

IN THE MATTER OF SUDESH CHAMBA, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr P Kempster (in the chair)
Miss T Cullen
Mrs C Pickering

Date of Hearing: 7th February 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Jayne Willetts, solicitor advocate, of Hammonds, Rutland House, 148 Edmund Street, Birmingham B3 2JR on the 12th September 2007 that Sudesh Chamba of Chamba & Co, 177 Dudley Road, Wolverhampton, West Midlands WV2 3DR might be required to answer the allegations contained in the statement that accompanied the application and that such order might be made as the Tribunal should think right.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in that:-

1. He failed to maintain the books of account for Chamba & Co ("the Firm") in breach of Rule 32(1) & (4) Solicitors Accounts Rules 1998 ("SAR 1998").
2. He made improper withdrawals from the Firm's client account in breach of Rule 22(1) SAR 1998, which for the avoidance of doubt is an allegation of dishonesty.
3. He utilised client funds for his own purposes, which for the avoidance of doubt is an allegation of dishonesty.

4. He failed to advise two separate clients, namely Mr L and Mr S, to seek independent legal advice before entering into a loan agreement with him in breach of Rule 1 Solicitors Practice Rules 1990 and Principle 15.04.
5. He made withdrawals from the Firm's client account in excess of monies held on behalf of clients in breach of Rule 22(5) SAR 1998.
6. He incorrectly credited interest on client money to the Firm's client bank account in breach of Rule 13 (note) (xi) (b) SAR 1998.
7. He failed to pay professional disbursements within two days in breach of Rule 19(1) (b) SAR 1998.
8. He failed to remedy the breaches contained in allegations 1 to 5 above promptly on discovery in breach of Rule 7(1) SAR 1998.
9. He failed to comply with the SAR 1998 by virtue of being a principal of the Firm in breach of Rule 6 of the SAR 1998.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Jayne Willetts appeared as the Applicant and the Respondent was represented by Kenneth Hamer of Counsel.

The Evidence Before the Tribunal

The evidence before the Tribunal included the admission by the Respondent of the facts and the allegations (including two allegations of dishonesty). At the hearing the Respondent handed up his written statement, the written statement of Mr H Singh, a bundle of testimonials, a medical report and the Weekly Law Reports Report of Giele v The General Medical Council [2005] EWHC2143 (admin) and a copy of his partnership agreement with Ms MK.

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

The Tribunal ORDERS that the respondent, SUDESH CHAMBA of 177 Dudley Road, Wolverhampton, West Midlands WV2 3DR, 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 £15,314.00

The facts are set out in paragraphs 1 to 22 hereunder:-

1. The Respondent who was born in 1960 was admitted as a solicitor in 1994. He practised on his own account at Chamba & Co, 177 Dudley Road, Wolverhampton, West Midlands WV2 3DR and at 85 High Street, West Bromwich, West Midlands, B70 6NZ.
2. On 23 February 2006 an investigation was commenced at Chamba & Co by a Forensic Investigation Officer of The Law Society (the FIO). The FIO's Report dated 30 June 2006 was before the Tribunal. The report identified a number of breaches and misuse of clients' money.

3. The Respondent's accounting records were not in compliance with the SAR 1998 in that the list of liabilities totalling £587,462.80 as at 31 January 2006 did not include further liabilities to clients of £6,484.89. There was an overall cash shortage of £12,216.62. The accounting records were not maintained up to date and there were a substantial number of incorrect entries.
4. An overpayment had been made to a client, Mr R, from client account of £5,003 on 12 January 2006. The Respondent admitted that he was probably not aware of the shortage until some time in February 2006 when the bookkeeper was posting the January transactions.
5. After the inspection date it was discovered that the Respondent's client account reconciliations for the months of February to May 2006 for the Wolverhampton office and for February to April 2006 for the West Bromwich office continued to record shortages.
6. The largest cash shortage after the inspection date (£85,980) arose where the Respondent acted for Mr S and Mrs R in the purchase of a property. There was an overdrawn balance on client account of £85,980 as at 4 April 2006. The shortage had existed for two months. It had not been identified as accounting information had not been posted until 19 May 2006.
7. From the Respondent's Accountant's Report for the year ended 29 February 2004, the FIO identified that the Respondent drew a cheque on client account for £30,000 on 23 July 2003 to settle his liability to a former partner, Mr M. The payment was allocated to a client ledger in the Respondent's name. That client ledger showed that there were no monies in client account at the time to cover this payment. The resulting debit balance on client account was subsequently cleared on 21 August 2003.
8. At an interview with the FIO on 4 May 2006 the Respondent agreed that he had knowingly made the payment from client bank account, as he did not have funds available at the time the payment was due. He accepted that the utilisation of client funds to settle a personal liability was not the action of an honest solicitor.
9. From the Respondent's Accountant's Report for the year ended 28 February 2005 the FIO identified a payment of £55,023 on 31 January 2005 made by the Respondent from client account to assist with the purchase of a residential property by him and his wife. The payment was posted to a ledger in the name of Mr H S, an unrelated matter. There were no corresponding funds in client account, resulting in a debit balance on client account. The payment (except for a remaining debit balance of £58.75) was repaid to client account by three instalments on 25 February 2005 (of £5000) and two instalments on 25 August 2005 of £19,146.25 and £20,818. At the interview with the FIO the Respondent admitted that he knowingly utilised client monies to complete his own purchase and that was not the action of an honest solicitor.
10. The Respondent borrowed £18,567.56 from his brother, Mr L. The monies had been held on client account on behalf of Mr L immediately prior to the loan. The Respondent did not advise Mr L to obtain independent legal advice.

