

IN THE MATTER OF TASKIN AHMET IZZET AND [*SECOND RESPONDENT – NAME REDACTED*], solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr J C Chesterton (in the chair)  
Mr D Potts  
Mr S Marquez

Date of Hearing: 20th October 2008

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by David Elwyn Barton, solicitor of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX on 18<sup>th</sup> December 2007, that Taskin Ahmet Izzet ("the First Respondent") and ("the Second Respondent"), solicitors of Swift Property Solicitors, 5 Swallow Court, Swallowfields, Welwyn Garden City, Hertfordshire, AL7 1SB 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 Respondents were that:

1. Contrary to the provisions of Rule 7 of the Solicitors Accounts Rules 1998 they had failed to remedy accounts rules breaches promptly upon discovery;
2. They had failed to notify lender clients of material facts thereby compromising or impairing their duty to act in the best interests of their clients in breach of Rule 1(c) of the Solicitors Practice Rules 1990;

3. They had acted contrary to Rule 1(c) of the Solicitors Practice Rules 1990 in that they had failed to act in the best interests of their client, RO and were thereby guilty of conduct unbefitting a solicitor;
4. Contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 they had failed to act with integrity;
5. Contrary to Rule 1.06 they had acted in a way that was likely to diminish the trust the public placed in them or the profession;
6. Contrary to Rule 10.05 of the said Code they had failed to comply with undertakings;
7. Contrary to Rule 20.03 of the said Code they had failed to deal with the Authority in an open, prompt and cooperative way.

The application was heard at The Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farrington Street, London, EC4M 7NS on 20<sup>th</sup> October 2008 when David Barton appeared as the Applicant and the Respondents appeared in person and were represented by Mr Treverton-Jones of Counsel.

The evidence before the Tribunal included the admissions of the Respondents and character references.

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

The Tribunal Order that the Respondent, Taskin Ahmet Izzet of Swift Property Solicitors, 5 Swallow Court, Swallowfields, Welwyn Garden City, Hertfordshire, AL7 1SB, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he be jointly and severally liable with the Second Respondent to pay the costs of and incidental to this application and enquiry assessed in the sum of £11,400.30.

The Tribunal Order that the Second Respondent, of Swift Property Solicitors, 5 Swallow Court, Swallowfields, Welwyn Garden City, Hertfordshire, AL7 1SB, solicitor, be suspended from practice as a solicitor for the period of three years to commence on the 1st day of March 2009 and it further Orders that he be jointly and severally liable with the First Respondent to pay the costs of and incidental to this application and enquiry assessed in the sum of £11,400.30.

**The facts are set out in paragraphs 1-24 hereunder:**

1. The First Respondent, born 1976, was admitted as a solicitor in 2001.
2. The Second Respondent, born 1956, was admitted as a solicitor in 1982.
3. Both Respondents' names remain on the Roll of Solicitors and at all material times, the Respondents carried on practice in partnership under the style of Swift Property Solicitors of 5 Swallow Court, Swallowfields, Welwyn Garden City, Hertfordshire, AL7 1SB.
4. On 30<sup>th</sup> August 2006 an Investigation Officer of The Law Society commenced an inspection of the books of account and other documents of Swift Property Solicitors

in which the Respondents were partners and had practised in partnership since 31<sup>st</sup> January 2004.

