

IN THE MATTER OF BASIL ONYEMAUCHECHUKWU OKAFOR
AND OKEIMUTE LUCKY OHRE-EMUOBOSA, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr L N Gilford (in the chair)
Mr N Pearson
Mr S Marquez

Date of Hearing: 11th December 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 David Elwyn Barton, solicitor of 5 Romney Place, Maidstone, Kent, ME15 6LE on 23rd February 2007 that Basil Onyemauchekwu Okafor, solicitor of 37-39 Peckham Road, London, SE5 8UH and Okeimute Lucky Ohre-Emuobosa of Clensham Lane, Sutton, Surrey, 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 against the First Respondent were that he had been guilty of conduct unbefitting a solicitor in each of the following respects:

- i) he had dishonestly utilised clients' money for his own purposes and/or for the benefit of others not entitled thereto;
- ii) he had acted in breach of the Solicitors Accounts Rules 1998 in that contrary to the provisions of Rule 22 of the said Rules, he had drawn from client account moneys other than in accordance with the said Rule;

- iii) contrary to the provisions of Rule 32(1) of the Solicitors Accounts Rules 1998 he failed to keep accounting records properly written up to show dealings with client money received, held or paid;
- iv) contrary to the provisions of Rule 32(7) of the Solicitors Accounts Rules he had failed to carry out client account reconciliations.

The allegations against the Second Respondent were that he had:

- i) acted in breach of the Solicitors Accounts Rules 1998 in that contrary to the provisions of Rule 22 of the said Rules, he had drawn from client account moneys other than in accordance with the said Rule;
- ii) contrary to the provisions of Rule 32(1) of the Solicitors Accounts Rules 1998 he failed to keep accounting records properly written up to show dealings with client money received, held or paid;
- iii) failed to carry out client account reconciliations contrary to the provisions of Rule 32(7) of the Solicitors Accounts Rules 1998.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 11th December 2007 when David Elwyn Barton appeared as the Applicant. Mr Okafor did not appear and was not represented. Mr Ohre-Emuobosa appeared in person.

The evidence before the Tribunal included a copy of the advertisement which appeared in The Law Society's Gazette in accordance with the Order for Substituted Service made by the Tribunal on 19th July 2007. Mr Ohre-Emuobosa did not deny the facts or allegations. Mr Johnson, The Law Society's Investigation Officer, gave oral evidence.

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

The Tribunal Orders that the Respondent, Basil Onyemauchekwu Okafor of 37-39 Peckham Road, London, SE5 8UH, 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 £4,480.90.

The Tribunal Orders that the Respondent, Okeimute Lucky Ohre-Emuobosa of Lilford Road, London, SE5, solicitor, be suspended from practice as a solicitor for the period of three months to commence on the 11th day of December 2007 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,000.00.

The facts are set out in paragraphs 1 to 10 hereunder:

1. Mr Okafor was born in 1958 and was admitted as a solicitor in 2004. His name remained on the Roll of Solicitors. Mr Ohre-Emuobosa was born in 1963 and was admitted as a solicitor in 1998 having previously been admitted to the Nigerian Bar. His name remained on the Roll of Solicitors.

2. At the material times the Respondent carried on in practice in partnership under the style of Basil & Co at 37-39 Peckham Road, London, SE5 8UH. Mr Okafor was an equity partner and Mr Ohre-Emuobosa was a salaried partner.
3. An Investigation Officer of The Law Society ("the IO") began an inspection of the Respondents' books of account and other documents on 17th May 2006. His Report dated 19th May 2006 was before the Tribunal.
4. The Report revealed that Mr Okafor had transferred from client to office account round sums ranging from £1,200 to £10,000 totalling £152,070. At the date of the inspection office account was in credit by £9,340.39. None of the round sum transfers from client to office account had been allocated to a specific client ledger.
5. £182,500 had been withdrawn from client account by Mr Okafor and paid to third parties, who were not clients, on seven occasions. None of the withdrawals had been allocated to a specific client ledger.
6. School fees in the sum of £8,161.14 had been paid out of client account. The payment was not allocated to a client ledger.
7. There was a minimum cash shortage of £633,926.80 after liabilities to four individuals had been identified and compared with cash held on client account. Conveyancing transactions being conducted for these individuals could not be completed because of the shortage.
8. The IO had been unable to determine the full cause of the shortage but the round sum transfers and payments to third parties were contributory factors.
9. Mr Okafor was the partner who had the ability to make all the withdrawals described in the IO's Report. He withheld documents and information from his cashier and left the UK for Nigeria on a date after 24th March 2006.
10. Client bank account had not been reconciled since 22nd March 2006.