11. The Respondent borrowed a further sum of £9,137.39 from Mr L in January 2006, making a total sum borrowed of £27,704.95. The Respondent did not advise Mr L to seek independent legal advice. The Respondent had since repaid the total sum loaned to him.
12. Mr S, a client and close friend of the Respondent, handed two cheques, for £20,818 and £19,146.25 respectively to the Respondent as a loan in January and February 2005. The Respondent had not banked them. The Respondent did not advise Mr S to seek independent legal advice in respect of the loan he was making to the Respondent.
13. There were historical shortages on client account which were identified in the Respondent's Accountant's Reports for 2003, 2004 and 2005.
14. The Accountant's Report as at 28 February 2005 revealed that there was a shortage on client account of £55,769.12 made up of 11 debit balances varying between £7.50 and £40,023.
15. In the client matter listing as at 31 December 2005, there were 84 client debit balances totalling £21,518.82 varying in amount between £0.25 and £3,399.39.
16. As at the inspection date of 31 January 2006 there were 13 client debit balances varying in amounts between £2.20 and £5,003 and totalling £5,731.73. The largest debit balance arose where a cheque was paid on 12 January 2006 to a client, Mr R, for £5,256 when there was only a balance of £253 in client account, resulting in a debit balance on client account of £5,003.
17. The Respondent's firm acted for Mr S and Mrs R in the purchase of a property. On 22 March 2006 the balance of completion monies was remitted to the vendor's solicitors resulting in an overdrawn balance on client account of £85,214.50. This overdrawn balance was increased by £615.50 on 4 April 2006 following a transfer from office account of costs and disbursements and a further £150 for the Land Registry fee. The total overdrawn balance of £85,980 was cleared on 19 May 2006 when mortgage advance monies were received.
18. Interest on general client account was incorrectly credited to client bank account. The same incorrect procedure had been followed in earlier accounting periods.
19. At the inspection date, 31 January 2006, there were 247 office credit balances, which included unpaid professional disbursements on four client matters totalling £1,440.50 and varying in amount from £197 to £550.
20. The money to pay the largest unpaid professional disbursement, £550, made up of £375 for Counsel's fees and £175 for a medical report, had been received on 28 March 2002 but was not paid out until 27 March 2006.
21. The majority of office account credit balances had been in existence for a long period, many going back to 2002. Entries had been made in the accounting records to indicate that shortages on client bank account had been rectified but the corresponding amounts had not been paid into the client bank account until some two years later.

22. The Respondent's Accountant's Report for the year ended 29 February 2004 revealed a shortage on client account of £18,567.56 from November 2003 until 3 January 2006.

The Submissions of the Applicant

23. Nine allegations had been made against the Respondent and he admitted all of them and the facts.
24. Allegations 2 and 3 included allegations that the Respondent had been dishonest and he had admitted dishonesty on the basis that the Tribunal would apply the two part test in the case of *Twinsectra Ltd v Yardley and Others* [2002] UKHL 12, but his admission was made on the basis that the events represented two isolated and momentary lapses on the Respondent's part in an otherwise unblemished career.
25. The allegations were based on the FIO's report which revealed numerous and serious breaches of the Solicitors Accounts Rules.
26. Allegations 2 and 3 were the most serious made against the Respondent as the underlying facts were that the Respondent had used clients' funds for his own purposes and had been dishonest.
27. Allegation 4 related to failures on the part of the Respondent to insist that clients took independent advice before making loans to the Respondent. Mr L was the Respondent's brother and he made a loan in two tranches. Mr H S was both a client and a close friend of the Respondent and he had provided two cheques to the Respondent by way of loan. The Respondent had not insisted that either of them obtain independent legal advice. Both of these gentlemen were making loans to the Respondent to replace shortfalls on client account. There had been a sorry history of shortfalls on the Respondent's client account.
28. The Respondent's bookkeeping demonstrated a number of breaches of the Solicitors Accounts Rules, failures on his part to remedy errors and breaches upon discovery and indeed poor accounting and record keeping. The Respondent's records had been in a mess. There had been many errors made and there had been times when errors had been realised but had not been corrected.
29. Overall there had been serious and persistent problems with the Respondent's accounts over a long period of time. He had shown a disregard for the sanctity of client funds and had acted dishonestly in connection with his handling of those funds on two occasions. The Respondent's actions and failures would lead to a serious question being raised about the Respondent's suitability and qualities to act as a steward of client funds in his capacity as a solicitor.
30. The Applicant sought the costs of and incidental to the application and enquiry and handed a schedule of costs to the Tribunal. The Respondent had agreed to pay those costs and had agreed the figure with the Applicant.

