No. 9908-2008

IN THE MATTER OF JAMES MICHAEL HILL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr R Nicholas (in the chair)
Mr N Pearson
Mr S Marquez

Date of Hearing: 14th July 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors' Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by Jayne Willetts, solicitor advocate and partner with Townshends LLP, solicitors of Cornwall House, 31 Lionel Street, Birmingham, B3 1AP that James Michael Hill, solicitor, might be required to answer the allegations contained in the statement that accompanied this application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that he was guilty of professional misconduct in that:

1. He failed to comply promptly or within a reasonable time with an undertaking given in writing to Wolstenholmes LLP Solicitors on 19th July 2006;

2. He failed to keep Wolstenholmes LLP informed of the reasons for the delay in complying with the said undertaking;

3. In acting in the sale of commercial property he failed to obtain a redemption statement prior to exchange of contracts and/or prior to providing an undertaking to the purchaser's solicitors and/or prior to completion in breach of Practice Rule 1(c), (d) and (e) of the Solicitors Practice Rules 1990;

4. He provided false information on a proposal form for his firm's professional indemnity insurance contrary to Rule 1(a) and 1(d) of the Solicitors Practice Rules 1990;

5. He dishonestly utilised client moneys for the purpose of making loans to others without the authority of his client in breach of Rule 1(c), (d) and (e) of the Solicitors Practice Rules 1990.

6. He dishonestly made improper withdrawals from the firm's client account in breach of Rule 22(1) of the Solicitors Accounts Rules 1998.

7. He failed to advise his clients, namely AL2 Ltd, Mr H and Mr L, to seek independent legal advice before entering into loan agreements in breach of Rule 1(c) and (e) of the Solicitors Practice Rules 1990.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 14th July 2009 when Jayne Willetts appeared as the Applicant and the Respondent did not appear and was not represented. The Applicant told the Tribunal that she had received an email from the Respondent immediately prior to the hearing.
The evidence before the Tribunal included the admission of the facts (in particular in the above mentioned email to the Applicant) but that email indicated that the Respondent denied that he had been dishonest.

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

The Tribunal Orders that the Respondent, James Michael Hill, 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 £15,000.00.

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

1. The Respondent, born in 1962, was admitted as a solicitor in 1989. From 29th July 1999 to 30th September 2007 the Respondent was a partner at Hill Jones Solicitors at Marple, Stockport, Cheshire, SK6 7AA. On 1st October 2007 the Respondent left. The firm continued as the Jones Law Partnership.

2. In 2006, Wolstenholmes LLP Solicitors acted for the purchaser of a portfolio of seven properties. Hill Jones Solicitors acted for the vendor and the Respondent had conduct of the matter. The sale price of the properties was £1,760,000.

3. On 19th July 2006 the Respondent answered requisitions on title and therein undertook to discharge the charge to Bank of Ireland on completion and to send appropriate evidence as soon as possible.

4. Contracts were exchanged on 26th May 2006. The completion date was 28th July or "earlier by agreement".

5. By letter dated 3rd November 2006 the Respondent informed Wolestenholmes that he was unable to comply with the undertaking and that the matter had been referred to his insurers.

6. By letter dated 22nd January 2007 the Respondent provided a detailed explanation to The Law Society of his failure to redeem the charges, namely his client had refinanced the properties with the Bank of Ireland the previous year. Six properties had been refinanced for £1.1m and one property for £820,000. His client had then agreed a sale of all properties for £1.7m, mistakenly believing that the loan of £820,000 related to all seven properties.

7. It was the Respondent's position that a substantial error had been made by his client, compounded by the Respondent's reliance upon the client's understanding. The Bank of Ireland had not produced redemption figures until after the transaction had been completed. He had anticipated a redemption figure in the region of £800,000 and had realised funds which should have been retained to discharge the charge. He had made attempts to resolve the matter before reporting it to his insurers in late October/early November 2006.

