

IN THE MATTER OF DUDLEY RICHARD OWEN-THOMAS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mr W M Hartley
Mr S Marquez

Date of Hearing: 4th February 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 by Michael Robin Havard, solicitor and partner in the firm of Morgan Cole Solicitors, of Bradley Court, Park Place, Cardiff, CF10 3DP on 25th March 2008 that Dudley Richard Owen-Thomas of Walton Street, London, solicitor 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 Respondent were that:-

- (1) he acted in a way which was likely to compromise or impair his independence and/or integrity contrary to Rule 1(a) of the Solicitors Practice Rules 1990;
- (2) he acted in a way which compromised and impaired his duty to act in the best interests of his clients contrary to Rule 1(c) of the Solicitors Practice Rules 1990;
- (3) he acted in a way which was likely to compromise or impair his own good repute and that of the solicitors' profession contrary to Rule 1(d) of the Solicitors Practice Rules 1990;

- (4) he acted improperly in a conflict of interest situation;
- (5) he appropriated client monies from client account for his own use without ensuring that the client sought independent legal advice and/or where the funds were unsecured;
- (6) he failed to hold client monies in client account contrary to Rule 15(1) of the Solicitors Accounts Rule 1998;
- (7) he withdrew money from client accounts otherwise than permitted by Rule 22(1) of the Solicitors Accounts Rule 1998;
- (8) he failed to give clients information about costs and other matters in accordance with the Solicitors Costs Information and Client Care Code 1999 contrary to Rule 15 of the Solicitors Practice Rules 1990;
- (9) he overcharged a client for work undertaken as Co-Attorney and in the administration of a client's estate;
- (10) he acted dishonestly;

The Application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 4th February 2009, when Michael Robin Havard appeared as the Applicant and the Respondent did not appear and was not represented.

The Tribunal had before it a letter dated 30th January 2009 together with an attached Regulatory Settlement Agreement and a letter dated 4th February 2009 sent by fax to the Tribunal from Radcliffes Le Brasseur Solicitors who represented the Respondent. In the faxed letter dated 4th February 2009, the Respondent's solicitors confirmed the Respondent admitted the charges against him, other than dishonesty. The Respondent's solicitors also confirmed that the Applicant's costs had been agreed in the sum of £16,750, together with an interim payment of £2,500 towards such costs, to be made within 28 days.

At the commencement of the hearing, the Applicant confirmed the appropriate Civil Evidence Act notices had been properly served on the Respondent with no counter notice in response and indeed, correspondence had taken place between the Applicant and the Respondent's solicitors, Radcliffes Le Brasseur.

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

The Tribunal Orders that the Respondent, Dudley Richard Owen-Thomas of Walton Street, London, 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 £16,750.00. An interim payment of £2,500 towards such costs is to be made within 28 days.

The facts are set out in paragraphs 1 – 8 hereunder:

1. The Respondent, born in 1948, was admitted to the Roll of Solicitors on 1st August 1979. At the material time, the Respondent practised on his own account under the style of Owen-Thomas Solicitors, of 1 Green Street, London, W1K 6RG. On 30th May

2006, Mr Zair Akram, an Investigation Officer (“IO”) from the SRA, attended the offices of the Respondent’s firm in order to carry out an inspection. His Forensic Investigation Report dated 22nd February 2007 was before the Tribunal. The Applicant sought to rely upon the Report in support of the allegations made against the Respondent. A number of matters were raised in the Report, details of which were provided to the Tribunal.

2. The Respondent acted as co-attorney with Mrs R under an Enduring Power of Attorney executed by Mrs B on 12th February 2002. For all intents and purposes, the Respondent took responsibility for managing Mrs B’s affairs.
3. On 7th October 2004, Mrs B died and the Respondent, being the sole executor in her Will, acted in the probate and administration of Mrs B’s estate. A review of Mrs B’s client account ledger revealed two payments made for the benefit of the Respondent personally:-

1 st March 2004	£213,749.49
17 th September 2004	£171,232.88
Total	£384,982.37

The Respondent used the first sum (£213,749.49) to pay a personal tax liability. The second payment was used in relation to a transaction concerning a Spanish property in which the Respondent was involved.