5. The Investigation Officer found a cash shortage on client account of £544,154.76. This was substantially caused by two fraudulent transfers. However a surplus on client account of £43,490.78 had been in existence since September 2005 and had existed because the Respondents had not allocated the money.
6. The Investigation Officer had reviewed eleven conveyancing matters where there were significant differences between the stated price in the mortgage offer and the actual purchase price paid over to the vendor.
7. The Respondents had acted for Mr and Mrs O in their purchase of a flat at a purchase price of £272,832.93. A trainee solicitor had conduct of the matter. The clients had obtained a mortgage in which the lender had agreed to lend £260,950 based on a purchase price of £307,000. The lender subscribed to the CML Lenders Handbook.
8. The Investigation Officer found a completion statement which showed that an allowance of £33,770 had been given by the vendor against a purchase price of £307,000. There was no evidence on the client file that the lender client had been made aware of the £33,770 allowance which was contrary to the provisions contained in the CML Lenders Handbook.
9. Completion took place on 5<sup>th</sup> July 2006 with the Land Transaction Return being sent on 24<sup>th</sup> July 2006 accompanied with a client bank account cheque in the sum of £9,210 which resulted in a debit balance of £780 on the client ledger account. This was rectified on 12<sup>th</sup> September 2006 by way of an office to client bank account transfer.
10. The Respondents had been asked if they had informed the lenders of the incentives to which the Respondents indicated that the lender had been informed by the mortgage broker. They were asked how they knew that the broker was informing the mortgage lender to which they replied, “view taken that they were aware, but in the view taken of that question, yes as the firm we should have also informed the lender”.
11. The Respondents acted for a Miss M in her purchase of plot of land in the sum of £123,212. The client had obtained a mortgage and the lender in their mortgage instructions had agreed to lend £131,930 based on a purchase price of £164,950. The lender subscribed to the CML Lenders' Handbook.
12. A final account and sales invoice from the vendor showed that a discount of £41,238 had been given by the vendor against the purchase price of £164,950.
13. The Investigation Officer found no evidence on the client matter file to suggest that the lender had been made aware of the discount of £41,238 which was contrary to the instructions contained in the CML Lenders' Handbook.
14. Completion took place on 1<sup>st</sup> June 2006 and Miss M was sent the balance of the monies amounting to £6,100.20 on 2<sup>nd</sup> June 2006. The Respondents were asked why the client had been sent this money to which she was informed that they did not know

and it must have been a deal that the client had done with the developer. The Respondents confirmed that the lender had not been informed that the client was being sent this money. Subsequently the First Respondent provided an undated letter from the mortgage broker which stated, "this is to confirm that the lenders would have been aware of the incentives offered by the builder in connection with the above client's property purchases".

15. The Respondents were instructed to act on behalf of RO in connection with a remortgage of a property. The Respondents had been required in their instructions to discharge an existing mortgage with another lender. The remortgage was completed on or about 15<sup>th</sup> May 2006.
16. On 18<sup>th</sup> November 2006 Miss RO complained to The Law Society that her mortgage with the first lender had not been discharged and she had received correspondence from the lender asserting she was in breach of her mortgage conditions. This had caused her embarrassment and credit difficulties and she had written to the firm complaining and making several phone calls which had not generated a reply.
17. On 19<sup>th</sup> November 2007 the SRA wrote to the First Respondent about the matter and on 10<sup>th</sup> December 2007 the Second Respondent responded and provided reconciliation statements for the dates from which it could be seen that the payment purporting to have been debited to the ledger on 31<sup>st</sup> May 2006 featured on successive reconciliations statements as an unrepresented debit. Had a proper bank reconciliation exercise taken place, this outstanding liability would have been detected and would have revealed the mortgage had not been discharged.
18. The First Respondent was involved in a conveyancing transaction where he was the vendor of his own property. SK Solicitors acted for the purchaser. Both Respondents had participated in the conveyancing transaction at different stages.
19. The Respondent dealt with work up to and including completion and the Second Respondent became involved in December 2007 when the purchaser was unable to obtain a response from the First Respondent to correspondence and telephone calls. The Second Respondent also participated in the Authority's investigation into the complaints lodged by the purchaser but the First Respondent did not participate in the investigation at all as he did not reply to any of the letters sent to him by the Authority.
20. The transaction was completed on 21<sup>st</sup> September 2007 when the purchaser telegraphically transferred the amount required to complete. The transfer was registered on 2<sup>nd</sup> November 2007.
21. During the course of the transaction it emerged that a Deed of Gift dated 1<sup>st</sup> June 1971 was not with the title deeds and was missing. The First Respondent offered to provide the purchaser with a statutory declaration together with a missing documents indemnity policy, which the purchaser agreed to accept.
22. The draft statutory declaration submitted by the First Respondent on 17<sup>th</sup> August 2007 was accepted by the purchaser's solicitors in a letter dated 20<sup>th</sup> August 2007 and the transaction moved on to completion on 21<sup>st</sup> September 2007. The letter accepting the

draft statutory declaration specifically recorded the expectation of the receipt by the purchaser's solicitors of the indemnity policy documents.

