

IN THE MATTER OF HOSSEIN GHARAIE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss T Cullen (in the chair)

Mr K W Duncan

Lady Bonham Carter

Date of Hearing: 25th June 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 ("the SRA") by Jayne Willetts, solicitor advocate and partner of Townshends LLP, Cornwall House, 31 Lionel Street, Birmingham, B3 1AP on 7th May 2008 that Hossein Gharai of Jones Gray & Co of 402 Edgeware Road, London, W2 1ED, solicitor, 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.

In the Applicant's supplementary statement referred to below the Applicant sought an Order that the direction of the Adjudicator of the SRA dated 18th June 2008 be treated for the purposes of enforcement as if it were contained in an Order made by the High Court pursuant to paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.

On 24th November 2008 and on 23rd February 2009 the Applicant made supplementary statements containing further allegations.

The allegations set out below are those contained in the originating and two supplementary statements.

The allegations against the Respondent were that he:

1. Failed to discharge the fees of a professional agent;
2. Failed to comply with an Order of the Court;
3. Failed to deal with the SRA in an open, prompt and cooperative manner in breach of Rule 20.03 of the Solicitors Code of Conduct 2007;
4. Continued practice as a solicitor in breach of conditions imposed upon his practising certificate for the year 2006/2007 contrary to Rule 1 of the Solicitors Practice Rules 1990 and Rule 1 of the Solicitors Code of Conduct;
5. Carried on practice as a solicitor on his own account without indemnity insurance cover from 1st October 2007 to 19th November 2007 contrary to Rule 4 of the Solicitors Indemnity Insurance Rules 2007;
6. Failed to pay to the Assigned Risks Pool Manager the Assigned Risks Pool premium for the period 1st October to 18th November 2007 within thirty days contrary to Rule 10.12 of the Solicitors Indemnity Insurance Rules 2007;
7. Failed to keep client ledgers properly written up in breach of Rule 32(2) of the Solicitors Accounts Rules 1998 ("SAR 1998");
8. Failed to carry out proper reconciliations of client account in breach of Rule 32(7) of the SAR 1998;
9. Failed to produce his accounting records for inspection in breach of Rule 34 of the SAR 1998;
10. Failed to comply with instructions from a client, Mortgagees PLC and thereby failed to act in its best interests contrary to Rule 1.04 of the Solicitors Code of Conduct 2007;
11. Failed to deliver to the Solicitors Regulation Authority by 30th September 2007 the Accountant's Report ("the Report") for Jones Gray & Co Solicitors for the year ending 31st March 2007 contrary to s.34 of the Solicitors Act 1974 and Rule 35 of the SAR 1998;
12. Failed to comply with the direction of an Adjudicator dated 18th June 2008 made pursuant to Schedule 1A of the Solicitors Act 1974 contrary to Rule 1.06 of the Solicitors Code of Conduct 2007;
13. Failed to deal with the Legal Complaints Service in an open, prompt and cooperative way in regard to a complaint of inadequate professional service by Mr N contrary to Rule 20.03 of the Solicitors Code of Conduct 2007;
14. Practised, or held himself out to practise, as a solicitor without holding a current practising certificate contrary to s.1(c) of the Solicitors Act 1974 and Rule 20 of the Solicitors Code of Conduct 2007.

15. Failed to deal with the Solicitors Regulation Authority in an open, prompt and cooperative way contrary to Rule 20.03 of the Solicitors Code of Conduct.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farrington Street, London, EC4M 7NS on 25th June 2009 when Jayne Willetts appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal

The evidence before the Tribunal included the Applicant's evidence as to due service of all of the relevant documents upon the Respondent which included notices to admit under the Tribunal's Rules of Procedure and Civil Evidence Act Notices to which no counternotice had been received.

The Tribunal expressed itself to be satisfied as to due service and having found that the Respondent had deliberately absented himself from the proceedings Ordered that the substantive hearing proceed in his absence.

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

The Tribunal Orders that the Respondent, Hossein Gharai of Jones Gray & Co, 402 Edgware Road, London, W2 1ED, 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 £17,106.08.

The Tribunal did not produce the written Order below at the conclusion of the hearing and its formal Order is set out below.