The Submissions of the Applicant

11. The Applicant recognised that Mr Okafor had the prime responsibility for what had occurred. He recognised that Mr Ohre-Emuobosa had cooperated with The Law Society, but he was responsible for the Accounts Rules breaches by virtue of his position as a principal. It was not alleged that he had been dishonest but the position might not have been so serious had he been more vigilant in accordance with his duties as principal. Regular client account reconciliations would have revealed shortages and failures to allocate transfers to client ledgers.

The Submissions of Mr Ohre-Emuobosa

12. Mr Ohre-Emuobosa had been employed by Mr Okafor as a salaried partner in the firm of Basil & Co until 18th May 2006. Mr Ohre-Emuobosa had been introduced to Mr Okafor by a respectable person and had no doubt as to the good character of Mr Okafor.

13. Before joining Mr Okafor, Mr Ohre-Emuobosa had worked in firms of solicitors either as an assistant or a salaried partner. He undertook in the main immigration work.
14. Mr Okafor had excluded Mr Ohre-Emuobosa from dealing with accounting matters and withheld the bank statements from him and gave instructions to the bookkeeper not to discuss accounting matters with him because he was not an equity partner.
15. Only Mr Okafor had access to telephone and online banking facilities. Mr Ohre-Emuobosa was permitted to sign cheques only if Mr Okafor was outside the country. The cheque books were under Mr Okafor's control.
16. The only occasions when Mr Ohre-Emuobosa authorised payment from client account was for the following clients; Mr PN (£31,980), Ms GS (£37,644.60) and Mr CR and Ms M (£13,729) when he had physically attended the bank with proof of his identity. These transactions concerned deposits in respect of the failed conveyancing matters. Mr Ohre-Emuobosa had no choice but to authorise these payments so that further loss would not be incurred as Mr Okafor still had access to the client account. He wished to ensure that the clients' matters were not prejudiced and afforded them the opportunity to instruct other solicitors.
17. Mr Ohre-Emuobosa never withdrew money from clients' account for his own benefit or for Mr Okafor. The missing money could be traced to Mr Okafor, who took it without Mr Ohre-Emuobosa's knowledge or authority.
18. In December 2005 Mr Ohre-Emuobosa's requested the firm's banker to issue him with a bank card, password and pin number to enable him to have access to the firm's account. In January 2006 he received a bank card. When the pin number and password for telephone and online banking were not forthcoming he pressed the bank and was informed that his instructions would be carried out. In March 2006 the bank informed him that the bank card issued to him had been cancelled. Despite pressing the bank further Mr Ohre-Emuobosa received no explanation indeed he received no response.
19. Mr Ohre-Emuobosa was thereby deprived from knowing the daily financial activities of the firm. He believed that if the bank had not behaved unreasonably, he would have responded in time to prevent the nightmare and personal tragedy that occurred.
20. Mr Okafor was the compliance officer of the firm and sole manager of the firm's financial activities. On three occasions Mr Ohre-Emuobosa had sent him memoranda regarding the reconciliation of the accounts.
21. When Mr Ohre-Emuobosa learned that clients' money was missing, he reported the matter to the police, The Law Society and the Economic Financial Crime Commission in Nigeria (the latter being responsible for screening potential political office contestants). He also wrote to a Nigerian newspaper concerning Mr Okafor's theft of clients' money in order to put the matter in the public domain as far as Mr Okafor's political career was concerned. As a result Mr Okafor had made a series of threats to Mr Ohre-Emuobosa and members of his family.

22. The whole matter had not only caused stress, mental anxiety, depression and psychological trauma and breakdown but had also caused Mr Ohre-Emuobosa to fear for his life and that of his family.
23. The situation had placed a great deal of pressure on Mr Ohre-Emuobosa. He had ceased to be in a position where he could financially support his four children. A financial burden had been placed on his wife who as a result could no longer cope resulting in their separation.
24. Mr Ohre-Emuobosa was a victim of Mr Okafor's dishonesty and theft. He did not accept that this occurred as a result of his own naivety or his failure to observe professional duties. He believed that whatever mechanism had been in place, Mr Okafor would still have succeeded in stealing clients' money. Mr Okafor denied Mr Ohre-Emuobosa access to the firm's books and bank accounts and fraudulently manipulated the bank to deny such access. Mr Ohre-Emuobosa had no opportunity to examine bank statements or make enquiries with the bank until it came to his knowledge that his bank card had been cancelled and access to online and telephone banking had been denied, when he pressed the bank but received no response.
25. Mr Ohre-Emuobosa acted in good faith. He worked in the firm as a salaried partner diligently and carried out all his duties effectively. At no point did he have reason to suspect misappropriation or theft of clients' money. He did all that was reasonably practicable as a salaried partner.
26. Mr Ohre-Emuobosa accepted that he had professional responsibilities as a salaried partner, but he had neither the opportunity nor the means to prevent this type of theft.
27. The Tribunal was invited to take all of the circumstances into account and find that Mr Ohre-Emuobosa was not professionally responsible for the gross misconduct of his employer, Mr Okafor, but rather that he was a victim of Mr Okafor's misconduct.