8. In a letter dated 12th March 2007 the Respondent said:-

> "I clearly failed to clarify the position over redemptions before giving my undertaking.... and it is hard to see how I could have allowed myself to make such an error, but I did. It seems obvious but not at the time."

He had been instructed shortly before he went on holiday.

9. In April 2007 the Respondent's insurers paid the sum required to redeem the charges and Wolstenholmes were provided with Forms DS1 discharges.

10. The initial shortfall on completion was £1,991.406. After the redemption of charges relating to four of the seven properties, the shortfall was reduced to £1,242,806.14. This was the sum paid by the Respondent's insurers to the Bank of Ireland.

11. Because of various technical problems and delays with the Land Registry, Wolstenholmes were not able to release the Respondent from the undertaking until 12th October 2007.

12. It had subsequently come to light that the sale price had been reduced by agreement to £1,685,000 and that completions would take place on a piecemeal basis as the properties were being sold on to private individuals by way of sub-sale by the purchasers.

13. A handwritten note on a fax dated 26th May 2006 stated:-

> "Bank of Ireland redemption : £820,000 plus closing costs etc".

14. The Respondent gave an undertaking on 3rd July 2006 to discharge the charges on completion and to forward DS1s. He also confirmed that the only charges were those in favour of the Bank of Ireland.

15. The client ledger recorded that completion moneys were received from Wolstenholmes LLP by telegraphic transfer in eight tranches from 19th July to 22nd August 2006 inclusive.

16. By email dated 14th August 2006 the Respondent informed his client that he had sent moneys on account to his client and asked his client to chase the Bank of Ireland for an individual property breakdown so that he could start obtaining DS1s for each of the relevant properties. He stated that his recollection was that the original loan advanced was £820,000. A handwritten note on the same email dated 18th August 2006 recorded a telephone conversation to the effect that the client believed the figure to be slightly less, around £750,000 - £780,000 as some payment had been made.

17. A redemption statement obtained on 17th August 2006 from the Bank of Ireland showed that the total moneys due to redeem the charges was £1,975,460.43.

18. On 6th September 2006 the Respondent sent £381,600 to the Bank of Ireland to redeem the charges on three properties together with DS1s for sealing. He also sent a further £367,000 to redeem the charge on a separate single property together with a DS1 for sealing.

19. The Respondent's firm's indemnity renewal form included the question:

> "After making full enquiry of all principals, members and employees in your practice, are you aware of any circumstances or claims that you have not reported to your current or any prior insurers?"

to which the answer given was "No". The Respondent signed the declaration at the end of the form confirming that the answers were true and complete. The form was dated 20th September 2006, the Respondent having been aware on 17th August 2006 (when he received a redemption statement from the Bank of Ireland) that the proceeds of sale would be insufficient to redeem the charge that was the subject of his undertaking.

20. An Investigation Officer ("the IO") of the Solicitors Regulation Authority commenced an inspection at the Jones Law Partnership on 13th May 2008. The IO's Report dated 30th September 2008 was before the Tribunal.

21. The IO's Report revealed a cash shortage in client account of £915,239. The Respondent had admitted that the cash shortage had arisen in the former partnership of Hill Jones Solicitors on client matters of which he had conduct.

22. The Respondent had acted on behalf of AL2 Ltd. Mr J was a shareholder in and director of AL2 Ltd and the Respondent was its company secretary. The Respondent acted in the sale of a development site for AL2 Ltd. The sale proceeds were £4,619,273.11 which were held in client account. The Respondent made loans from

these funds to Mr H of £275,000 (none of which was repaid) and loans to Mr L totalling £1,520,000 (of which £880,000 was repaid).

23. The Respondent admitted that there were no written agreements in respect of these loans and that his clients had not been advised by him to seek independent legal advice. He stated that Mr J had orally authorised the loan to Mr H on behalf of AL2 Ltd. Through his solicitors, Mr J had indicated that he had no knowledge of these loans.

