2005 and had resulted in a report of the Monitoring and Investigation Unit, dated 7th November 2005, that was before the Tribunal. The Investigation Officer (IO) was Shorof Uddin.

Allegations 1 – 4

5. The IO had been unable to determine whether sufficient monies had been available in client account to meet liabilities to clients as at 31st July 2005. This had been because, although the Respondent had told the IO that she had maintained manual books of account, she had said that the firm's offices had been burgled on 13th or 14th April 2005, just prior to a visit from the Practice Standards Unit. All client and office cashbooks, ledger accounts and bank reconciliations had been stolen in the burglary.
6. The IO had noted that the books of account from 1st May 2005 - 31st July 2005, the three month period between the alleged burglary and the date of the inspection, had not been written up. The Respondent had said that she had been too busy with clients during that period to bring the accounting records up to date. The Respondent had stated to the IO that even before the burglary, the books of account had not been regularly written up but had been when time permitted.
7. The brought forward balances on the receipt (£2,432,734.05) and payment (£2,398,386.94) columns of the client account cashbook, as at 1st October 2004, could not be verified. Moreover, the Respondent had been unable to explain how, given the stolen records, she had been able to calculate the balances, including individual client ledger account brought forward balances.

Allegation 5

8. On 29th August 2006 the Law Society's Regulation Unit had written to the Respondent seeking the firm's accountant's report for the year ended 31st December 2005. The report remained outstanding.

Allegation 6 and 7

9. The Respondent had accepted instructions in November 1998 to act for JL-T in connection with her application for indefinite leave to remain in the United Kingdom. The Adjudicator's decision of 16th March 2006 found serious service failure by the Respondent and ordered her to pay compensation of £2,905.00 to JL-T. The Respondent had been ordered to pay the compensation by 29th March 2006 but she had failed to do so until 8th May 2006. Moreover, the Respondent had failed to return JL-T's passport saying that she had been unable to find the file.
10. The Respondent had also accepted instructions from PMML and PCCGL, sons of JL-T. They had also made a complaint against the Respondent. Again the Adjudicator's decision of 17th March 2006 had found serious service failure by the Respondent.

Compensation totalling £2,010 had been ordered to be paid by 30th March 2006. It had not been paid by the Respondent until 8th May 2006.

Allegations 8, 9, 13 and 14

11. On 3rd January 2007 the SRA had commenced a further inspection of the Respondent's books of account and other documents. On 13th December 2006 the Respondent had been notified of an intended inspection of her books of account and other documents; a written request within the meaning of Rule 34 of the Solicitors' Accounts Rules 1998.
12. The IO, Mr Hill, had not been able to express an opinion as to whether any funds held in client account were sufficient to cover liabilities. Attempts had been made to defer the investigation. However the IO had attended to commence his investigation on 3rd January 2007. Although the IO had attempted to inspect the books of account of the practice and a number of assurances had been given to him that the documents he required would be produced, none of those assurances had been complied with. The documents required by Mr Hill had not been produced to him and thus the Respondent's obligation under Rule 34 of the Solicitors Accounts Rules 1998 had been breached.
13. Moreover, the accountant's report for the six month period ended 30th June 2006 had been due for delivery by 31st August 2006. In breach of the requirement that had not been done.
14. By letter dated 12th February 2007 the SRA had written to the Respondent to ask for her explanation and to request further information. Radcliffes LeBrasseur solicitors had replied on her behalf on 8th March 2007. Basically, the inability to express an opinion on whether there were sufficient funds to meet liabilities to clients had been noted. The material events prior to the commencement of the investigation had been either agreed or noted. Finally, the material events during the investigation relating to the alleged failure to provide the documents requested were confirmed or simply noted.

Allegations 10, 13, 14 and 15

15. The IO had made a further visit to the Respondent's office on 1st October 2007. The purpose of that visit had been to ascertain the progress, if any, made in bringing the firm's books of account up to date. Following the visit the IO had prepared a memorandum dated 1st November 2007. He had visited again on 3rd December 2007 with Mr Shaw, a Senior Investigation Officer employed by the SRA. A memorandum dated 1st November 2007 and the report of 6th December 2007 both confirm that at their respective dates the books of account of the firm had not been in compliance with the Solicitors' Accounts Rules 1998. The books had not been properly written up and there had been no client account reconciliations since at least 31st March 2007.
16. The Respondent had acted for CD in his purchase of a property. On 29th October 2007 the sum of £31,800 had been withdrawn from the firm's client account in respect of Stamp Duty Land Tax. However the Respondent had confirmed that the payment on 29th October 2007 had been improper because she had known that she

had not had the funds from the client to cover the payment. The Respondent had confirmed that when she had made the payment the only significant monies available in client account had belonged to a Mr P and that she had realised that in making the payment she had in fact been using Mr P's money. (It was on that basis that the allegation had been put as one of dishonesty.)

17. As at the date of the second inspection the Respondent had confirmed that the latest accountant's report that she had submitted had been for the year ended 2005. The accountant's reports for the periods ending 30th June and 31st December 2006 had remained outstanding.