23. By a letter dated 25<sup>th</sup> September 2007 the First Respondent stated that as soon as he received the indemnity policy, he would forward it to the purchaser's solicitors. This implied he was obtaining the policy in accordance with his agreement to do so. However, the First Respondent took no steps at all after completion to obtain the policy and did not deal with correspondence from SK Solicitors. His letter of 25<sup>th</sup> September 2007 contained an undertaking with which he had failed to comply.
24. The statutory declaration was provided to SK Solicitors on 1<sup>st</sup> May 2008, some seven months later accompanied by a cheque for the policy premium, but not by the policy documents themselves. The Respondents did not give any explanation for this. Despite receiving numerous letters from the purchaser's solicitors, the only letter sent to them from the Respondents was dated 1<sup>st</sup> February 2008 stating a statutory declaration and indemnity policy would be available during the course of the following week but nothing transpired. The letter had been written by the Second Respondent and provided a statement of assurance.

#### **The Submissions of the Applicant**

25. The Respondents had admitted all the allegations. The Applicant submitted that allegation 2 was the more serious allegation as the allowances granted to the two purchasers were significant in each of the transactions referred to.
26. Allegation 3 placed the client, RO, in a very difficult position as she was effectively paying two mortgages as the existing mortgage had not been redeemed. The Respondents had failed to reply to her letters of complaint and in their letter to the Solicitors Regulation Authority ("SRA") dated 10<sup>th</sup> December 2007, their reply was brief and there was a clear absence of reporting anything to the client.
27. Regarding allegation 6, this related to an undertaking being given by the First Respondent relating to the sale of his own property. The solicitors acting for the purchaser had tried to get compliance with the undertaking but had been unsuccessful. The Applicant submitted that the purchaser's solicitors had relied on the undertaking and had taken it as a statement of intent. An indication had clearly been given, it was relied upon, and it was asked for repeatedly. As a result of the Respondent's failure to comply, the recipient of the undertaking had been put to a great deal of inconvenience and expense as had been their client.
28. With the consent of the Respondents, the Applicant informed the Tribunal that the Respondents were due to appear before the Master of the Rolls the following day on 21<sup>st</sup> October 2008. The application to be heard before the Master of the Rolls concerned an appeal against conditions that had been imposed on the Respondents' practising certificates. The Applicant indicated that the Master of the Rolls would hear matters that were not before the Tribunal today. The Respondents indicated they were happy for the Tribunal to be informed of all issues.
29. Conditions had been placed on the Respondents practising certificates on 16<sup>th</sup> October 2007 indicating that after 30<sup>th</sup> January 2008, the Respondents could only practice in

approved employment or in an approved partnership. The Authority had declined to approve the existing partnership due to the Respondents history and the Respondents had therefore issued a petition to appeal against the decision to impose conditions on their practising certificates. The Master of the Rolls had ordered a stay on the imposition of the condition pending the hearing of the appeal on 21<sup>st</sup> October 2008.

30. The Applicant informed the Tribunal that there were a number of other matters which were also relevant.
31. The Respondents had been reprimanded on 22<sup>nd</sup> October 2007 for failure to comply with an undertaking, on 24<sup>th</sup> October 2007 for failure to comply with an undertaking, on 2<sup>nd</sup> October 2006 for the late filing of an Accountant's Report and on 25<sup>th</sup> September 2006 for failure to comply with an undertaking. In addition to these reprimands, the Respondents had appeared before the Tribunal previously on 6<sup>th</sup> July 2006 when a fine had been imposed upon them for breaches relating to the Solicitors Accounts Rules.
32. The Applicant informed the Tribunal that the Authority had seven files open against the Respondents investigating various complaints and that in view of the previous appearances and other matters where reprimands were imposed, the Authority took the view that the conditions on the practising certificate should remain.
33. The Applicant also submitted an application for costs in the sum of £11,617.68.

#### **The Submissions of the Respondents**

34. The Respondents confirmed that they admitted the allegations. They accepted that the breaches which were regulatory in nature were unsatisfactory.