The Tribunal further Orders that the Respondent do make payments totalling £1,590 to his client, Mr H, and that he waive any costs other than those already paid be treated for the purposes of enforcement as if the Adjudicator's direction was an Order of the High Court.

The facts are set out in paragraphs 1-23 hereunder:

1. The Respondent, born in 1948, was admitted as a solicitor in 2000 and his name remained on the Roll.
2. At the material times he practised on his own account as Jones Gray & Co, Solicitors at 402 Edgware Road, London, W2 1ED. The Law Society intervened into the Respondent's practice on 24th July 2008.
3. By letter of 1st November 2007 Mr C complained to the Solicitors Regulation Authority ("the SRA") that the Respondent had not paid his fees for preparing a report as an expert provided to the Respondent's firm in January 2006. Mr C had delivered an invoice, had instructed a debt recovery firm and ultimately had obtained judgment against the Respondent in August 2007. The debt remained outstanding.
4. Gordons LLP, acting on behalf of the SRA, wrote to the Respondent about his failure to pay Mr C in December 2007, January and February 2008. The Respondent did not reply.

5. Following an Adjudicator's decision to refer the Respondent to the Tribunal in March, by letters dated 14th April 2008 the Disciplinary Proceedings Officer wrote to the Respondent at his business and home addresses suggesting that it might be possible to avoid further disciplinary action if he immediately settled his debt to Mr C. There was no response.
6. A Forensic Investigation Officer of the SRA ("the FIO") commenced an inspection of the Respondent's practice on 22nd January 2008. The FIO's Report dated 22nd January 2008 was before the Tribunal.
7. On 28th June 2007 an Adjudicator imposed a condition of approved employment or partnership upon the Respondent's practising certificate together with a requirement to notify any proposed employer of such condition. The conditions were to take effect within two months of the date of the letter notifying him of this decision, namely 3rd July 2007. The Respondent's appeal against the decision was unsuccessful.
8. The Respondent had made a number of attempts to comply with the practising certificate conditions but the SRA did not approve any proposed arrangement. The Respondent continued to practise without compliance with the conditions.
9. The Respondent had not been entitled to practise as a solicitor since 6th September 2007 and he ceased to practise upon The Law Society's intervention.
10. The Respondent's professional indemnity insurance commenced on 19th November 2007. The Respondent had despatched the proposal form to the insurers but there had been a delay so that he was practising without insurance from 1st October 2007 to 19th November 2007.
11. The manager of the Assigned Risks Pool had not received the Respondent's Assigned Risks premium for the period 1st October to 18th November 2007 which was due to have been paid by 10th December 2007. The premium remained outstanding. The Respondent did not respond to a letter of 6th August 2008 from the SRA about this matter.
12. The most recent client account bank reconciliation had been completed in March 2006 by the Respondent's accountants. The Respondent had been in dispute with his accountants regarding unpaid fees. The firm maintained client ledger accounts, some of which were handwritten, but they had not been updated and did not show the current position at the date of the FIO's inspection.
13. The Respondent agreed to update his accounting records by 28th January 2008 and to report to the FIO but he did not do so.
14. The Respondent acted on his own behalf in the re-mortgage of his own property. The standing instructions of his mortgagee, Mortgages PLC, did not permit the Respondent's firm to act in such circumstances.
15. The Respondent had failed to lodge an Accountant's Report for his firm for the year ending 31st March 2007. It was due by 30th September 2007 and it remained outstanding.