4. In order to repay the sums appropriated from Mrs B’s account in the sum of £171,232.88, the Respondent transferred the sum of £175,000 from the client ledger account in the name of Dr LW to Mrs B’s account. The Respondent maintained that Dr LW was his father-in-law and had readily agreed to make the personal loan to the Respondent to enable him to repay the moneys improperly used from Mrs B’s account. The Respondent also argued that Dr LW was not at the material time a client. Dr LW died on 26th December 2006 and an e-mail from the solicitor acting on behalf of the estate showed that a sum in excess of £100,000, which was unsecured, remained outstanding.
5. The Respondent acted for a Mr T in relation to an employment matter. On 26th September 2005, a client account payment of £5,000 was made to the Inland Revenue from Mr T’s account. It was a personal payment to meet a tax liability of the Respondent.
6. The Respondent advised the IO that the Respondent had rendered a bill for £10,000 to Mr T but there was no evidence of this on the file. More particularly, when Mr T was asked for his understanding of the position, he stated that he had only received one bill of costs which totalled £2,000. He stated he was totally unaware of any bill for £10,000 or that £5,000 of that sum would be utilised to pay the Inland Revenue in respect of the Respondent’s personal tax liability.
7. On 27th November 2003, the Respondent made two transfers totalling £66,015 from Mrs B’s account, transferring £50,015 and £16,000 to the client ledger accounts of

two other clients, CR and GL respectively. The client ledger accounts of CR and GL both showed debit balances which were rectified by transfers from Mrs B's ledger account. Some seven months later on 9th July 2004, a sum of £68,500 was transferred back to the client account of Mrs B from a client ledger account in the name of SW.

8. As already indicated, the Respondent acted as sole executor in the probate and administration of Mrs B's estate. A Report from an independent Costs Draftsman dated 3rd November 2006 supported the allegation that the Respondent overcharged Mrs B, and subsequently her estate, for the work undertaken to the extent that the Costs Draftsman concluded that the firm's charges were nearly twice the maximum reasonable amount.

The Submissions of the Applicant

9. The Respondent was not attending but had indicated, through his solicitors, that he admitted all the allegations save the allegation of dishonesty.
10. The Applicant referred the Tribunal to the Regulatory Settlement Agreement which had been prepared by the Respondent's solicitors and sent to the Applicant with a view to disposing of the matter. The Applicant indicated that he did not consider it was appropriate to settle this case under the terms of the Regulatory Settlement Agreement, particularly given the seriousness of the allegations.
11. The Applicant indicated that the allegations fell broadly into three categories:
 - (a) improperly utilising client moneys for his own benefit;
 - (b) transferring moneys from client account to office account in respect of costs when he was not permitted to do so;
 - (c) substantially overcharging a client for work undertaken.
12. The Applicant submitted that whilst the Respondent acted as Co-Attorney with Mrs R under an Enduring Power of Attorney executed by Mrs B on 12th February 2002, the Respondent had admitted in his response to the Solicitors Regulation Authority dated 10th April 2007 that he had known Mr and Mrs R for over thirty years, they were clients as well as close friends. However, there was no suggestion in the Respondent's response that he knew Mrs B well or vice versa. The Applicant pointed out that when the payments had been made from Mrs B's client account ledger in the total sum of £384,982.37, Mrs B had still been alive at that time and indeed, died shortly after the second payment was made.
13. The Applicant referred the Tribunal to an interview between the Respondent and the IO and in particular, the fact that the Respondent claimed he had permission from Mrs R, the Co-Attorney, to borrow this money from Mrs B. The Respondent accepted, in hindsight, that there had been a conflict of interest in him borrowing the money and that he wouldn't do it again. The Respondent confirmed that the loan had not been secured on anything, there had been no written agreement and there was nothing on the file like attendance notes to record conversations, or letters regarding the loans. The Respondent had repaid the money with interest. However, the Applicant

submitted that on any definition the payments could not be described as loans as no security had been provided in relation to either sum.