#### Allegation 1

35. The Respondents said that a fraud had been perpetrated upon them by a bank employee who had paid out the sum of £592,000 from their client account without any authorisation and had in fact forged the First Respondent's signature. The Respondents became aware of the situation on 21<sup>st</sup> July 2006 and reported the matter to the SRA themselves. The bank took a long period of time sorting matters out and all but £98,000 of the money was paid back to the Respondents. The balance of £98,000 had to be paid by the Respondents themselves to rectify the shortfall and was paid on 8<sup>th</sup> March 2007. The Respondents accepted that the breaches should have been remedied promptly but as the bank was dragging its heels, the Respondents submitted that it was not their fault that things had gone wrong.

#### Allegation 2

36. The Respondents submitted there was no allegation of dishonesty or mortgage fraud. All the documents clearly showed the full purchase price rather than the discounted price and the lenders were not informed simply because the Respondents believed the mortgage broker had informed them. The Respondents submitted that this had simply been a failure to tell the lenders a matter which lenders knew generally, in that purchasers were offered discounts. The Respondents apologised for this failure and

reminded the Tribunal that the lenders own valuation in the matter of Mr and Mrs O had valued the property at £315,000, all relevant searches and enquiries were on the file, the mortgage was a 'buy to let' product and stamp duty had been paid at the full amount of the premium.

### Allegation 3

37. The Respondents admitted the problem that arose with RO concerning the discharge of an existing mortgage was purely an error and accepted it was a matter that should have been picked up on the reconciliation statements but was not. It should have been dealt with as a 'service' issue not a regulatory issue and whilst the client could have been paying two mortgages, this was not actually the case. The Respondents had agreed to pay the client £650 compensation on 26<sup>th</sup> October 2007.
38. Concerning the remaining allegations, the First Respondent accepted that he did not deal with matters as he should have done and he accepted that the blame rested with him rather than the Second Respondent. The Second Respondent was far less culpable as he had engaged with the process, he had written a number of letters and had tried to sort the matter out.
39. The Respondents submitted that they were property solicitors dealing in the sub prime market which had now collapsed. They had been doing a large number of transactions each year which meant that their attention to regulatory matters had suffered. They were now suffering substantially as their work had reduced considerably as a result of the collapse in the sub prime mortgage market and although this was bad for work, it was a good time for administration as all accounts problems had now been sorted out.
40. The Respondents accepted that there were real concerns about the background and history of their regulatory procedures. They had decided they would allow their firm to be taken over by another firm of solicitors and they were in advanced talks with that firm. The Respondents realised that the SRA were not happy with them practising as they were and accepted that if the conditions on their employment were not removed, they could not continue practising in their current partnership. The Respondents invited the Tribunal to delay implementation of any conditions in order to allow them to dispose of their practice. This would protect the public, it would mean the hearing before the Master of the Rolls the next day would be unnecessary and it would minimise any risk but still allow the Respondents to continue in practice but in a different practice as to the one that they had been practising in so far. The Respondents requested four months in order to allow them to dispose of their practice.
41. The Tribunal asked the Respondents to explain why there had been a delay in dealing with the undertaking and providing indemnity policy documents. The Respondents indicated that there was no satisfactory explanation. The documents had been requested in August 2007 and they had not been supplied until the following April/May 2008 and they could give no explanation for this.
42. The Respondents asked that costs be assessed by the Tribunal. The costs were £11,500. The Respondents submitted that the time spent on this matter was too great. The Tribunal was invited review.

43. The Applicant submitted on costs that a great deal of work had been required on this case. This involved reading significant files to decide what was relevant to today's hearing and whilst the method of presentation was straightforward, this was the product of the background work.

### **The Findings of the Tribunal**

44. The Tribunal found the allegations to have been substantiated, indeed they were not contested.

45. The Tribunal considered all of the submissions of the parties and whilst there was no dishonesty alleged, the Tribunal was mindful of the case of Bolton -v- The Law Society [1994] 1 WLR 512CA. In that case Lord Bingham said:

"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal....."

If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well."