The Findings of the Tribunal

28. The Tribunal found the allegations against Mr Okafor to have been substantiated. The Tribunal found the allegations against Mr Ohre-Emuobosa to have been substantiated on the basis that he was liable for breaches of the Solicitors Accounts Rules in his capacity as a salaried partner. The Tribunal recognised that dishonesty had not been alleged against Mr Ohre-Emuobosa.

The decision of the Tribunal and its reasons

29. Mr Okafor had dishonestly and blatantly taken clients' money for his own purposes. A solicitor is required to regard clients' money as sacrosanct and not only comply punctiliously with the Solicitors Accounts Rules but exercise a proper stewardship over money which he holds on behalf of clients. Mr Okafor's seriously dishonest behaviour cannot be tolerated by the solicitor's profession or this Tribunal. The Tribunal Ordered that Mr Okafor be struck off the Roll of Solicitors. The Tribunal noted that the police had been informed of Mr Okafor's behaviour.

30. The Tribunal found the allegations proved against Mr Ohre-Emuobosa on the basis that he was not complicit in Mr Okafor's dishonest activities but, as he himself recognised, he could not avoid liability for breaches of the Solicitors Accounts Rules in his capacity as a salaried partner in the firm.
31. The Tribunal recognised that Mr Okafor kept his nefarious activities from Mr Ohre-Emuobosa's knowledge.
32. The Tribunal gave Mr Ohre-Emuobosa credit for his attempts to gain access to the firm's bank accounts and accounting records and to ensure that proper reconciliations were carried out. The Tribunal accepted that if the firm's bank had provided information or the ability to access dealings on the firm's bank accounts then matters might not have gone as far as they did.
33. The Tribunal also gave Mr Ohre-Emuobosa credit for the fact that when his concerns crystallized he did report the matter to the relevant authorities.
34. The Tribunal considers that the position in which Mr Ohre-Emuobosa found himself which included suffering threats from Mr Okafor, being without employment and suffering family difficulties, amounted to strong mitigation which the Tribunal has also taken into account.
35. There had never been any suggestion that Mr Ohre-Emuobosa had acted dishonestly. The Law Society had confirmed that he had cooperated fully with its investigation. Further Mr Ohre-Emuobosa had appeared before the Tribunal to explain the position in which he found himself.
36. The breaches of the Solicitors Accounts Rules for which Mr Ohre-Emuobosa accepted he was liable were, of course, at the serious end of the scale. Any salaried partner should give very careful consideration to his position if he is not given full access to the client accounts held on behalf of the partnership or the books of account maintained by the firm or where he is anxious about failures, such as the failure to carry out proper and timely reconciliations, and still continue to be a salaried partner in the firm. The Tribunal did, of course, recognise that Mr Ohre-Emuobosa behaved entirely properly when he reported Mr Okafor's nefarious activities but he no doubt himself recognised that the steps that he took should perhaps have been taken somewhat sooner.
37. In all of the particular circumstances of this case, and, whilst expressing some sympathy for the position in which Mr Ohre-Emuobosa found himself, the Tribunal concluded that it would be both appropriate and proportionate to Order that he be suspended from practice for a period of three months.
38. The Applicant sought the costs of and incidental to the application and enquiry and provided figures to the Tribunal and suggested how those costs might be apportioned between the Respondents. The Tribunal accepted that Mr Okafor should bear the greater part of the costs but considered that Mr Ohre-Emuobosa should bear some of the costs. The Tribunal Ordered Mr Okafor to pay £4,480.90 and Mr Ohre-Emuobosa to pay £2,000. Such costs to be paid on a several basis. The proportion of the costs reflected the respective parts played by the Respondents in this unhappy affair.

Dated this 5th day of February 2008
On behalf of the Tribunal

L. N. Gilford
Chairman