14. The Respondent had claimed that the sum of £171,232.88 taken from Mrs B's client account had been used to pay off a mortgage the Respondent had on a Spanish property he had purchased. Whilst the Respondent asserted that the sum was guaranteed by a legal charge over the Spanish property, the Applicant submitted that there was no such legal charge in Mrs B's name.
15. Furthermore, when the IO had interviewed Mrs R, the Co-Attorney about the incident, Mrs R stated in interview that she was surprised about the amount of sums that had been taken while Mrs B was still alive. Mrs R had thought there had been three loans from Mrs B's ledger and was surprised to be told there were four loans, three taken out while Mrs B was alive and one after she had died. Mrs R had thought the amount of the loans was £66,000 and had been surprised to learn the extent of the loans. She had not been informed that the money would be used for a tax payment although she was aware that the loans were for a property in Spain. Mrs R confirmed that during Mrs B's life, Mrs R had not received any bills of costs and indeed, Mrs R stated "he didn't want me to see you today and I hope I haven't got him in trouble".
16. The Applicant submitted that it was very clear Mrs R had no idea of the extent of the amount of money taken by the Respondent. The Respondent had indicated in his response to the SRA dated 10th April 2007 that he intended to obtain a statement from Mrs R which would be submitted in evidence in due course. The Respondent had not submitted any such statement despite the fact that he had had plenty of time to deal with this.
17. In relation to the matter of Dr LW, the Applicant submitted that Dr LW was a client of the firm, despite the Respondent claiming he was not and this could be proved by the fact that there was client account ledger in Mr DW's name. This showed that he was a client of the firm and money had gone into client account. The Applicant submitted, particularly in relation to a family member, the Respondent should have ensured Dr LW sought independent advice. The Applicant referred the Tribunal to an e-mail from Dr LW's solicitors which confirmed that a sum in excess of £100,000 which was unsecured remained outstanding and had not been paid.
18. The Applicant alleged dishonesty on the part of the Respondent in relation to each individual client matter and also collectively. The Applicant submitted that the Tribunal should consider whether, when the Respondent obtained money from Dr LW, he had any real intention to repay the money. The Applicant submitted that the history of the case indicated that the Respondent had no real prospect of repaying this money. At no time in any of the cases had the Respondent suggested the client should take independent legal advice and nor had any security been given for the moneys taken. The Respondent appeared to be claiming that as long as he had repaid the money with interest, which he had done with some of the money, this would legitimise what he had done. The Applicant submitted that repayment of the moneys with interest did not legitimise the Respondent's actions and that there had been clear dishonesty as the evidence showed that moneys had been withdrawn and that clients were unaware of the level of withdrawals. Consequently, the Applicant submitted that the withdrawals were without the clients' consent and the sums had been improperly

utilised. Finally, in relation to the matter of overcharging, the Respondent had charged a fee of £42,626.50 for work relating to acting in the probate and administration of an estate, and the sale of a property. The independent Law Costs Draftsman had concluded these charges were nearly twice the amount that would be considered reasonable. Furthermore, no cost information had been given either to the client or the Co-Attorney and there is no evidence that the client's or the Co-Attorney's approval was sought or given. The Applicant submitted this was evidence of a serious overcharging of fees to a vulnerable client.

19. The Applicant referred the Tribunal to the test of dishonesty contained in the case of Twinsectra v Yardley (2002) UKHL 12 which stated that the Tribunal had to consider whether the Respondent's conduct had been dishonest by the ordinary standards of reasonable and honest people and further, whether the Respondent himself had realised that by those standards his conduct was dishonest.
20. The Applicant indicated that he wished to pursue an application for his costs and that these had been agreed with the Respondent, as confirmed in the letter from the Respondent's solicitors dated 4th February 2009 in the sum of £16,750, with an interim payment of £2,500 to be made within 28 days.