The Submissions of the Respondent

31. The allegations against the Respondent fell into three parts. The first part was a failure to maintain accounting records and the fact that there had been shortfalls on client account. The second part dealt with the Respondent's failure to ensure that clients obtained independent advice before making loans to him. The loans had been made by the Respondent's brother and a very old friend and neither of them had complained. The third part related to allegations 2 and 3. Those allegations were not disputed and it was agreed that they had been correctly drafted. There were however factual overlaps.
32. In the submission of the Respondent if the dishonesty allegations at 2 and 3 had not been made a number of the other allegations might well not have been referred to the Tribunal but dealt with by The Law Society "in-house."
33. The Respondent offered his apologies for what had occurred.
34. The Respondent wished to place before the Tribunal a number of mitigating factors and invited the Tribunal to take into account the case of Giele v The General Medical Council and conclude that in all the particular circumstances of this case it would not be necessary to impose the ultimate sanction upon the Respondent.
35. With regard to the sum of £30,000 drawn from client account in July 2003 the Respondent had been in dispute with a former partner. It was part of the arrangements following that dispute that £30,000 should be paid to the Respondent's former partner, Mr M, within a specified timescale. The Respondent had made arrangements with his bankers for a facility to enable him to make payments to Mr M in accordance with this agreement. In July 2003 the first payment of £30,000 had fallen due. The Respondent had drawn the money from client account with the intention of replacing that money as soon as he received the loan from his bankers. In fact the Respondent received a sum of over £60,000 from his bankers shortly thereafter and the shortfall on client account was repaid. The sum received from the bankers was £60,000 because it was to meet two payments that the Respondent had agreed to make to Mr M on two different dates.
36. With regard to the drawing of £55,023 on client account in February 2005, the Respondent had decided to sell the house which he owned with his wife and to buy another. He had exchanged contracts on his purchase when he had not exchanged contracts on his sale. The purchase completion had been set for 31 January 2005. Because of the delay in the sale of his existing property the Respondent was going to be short of about £45,000 on completion of the purchase.
37. At about that time Mr H S was purchasing a commercial property. The Respondent had made Mr H S aware of his situation and he had agreed to assist the Respondent with a loan of £24,000 which was being held in the firm's client account. It had been arranged that Mr H S would provide an additional £21,000 and the Respondent was to repay Mr H S all of the monies lent when he completed the sale of his house. In December 2004 Mr H S went to India giving the Respondent a special Power of Attorney to deal with his commercial property. Early in January 2005 Mr H S telephoned the Respondent to inform him that he had decided not to proceed with his

proposed purchase. He confirmed that he was still going to assist the Respondent with his own purchase. Mr H S had given his word that the monies would be available for the Respondent's own completion and the Respondent relied on that assurance. Mr H S did not send the monies to the Respondent as had been expected. The Tribunal was invited to take note of Mr H S's statement which had been handed up. He said that he had regretted letting down the Respondent but had been in a position where he was unable to help him and he had required the repayment of the sum of £23,500 that was held by the Respondent on client account

38. The Tribunal was invited to accept that the Respondent's actions did not represent what was described as the "usual" situation where a solicitor made constant withdrawals from client account but in this case there were two separate and explicable instances. The Tribunal was invited also to take into account the fact that in July 2003 the Respondent had been suffering from a painful and debilitating illness and he had undergone surgery in July 2003 and August 2003 with a further operation in November 2004.
39. The Tribunal was invited further to take into account the bundle of some 40 testimonials written in support of the Respondent. The testimonials were given by professional colleagues of the Respondent and others and all spoke highly of his competence and integrity. The Respondent was generous in the time he gave to religious communities and the disadvantaged community as a whole.
40. In all the particular and unusual circumstances of this case, the Respondent having recognised that he had made unqualified admissions, the Tribunal was invited to impose a sanction that would not permanently interfere with the Respondent's ability to practise.