Allegations 16, 17 and 18

18. On 9th January 2008 the SRA had resolved to intervene into the Respondent's practice. The Adjudication panel had exercised powers conferred by Part II of Schedule 1 to the Solicitors Act 1974 (the power to intervene). The effect of the resolution pursuant to Section 35 of the Solicitors Act 1974 and paragraph 6(1) of the said Schedule 1 had been that all sums of money held by or on behalf of the Respondent or her firm had vested in the Law Society together with the right to recover or receive them. The effect of the legislation was that the Society held and received all such money on trust for the persons beneficially entitled to them (the Statutory Trust).
19. Pursuant to Section 15(1A) of the Solicitors Act 1974, the exercise of the power conferred by paragraph 6(1) of the said Schedule 1 had operated to immediately suspend the Respondent's practising certificate. Section 1 of the Solicitors Act 1974 provides that no person may be qualified to act as a solicitor unless he has been admitted as a solicitor, his name is on the Roll, and he has in force a practising certificate. The Respondent had thus been prevented by the said suspension from acting as a solicitor.
20. Rule 23 of the Solicitors' Accounts Rules 1998 permits money to be withdrawn from client account on the signed authority of a solicitor who holds a current practising certificate. It follows that any withdrawals by the Respondent from any client account after 9th January 2008 (being the date upon which her practising certificate had been suspended) had been unlawful and in breach of the said Accounts Rule.
21. The cumulative practical effect of the vesting on trust in the Society of all client money existing at the time of the resolution (and any received thereafter) and the suspension of the Respondent's practising certificate had been that she could not withdraw or deal with client money and could not act as a solicitor. It was the function of the intervention agent, as agent of the Society, to perform those activities on instructions from the Society.
22. Notice of intervention had been served on the Respondent on 11th January 2008 and pursuant to paragraph 6(3) of the said Schedule 1, the Society had served the Respondent's bankers, Barclays Bank plc, as the "person having possession of sums of money to which this paragraph applies" a certified copy of the resolution and a notice prohibiting the payment out of any such sums of money. That had been

intended to ensure that client money was protected and paid over only to the intervention agent.

23. Mr Guy Osborne of Osbornes Solicitors had been appointed as the Intervention Agent on 11th January 2008. Pursuant to the said Statutory Trust he had received all client money in client account at the date of intervention which had stood at £357,750.87. He had taken possession of all practice documents, including accounting records and cheque books.
24. The Distribution Proposal Report (DPR) had described the receipt of sums of money into client account after the service of the intervention notice and the partial unlawful disbursement thereof by the Respondent for her own benefit and for the benefit of others. The Respondent had disbursed money belonging to Birmingham Midshires Building Society.
25. There had existed a specially designated deposit account in the Respondent's name bearing the title "Lai Burke and Co Clients Account Re Executors of GT". The account number was 207174 and it had been a client account. It had been opened on 7th June 2005 and on 10th January 2008 the account balance had been nil. Any money coming into that account after the exercise of the powers of intervention as described above had been subject to the Statutory Trust and had vested in the Society. Barclays Bank had not closed the account until about 7th February 2008 when its error in not doing so had been discovered. The Respondent had not disclosed the existence of that account to the SRA or to its agent and she had not delivered up the cheque book.
26. On 6th February 2008 the sum of £269,965 had been credited to the account and on the following day a further £180,266 had been credited. Both sums had been paid by Birmingham Midshires Building Society as mortgage advances in connection with the purchase of two properties; 60 HR and 138 GW. In each case the firm of Lai Burke and Co had been instructed to act for the Society as mortgagee. The monies had been advanced to be used in connection with the said purchases. The Certificates of Title requesting the said mortgage advances had been signed and dated 1st February 2008. They carried the signature of WN, who had been employed by the Respondent as an assistant solicitor. Neither he nor the Respondent had had any authority to despatch the Certificates. Mr Osborne had not known of their existence.
27. The Certificates of Title had been signed and despatched on 1st February 2008 and in each case the mortgagee had been asked to credit the said client account number 207174. That client account had been debited as follows:-
 - (a) £43,000 by cheque dated 1st February 2008 payable to MK and JFG and signed by the Respondent.
 - (b) £49,000 by transfer to the Respondent's personal account on 6th February 2008.
 - (c) £44,275.13 by transfer to a Jersey HSBC account in the name of JFG on 6th February 2008.

28. The party beneficially entitled to the mortgage money had been Birmingham Midshires Building Society and the purpose of the Distribution Proposal Report had been to obtain approval from an Adjudicator to distribute to the Building Society such money as had remained. That approval had been duly given and the Building Society had made a claim against the Compensation Fund for the balance.
29. The Respondent's bank statements had been obtained and had shown the receipt into her account on 6th February 2008 of £49,000. Various sums had been debited on the same date and a balance of £28,672.67 had remained on 7th February. That had been transferred to an escrow account.
30. The Respondent had asserted that those had been loans to her. However the money had been despatched by Birmingham Midshires Building Society in connection with two clearly identifiable conveyancing transactions and it was to have been used only for the purchase of the two properties. The Respondent had stated that the mortgage advance money should have gone into her personal account. The money had gone into the designated account because its account number had been inserted into the Certificates of Title.
31. The Respondent had been asked by Mr Osborne for evidence of the stated error and evidence that the money had in fact been hers. Neither purchase had been completed. The Respondent had not disclosed to the SRA, directly or through its agent, that she had been withdrawing money from a client account.