The Findings of the Tribunal

21. The Tribunal considered very carefully the documentation and the submissions of the Applicant together with the documents provided by the Respondent's solicitors, Radcliffes Le Brasseur. The Respondent had admitted all the allegations save the allegation of dishonesty. Having considered all the documentation available and the submissions of the Applicant, the Tribunal were satisfied that all the allegations had been substantiated including the allegation of dishonesty. The Tribunal were satisfied that the Respondent had acted dishonestly in relation to each individual client and also in his general pattern of conduct overall.
22. The Respondent, being appointed as Co-Attorney for Mrs B had been in a privileged position and both Mrs B and Mrs R had trusted him. By taking the sum of £384,982.37 from Mrs B's estate for payment of his own personal tax liability, and payment for a transaction concerning a Spanish property in which the Respondent was involved, the Respondent had abused that trust. By failing to inform Mrs R the Co-Attorney (and Mrs B prior to her death) of the precise amounts involved and failing to inform them that some of the moneys would be used to pay a personal tax liability, the Respondent had acted dishonestly. Any reasonable and honest person would regard this behaviour as dishonest.
23. When interviewed by the IO, the Respondent accepted with hindsight that he would not act in such a way again. The Tribunal were satisfied the second part of the Twinsectra test was established in that the Respondent knew his behaviour was dishonest.
24. In relation to Dr LW the Respondent had claimed Dr LW was not at the material time a client, yet the investigation had revealed Dr LW was a client, with a client ledger and the sum of £175,000 transferred from Dr LW to Mrs B's account had been taken from Dr LW's client account. Again the Tribunal were satisfied that the test of

dishonesty was established both objectively and subjectively, given that the Respondent had not been truthful with the IO during interview.

25. The Respondent had not been honest and forthright with his clients as to the amount of the payments taken from their accounts or the purpose for which they were to be used and, in relation to the matter of Dr LW, the moneys were still outstanding and had not been repaid. The payment of £5,000 from Mr T's client account to the Inland Revenue for the Respondent's personal tax liability was another example of the Respondent's dishonesty. He had claimed Mr T owed £10,000 under a bill rendered, but there was no evidence of this on the file and Mr T himself had only ever received one bill in the sum of £2,000 and was completely unaware of any payment to the Inland Revenue. Furthermore, charging fees which were nearly twice the maximum reasonable amount to the estate of a deceased person for whom the Respondent had been in a position of trust as Sole Executor, and by not sending any bills of costs to his Co-Attorney Mrs R, the Respondent had blatantly taken advantage of his privileged position. He had taken moneys from the estate that were not properly due and by failing to inform his Co-Attorney of the amounts involved, particularly as the costs appeared to be substantially higher than they should have been, he had acted dishonestly. The Tribunal had unanimously determined that the Respondent had acted dishonestly in respect of each client and in his general pattern of conduct.
26. The Tribunal felt that the Respondent's conduct was disgraceful and were satisfied that it had been entirely correct for the Applicant to persist with this application and to decline to enter into the Regulatory Settlement Agreement, which was clearly a vehicle which the Respondent had tried to use to allow him to exit these proceedings via the backdoor and thereby avoid an order striking him off the Roll. The Tribunal entirely endorsed the approach of the SRA in refusing to enter into the Regulatory Settlement Agreement proposed by the Respondent.
27. It was clear to the Tribunal that this was a case where there had been a blatant abuse by the Respondent of the trust placed upon him by clients and it was completely unacceptable that he should use clients' funds in the ways that he had done. There had been a complete disregard of the clients' best interests and the Respondent had blatantly abused his position to his own advantage. The public were entitled to trust solicitors and expect their money would be safeguarded and protected whilst in the solicitor's care. Clients should be able to have confidence in knowing that their money was being properly handled by solicitors. The Respondent's behaviour had damaged the reputation of the profession in the eyes of his clients and the public and it was right that he should no longer be a member of the profession.
28. The Tribunal unanimously decided that the appropriate sanction in this case was that the Respondent should be Struck Off. The Tribunal appreciated the way in which the case had been presented and the immaculate paper work which had enabled the Tribunal to read the documents and grasp the facts of the case very easily, which did not always happen. The IO, Mr Zair Akram, had flushed out considerable wrongdoing and was to be congratulated on the manner in which he had dealt with this case.
29. The Tribunal Ordered that the respondent, Dudley Richard Owen-Thomas of Walton Street, London, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the

sum of £16,750.00. An interim payment of £2,500 towards such costs is to be made within 28 days.

Dated this 20th day of May 2009
On behalf of the Tribunal

A H B Holmes
Chairman