16. The SRA wrote to the Respondent on 15th April 2008. A Report prepared for an Adjudicator was sent to the Respondent on 17th June 2008. He made a detailed response by letter dated 25th June 2008 in which he maintained that he had complied with the conditions on his practising certificate but he went on to say that his failure to have indemnity insurance arose when his insurers failed to implement the same. At first his insurers indicated that there had been a mistake on their part but later they said that the last two pages of the proposal form had not been received in the fax the Respondent had sent to them. It had been the Respondent's position that as his insurers had made a mistake they should be responsible for rectification or payment of the premium to the Assigned Risks Pool. The Respondent indicated that he would be prepared to pay the Assigned Risks Pool's premium if the SRA indicated that he should do so. With regard to his failure to file an Accountant's Report he had had a dispute with his accountants because of their unacceptably high level of fees. They would not deliver an Accountant's Report while fees were outstanding. The Respondent said that before 15th July 2008 the outstanding Accountant's Reports would be delivered. He went on to confirm that the bank reconciliation statements had been largely completed and client's ledgers had been updated.
17. On 18th June 2008 an Adjudicator found that the services provided by the Respondent's firm to its client, Mr H, were inadequate and the following directions were made (to be complied with within seven days):
 - (a) payment of £500 for her new solicitor's fees and a further £499 on production of evidence of payment of this sum;
 - (b) compensation for distress and inconvenience of £650;
 - (c) waiver of any costs other than those already paid.
18. On 23rd June 2008 a copy of the decision was sent to the Respondent. He was required to send a cheque for £1,590 within seven days (by 30th June 2008). No response was received. The payment remained outstanding.
19. As the result of the intervention into the Respondent's firm, the Respondent was suspended from practice from 28th July 2008.
20. Correspondence was received from SD Rosser & Co Solicitors of Willesden indicating that the Respondent had represented Mrs E in a property transaction while he was suspended.
21. A partner at SD Rosser & Co had confirmed that he had spoken to the Respondent by telephone on 9th October 2008 when the Respondent had admitted that he had been suspended from practice as a solicitor and claimed that he was completing seven outstanding cases.
22. By letter dated 10th December 2008 the SRA asked the Respondent to provide his explanation. The Respondent contacted the SRA by telephone on 16th December 2008 and stated that he had received the letter dated 10th December but not a copy of his letter to which SD Rosser & Co had made reference.

23. A further copy of that letter was sent to the Respondent on 18th December 2008 and he was granted an extension of time to provide an explanation to 2nd January 2009. No response was received, nor was there a response to a reminder letter sent to the Respondent on 8th January 2009.

The Submissions of the Applicant

24. The Tribunal noted that the Respondent appeared to have qualified somewhat later in life than usual. It was accepted that the Respondent had attempted to comply with conditions placed on his practising certificate but had failed to do so. It was further recognised that he had suffered difficulties with putting indemnity insurance in place.
25. Fifteen allegations had been made against the Respondent which indicated a catalogue of default on his part. He had failed to cooperate with his own professional regulator and had demonstrated a blatant disregard for that regulator. The Tribunal was invited to take the view that the allegations had been substantiated and represented a serious case against the Respondent.
26. The Applicant sought the costs of and incidental to the application and enquiry in the figure of £17,106.08. She explained the breakdown between legal costs and the costs incurred by the SRA.

The Findings of the Tribunal

27. The Tribunal found all of the allegations to have been substantiated.

Previous matter

28. Following a hearing on 8th November 2007 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations had, on that occasion, been that the Respondent had been guilty of conduct unbecoming a solicitor in that:
- 1 & 2. Withdrawn
 - 1a. [new allegation substituted for original allegations 1 and 2]. The Respondent failed to reply to correspondence from a professional agent regarding fees.
 3. The Respondent failed to respond promptly and substantively to correspondence from The Law Society.
 4. He allowed the name of his firm Jones Gray & Co to be placed on the Bar Council's Withdrawal of Credit Scheme List on 11th August 2006 on grounds of non-payment of Counsels' fees.
 5. He failed to reply promptly and substantively to correspondence from the Solicitors Regulation Authority in respect of a complaint by his former client, Mrs O.