46. The Tribunal felt that the profession had been brought into disrepute by the conduct of the Respondents. They had not made any attempt to deal with the complaint of the client, RO. Furthermore, the failure to redeem an existing mortgage should have been picked up when the client account statements were reconciled but this had not happened. Failure to notify lenders of incentives/discounts offered to purchasers was also a serious matter and it was issues like these that could cause lenders to suffer great loss although fortunately that did not appear to be the case here. The Tribunal also noted in particular that when the Respondents had previously appeared before the Tribunal on 6<sup>th</sup> July 2006, there had been similar breaches and it seemed the Respondents had not taken heed of the Tribunal's findings on that occasion.
47. Admissions had been made today and the history and record of both Respondents appeared to the Tribunal to be serially in disregard of regulatory matters. The pattern of behaviour, particularly with regard to undertakings, gave the Tribunal grave concern. Solicitors undertakings were central to practice and other parties were entitled to rely upon them and expect them to be honoured promptly and without delay. Failure to honour them was a very serious matter and a consistent failure to honour a number of undertakings was unacceptable.
48. An aggravating feature relating to allegations 4, 5, 6 and 7 was that the undertaking related to the First Respondent's own property, and he had given the undertaking himself. Even the involvement of the SRA had not prompted the First Respondent to immediately honour the undertaking and the Tribunal considered the First Respondent's conduct wholly unacceptable and regarded this as a very serious matter

indeed. It was evident that the First Respondent lacked the standard of integrity, probity and trustworthiness required of a solicitor. He had bought the profession into disrepute and had shown little regard for important regulatory requirements.

49. The Second Respondent's position was slightly different in that he had made some attempt to correspond with the SRA and investigate matters but nevertheless his attention to regulatory matters was reprehensible in relation to all other allegations being brought before the Tribunal. The Tribunal was mindful of its duty to protect the public and this was at the forefront of their minds. Both Respondents had bought the profession into disrepute. The Tribunal were mindful that the Respondents were seeking to dispose of their practice but felt the Second Respondent would be able to do this alone provided he had time to do so. The Tribunal felt that the appropriate sanction in this case was that the First Respondent should be struck off the Roll of Solicitors and the Second Respondent should be suspended from practice as a solicitor for a period of three years to commence on 1<sup>st</sup> March 2009. This would allow him enough time to dispose of the practice. The Tribunal made a further recommendation to the SRA that the Second Respondent, when free to do so, should only practise in approved employment.
50. The Tribunal assessed the costs at £11,400.30 and both Respondents were jointly and severally liable to pay these costs.

#### **Memorandum of subsequent application by First Respondent**

51. On hearing the Tribunal's decision, the First Respondent made an application for the Order to strike him off to be delayed by a month from today's date in order to allow him to dispose of his practice. The First Respondent submitted that the Second Respondent would find it very difficult to wind up the practice as a sole practitioner as many lenders would not allow a sole practitioner to remain on their panels. In the circumstances, the First Respondent asked for the strike off to be delayed by one month.
52. The Applicant submitted that it would very unusual for the Tribunal to decide to change or delay an Order to strike off a solicitor. The Applicant submitted that the circumstances must be exceptional for the Tribunal to suspend a strike off and that in any case the Second Respondent had plenty of time to take the steps required to dispose of the practice, albeit there may be some issues concerning his practising certificate and being able to dispose of the practice as a sole practitioner.
53. The Tribunal considered the application and submissions but was not minded to undermine the immediacy of the Strike Off of the First Respondent. In any event given the current climate and the economic downturn, the Second Respondent should not have any difficulty in appointing an experienced conveyancer on a fixed term contract if necessary in order to assist with the disposal of the practice to the new firm.
54. In the circumstances, the First Respondent's application was dismissed.
55. The Tribunal Ordered that the Respondent, Taskin Ahmet Izzet of Swift Property Solicitors, 5 Swallow Court, Swallowfields, Welwyn Garden City, Hertfordshire, AL7

1SB, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he be jointly and severally liable with the Second Respondent to pay the costs of and incidental to this application and enquiry assessed in the sum of £11,400.30.

56. The Tribunal Ordered that the Second Respondent, of Swift Property Solicitors, 5 Swallow Court, Swallowfields, Welwyn Garden City, Hertfordshire, AL7 1SB, solicitor, be suspended from practice as a solicitor for the period of three years to commence on the 1st day of March 2009 and they it further Ordered that he be jointly and severally liable with the First Respondent to pay the costs of and incidental to this application and enquiry assessed in the sum of £11,400.30.

Dated this 9<sup>th</sup> day of January 2009

On behalf of the Tribunal

J C Chesterton  
Chairman