Application by the Respondent for an adjournment

32. The Tribunal noted that on the day before the hearing, the Respondent had sent a letter by fax informing the Tribunal that she would be unable to attend because she was not physically strong enough to do so. The Respondent had asked the Tribunal to adjourn the hearing until 2010 when she should have a clearer picture of her medical condition.
33. The Applicant opposed the Respondent's application for an adjournment. He reminded the Tribunal that the Respondent had made a similar application when the matter was before the Tribunal on 30th July 2009 for a substantive hearing. On that occasion the Tribunal had adjourned the hearing subject to directions including a direction that the Tribunal would be supplied with medical evidence and that there be a written response to the allegations by 1st September 2009, prior to a further hearing for directions on 29th September 2009. The Applicant explained that neither medical evidence nor any written response had been forthcoming and that he had heard nothing from the Respondent since 29th July 2009. This was despite writing to her on 3rd August, 14th September and 19th October 2009. The Applicant explained that he was aware that the Respondent had telephoned the Tribunal and had asked for the hearing to be listed on a Wednesday as that was the day in the week when she would be available.

The Decision of the Tribunal

34. The Tribunal was satisfied that its previous directions had been explicit and that the Respondent was aware that any further applications for an adjournment of the

substantive hearing would have to be supported by medical evidence. As the Respondent had failed to produce such evidence the Tribunal directed that the hearing should continue. The Tribunal noted that the application had been issued in November 2006.

The Submissions of the Applicant

35. The Applicant took the Tribunal through the 18 allegations and the facts and documents in support of those allegations.
36. Dealing with allegations 1 - 4, the Applicant noted that the alleged burglary had taken place some 4 ½ months before the IO's inspection. The Applicant submitted that notwithstanding any burglary, the Respondent had been under a duty to reconstruct the practice records in order to be compliant with the Solicitor's Accounts Rules 1998.
37. Dealing with allegations 6 and 7, the Applicant submitted that the service failures identified by the Adjudicator had been sufficiently serious to constitute a breach of Rule 1 of the Solicitors' Practice Rules 1990. Moreover, the Respondent had been under an obligation to comply with the Adjudicator's awards in a timely fashion and her failure to do so had brought herself and the solicitors' profession into disrepute.
38. Turning to allegation 8, the Applicant submitted that in making a payment out of client account in respect of CD's matter when the Respondent had been fully aware that in so doing she would be using another client's monies, the Respondent had been acting dishonestly.
39. Dealing with allegations 16, 17 and 18, the Applicant submitted that in directing monies from Birmingham Midshires Building Society, through the Certificates of Title, into a designated deposit account that had had nothing whatsoever to do with the conveyancing transactions and had been the only account not frozen by Barclays Bank, the Respondent had acted, at all times, in secrecy. Moreover, she had subsequently given false and misleading explanations to the SRA. The Applicant further submitted that the Respondent's behaviour had been consistent with dishonesty.
40. The Applicant referred the Tribunal to the witness statement of Jane Davis dated 23rd January 2009 and the Legal Assistant for Birmingham Midshires Building Society, with the Bank of Scotland, she had made it clear that the money advanced had been client money belonging to Birmingham Midshires Building Society, the lender client. Moreover, that money had been advanced as mortgage monies for the purchases of 60HR and 138GW by a Mr A and a Mr H. Lai Burke and Co Solicitors had been instructed to act for the lender. In her statement Ms Davis had confirmed that the lender had not been aware that the mortgage money was to be used as a loan to the Respondent and that, had the lender been so aware, it would not have consented to such a loan.
41. The Applicant referred the Tribunal to the case of *Twinsectra v Yardley* and submitted that on the documents before the Tribunal the evidence was overwhelming that the Respondent's conduct, in relation to the mortgage money, had been dishonest

by the standards of reasonable and honest people and that she herself had realised that by those standards her conduct in withdrawing monies from client account and in paying such monies into her personal account was dishonest.

42. The Applicant referred the Tribunal to the cost schedules and sought an order for costs fixed in the sum of £28,121.75.

The Tribunal's Decision

43. Having considered all of the evidence together with the helpful submissions of the Applicant, the Tribunal was satisfied that all the allegations against the Respondent were proved. Moreover, the Tribunal was satisfied, so that it was sure, that when the Respondent paid monies from client account to her own personal account or into the accounts of third parties, she had been fully aware not only that her conduct would be considered dishonest by the standards of reasonable and honest people but that she realised that by those standards her conduct was dishonest.
44. In order to protect the public and also to maintain the integrity of the profession, the Tribunal considered that the Respondent should be struck off the Roll of Solicitors and it so ordered. Moreover, it considered it appropriate to make an order for costs in the fixed sum of £28,121.75 but that given the Respondent's financial circumstances such order was not to be enforced without leave.

Dated this 15th day of April 2010
On behalf of the Tribunal

Mrs J Martineau
Chairman