6. He failed to deliver to The Law Society by 30th September 2006 the Accountant's Report ("the Report") for Jones Gray & Co Solicitors for the period ending 31st March 2006 contrary to Section 34 of the Solicitors Act 1974 and to Rule 35 of the Solicitors Accounts Rules 1998.
 7. He practised uncertificated between 5th January 2007 and 28th June 2007.
 8. He used headed notepaper for his firm Jones Gray & Co that was inaccurate and misleading contrary to section 1(c) of the Solicitors Publicity Code 2001.
29. In its written Findings dated 11th January 2008 the Tribunal said:
- "54. The allegations substantiated against the Respondent represented a range of misconduct. The Tribunal takes a very serious view of a solicitor who fails to respond to correspondence addressed to him by his own professional regulator. Such a failure prevents the regulator from fulfilling its duties to the public and causes the regulator to expend time and money that might well be better spent on other matters.
 55. The prompt filing of an Accountant's Report is an important element of practice as this enables The Law Society to confirm to members of the public that placing money with a firm of solicitors is not likely to mean that such money will be placed in jeopardy. It seriously damages the good reputation of the solicitors' profession if The Law Society is put in a position where it cannot properly give that assurance.
 56. A solicitor is required to hold a current Practising Certificate when he wishes to practise and thereby provide legal services. The Respondent adopted an unsatisfactory lackadaisical approach to his application for a Practising Certificate and did not take prompt steps to ensure the renewal of his Practising Certificate. The Tribunal considered it somewhat disingenuous of the Respondent to claim that he relied upon assurances by two members of staff at The Law Society that he might continue to practise while his application was under consideration. It must have been self evident to the Respondent that he was not certificated when he had been notified by The Law Society that his then current Practising Certificate had been terminated and assurances given to him by members of staff at The Law Society could only be of any value if they had full and detailed information about the Respondent's situation.
 57. It clearly was a matter of considerable inconvenience to the surveyors who found it necessary to sue for their fees. Had the Respondent taken the trouble to reply to their letters, he would no doubt have explained to them, as he explained to the Tribunal, that the property had not been sold and there were no proceeds of sale from which the fees were to be paid.

58. The Tribunal accepted the Respondent's explanation that he had written to The Law Society in response to matters raised by its monitoring unit. It was noteworthy, however, that the reply was very far from prompt and had been written only after The Law Society had had to issue a number of reminders to the Respondent.
59. The failure to pay Counsel instructed by him serves seriously to damage the good reputation of the Respondent and of the solicitors' profession. Counsel are entitled to expect solicitors from whom they receive instructions to meet their proper charges.
60. The Respondent's use of a professional letterhead which indicated that there were other solicitors at the firm in addition to himself was symptomatic of his failures to recognise that it was necessary to get things right. Whilst it might be acceptable to use the letterhead with the names of those no longer involved with the firm crossed out, it most certainly was not right to omit those deletions on any occasion.
61. Because of the Respondent's failures and his apparent attitude to important duties and obligations relating to his practice as a solicitor the Tribunal had given very careful thought to interfering with his ability to practise.
62. The Tribunal took into account the Respondent's explanations and the fact that he had to some extent put matters right. As a result the Tribunal concluded that the seriousness with which it regarded the Respondent's overall course of conduct could be met with the imposition of a substantial fine which would be both proportionate and appropriate. The Tribunal ordered the Respondent to pay a fine of £12,000.00. It was also appropriate and proportionate that the Respondent pays the Applicant's costs. The Tribunal considered the costs sought by the Applicant to be reasonable and it ordered the Respondent to pay those costs fixed in the sum sought. The Tribunal wish to make it very clear to the Respondent that should he appear before it on another occasion and have similar allegations substantiated against him he might not expect the Tribunal to take such a lenient stand."

The Tribunal's sanction and its reasons

30. The Tribunal was dismayed to learn that the allegations substantiated against the Respondent in 2009 to a considerable degree reflected the allegations substantiated against him in 2007. The Respondent appeared to have ignored the lesson inherent in the Tribunal's Findings of 11th January 2008, in particular when it said the Respondent had not complied with decisions made by his professional regulator and had not replied to communications addressed to him by his regulator. He had been guilty of a number of breaches of regulatory requirements that were important and in place to protect clients.

31. The Tribunal took a particularly serious view of the Respondent acting on his own behalf in a conveyancing transaction in direct contravention of the lender's instructions.
32. The Tribunal noted that The Law Society had intervened into the Respondent's practice and considered this to have been an entirely appropriate step.
33. The Tribunal found the Respondent's complete disregard for important regulatory and other requirements to be wholly unacceptable and in order to fulfil its duties of protecting the public and maintaining the good reputation of the solicitor's profession, the Tribunal Ordered that the Respondent be struck off the Roll of Solicitors.
34. The Tribunal gave careful consideration to the costs sought by the Applicant. Having considered the schedule of costs and the Applicant's explanation of them, the Tribunal took the view that it was not only right in principle that the Respondent should pay the Applicant's costs but that the sum sought should be reasonable in all the circumstances. The Tribunal therefore Ordered the Respondent to pay the Applicant's costs fixed in the sum of £17,106.08.

Dated this 10th day of August 2009
On behalf of the Tribunal

Miss T Cullen
Chairman