24. The Respondent had paid £94,000 of his own funds towards the cash shortage which reduced the figure to £821,329. The firm's professional indemnity insurers had rectified the balance of the cash shortage.

The submissions of the Applicant

25. The facts and the allegations spoke for themselves. The Applicant alleged that the Respondent had been dishonest with regard to allegations 4, 5 and 6. The Tribunal was invited to regard allegations 5 and 6 as the most serious examples of misconduct.

26. The Tribunal was invited when considering the question of dishonesty to apply the two-part test in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12T. The first part of the test, namely that the Respondent's behaviour had been dishonest by the standards of reasonable and honest people had been met in that he had realised that by those standards his behaviour had been dishonest. That approach had been endorsed in the case of Bryant and Bench v The Law Society [2007] EWHC 3043 Admin in 2007.

27. Large sums of money had been lent from client account with no authority either written or otherwise. That money had in fact been held by the Respondent as a stakeholder and the client was not able to authorise its release. To use money held in his capacity as a solicitor in that way would be regarded by ordinary reasonable people as dishonest.

28. The Respondent had indicated that he had received oral confirmation that he might make loans to H but J had categorically denied that he had given such authorisation.

29. It was the Applicant's submission that an attempt had been made to conceal the destination of the funds and, indeed, the Respondent had admitted making false entries during the course of the investigation.

30. Nothing in the Respondent's recent email served to clarify the position or provide any explanation. The Respondent had not responded to a request from the SRA for an explanation.

31. With regard to the Respondent's failure to redeem the charge to the Bank of Ireland, in such circumstances a solicitor was under a high duty of care and before permitting his client to enter into a sale of properties, he must be sure that outstanding charges would be paid. The Respondent said that he made mistakes but it was the Applicant's submission that his actions had been more serious than that.

32. When the Respondent signed his firm's indemnity renewal form he was aware on 17th August 2006, when he received a redemption statement from the Bank of Ireland, that the proceeds of sale of the seven properties was insufficient to discharge the charges. Accordingly he was aware when he signed the proposal form of circumstances that gave rise to a claim and declared that he was not so aware.

The Findings of the Tribunal

33. The Tribunal found the allegations to have been substantiated, indeed they were not contested save for the allegations of dishonesty.

34. The Tribunal had taken into account the emails of the Respondent, copies of which had been provided to it at the hearing. The Tribunal noted that the Respondent had described the situation either as "mismanagement of accounts" or as mistakes. The Tribunal in considering the question of dishonesty applied the two-part test in Twinsectra v Yardley. The Tribunal found that, in using client moneys for the purpose of making loans to others without the authority of his client, and in making withdrawals from the firm's client account which were improper, and in completing a professional indemnity insurance proposal incorrectly by stating that he was aware of no potential claim, the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal did not consider that the Respondent's explanation that he had made mistakes or had perpetrated mismanagement of accounts was an acceptable answer. The Tribunal considered that it was not possible to make a loan by mistake. The Tribunal was satisfied that the Respondent did not have an honest belief that he had authority to make the loans that he did or to utilise the client moneys as he had. It was further satisfied that he did not have an honest belief at the time of making his declaration in completing his indemnity insurance proposal that there was no potential claim, and therefore that he knew that what he was doing was dishonest by those same standards.

35. The Respondent had been guilty of appalling conduct and had been dishonest. In order to protect the public and the good reputation of the solicitor's profession the Tribunal found that it was both appropriate and proportionate to Order that he be struck off the Roll of Solicitors. The Respondent had indicated that he had agreed the costs with the Applicant so far as he was able to do so. The Tribunal considered the schedule of costs provided to it by the Applicant, a copy of which had been supplied to the Respondent, and decided that it would summarily fix the costs in the sum of £15,000 having taken into account the notification of the Respondent's bankruptcy and his inability to practise as a result of the Tribunal's Order. The Respondent was Ordered to pay the Applicant's costs in the sum of £15,000.

Dated this 3rd day of December 2009
On behalf of the Tribunal

R Nicholas
Chairman