The Tribunal's Findings

41. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
42. The Tribunal noted in particular that the Respondent admitted allegations 2 and 3 and further admitted that had it been necessary for the Tribunal to apply the test in *Twinsectra v Yardley* then the Tribunal would have been bound to find that he had acted dishonestly.
43. The Tribunal had been invited to take the view that the Respondent had been guilty of only two isolated incidences of what had been described as "technical" dishonesty in a successful long and unblemished career as a solicitor and that those were isolated incidences only and did not amount to a course of conduct. It was said that each of the drawings on client account had been made when the Respondent was confident that he would be placed in funds. There had been no question of any intention permanently to deprive clients of their money.
44. The Respondent had invited the Tribunal to regard his two drawings on client account for his personal purposes as isolated matters, but the Tribunal noted that the Respondent's books of account had over a long period of time been in considerable disarray and there had been a persistent history of shortages on client account.

Further the Respondent had agreed to borrow money from two persons who were close to him who were also clients of his firm without first insisting that they obtain independent advice about the arrangement.

45. All in all the Tribunal concluded that the Respondent had failed to grasp the importance of due compliance with the Solicitors Accounts Rules which were in place to protect members of the public. He had not exhibited a proper regard for the sanctity of client funds and he had failed to exercise a proper stewardship over client monies in his hands.
46. It would be recognised that in order to fulfil its duty to protect the public and maintain the good reputation of the solicitors' profession the Tribunal would have to give proper consideration to the imposition of a striking off order upon a solicitor who had utilised clients' money for his own purposes and, as in the Respondent's case, had admitted that in doing so he had acted dishonestly.
47. The Tribunal gave careful consideration to the submissions made on the Respondent's behalf that it need not in such circumstances impose the ultimate sanction. The Tribunal had considered the testimonials provided on behalf of the Respondent.
48. The Tribunal took the view that it would be only in the most exceptional case where a solicitor had been found to be dishonest that the Tribunal would not impose a striking off order. In the two incidences where the Respondent dishonestly used clients' money for his own purposes, he simply helped himself to client funds as an expedient to deal with his own personal financial problems. The Tribunal concluded that the Respondent simply did not recognise the sanctity of client funds and however certain he was that monies would be forthcoming to replace the money taken from client account, to use clients' money in this way was so unacceptable as to be deeply shocking and any solicitor who deliberately behaved in this way ought not to expect to remain a member of the solicitors' honourable profession.
49. Even if the facts had been placed before the Tribunal without an allegation and/or an admission of dishonesty the Tribunal would have regarded the Respondent's behaviour as being so grave, so potentially damaging to the public and so damaging to the good reputation of the solicitors' profession that it would have considered it appropriate to order that the Respondent be struck off the Roll of Solicitors.
50. Both because of the underlying facts and the finding of dishonesty, which was not contested, the Tribunal ordered that the Respondent be struck off the Roll of Solicitors. The Tribunal gave the Respondent credit for accepting responsibility for the Applicant's costs and for agreeing the quantum. The Tribunal ordered the Respondent to pay the Applicant's costs fixed in the agreed sum.

Application to Suspend the Filing of the Tribunal's Order with The Law Society

51. An indication was given on behalf of the Respondent that it was his intention to appeal against the Tribunal's decision. The Tribunal was asked to agree to suspend the filing of its order with The Law Society so that it would not take effect until the outcome of any appeal was known. The Law Society had permitted the Respondent to continue in practice, albeit with a condition on his practising certificate that he file

half yearly Accountant's Reports, and it would not be inappropriate to allow the Respondent to continue in practice until the outcome of his appeal was known. The Respondent had entered into partnership with Ms M K and would, if required, agree that she be the sole signatory on client account for so long as was appropriate. The Respondent was prepared to give an undertaking to the Tribunal should it so wish.

52. On behalf of The Law Society it was pointed out that it had not been given advance notice of the application but it was reasonable to notify the Tribunal that a further inspection of the Respondent's books of account had been carried out and that a small shortfall on client account had been found. A question was raised about the enforceability of any conditions imposed upon the Respondent by the Tribunal or any undertaking given to it.

The Tribunal's Decision

53. The Tribunal refused to suspend the filing of its Findings and Order with The Law Society. It would not be right to expose the public to a solicitor who had been struck off where a finding of dishonesty and grave and serious failures to comply with the Solicitors Accounts Rules and other matters had been substantiated against him. The public would not be protected and the good reputation of the solicitors' profession would not be protected if the striking off order made by the Tribunal did not have immediate effect. The Tribunal pointed out that the Respondent was legally advised and would no doubt be advised of the avenues now open to him.

Dated this 28th day of March 2008
On behalf of the Tribunal

P Kempster
Chairman