

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10590-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NEIL BROMLEY

Respondent

Before:

Mrs K. Todner (in the chair)

Mrs E. Stanley

Mr M. R. Hallam

Date of Hearing: 27th April 2011

Appearances

Stephen Battersby, solicitor (Jameson & Hill of 72/74 Fore Street, Hertford, Herts SG14 1BY) for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Applicant applied for an Order under s.43(2) of the Solicitors Act 1974 (as amended) in the following terms:
 - 1.1 no solicitor shall employ or remunerate in connection with his practice as a solicitor;
 - 1.2 no employee of a solicitor shall employ or remunerate in connection with the solicitor's practice;
 - 1.3 no recognised body shall employ or remunerate;
 - 1.4 no manager or employee of a recognised body shall employ or remunerate in connection with the business of that body.

Neil Bromley of 49 Piccadilly, Tamworth, B78 2ER except in accordance with The Law Society's permission:

- 1.5 no recognised body or manager or employee of such a body shall, except in accordance with The Law Society's permission, permit Neil Bromley to have an interest in the body.
- 1.6 such other Order may be made as the Tribunal should think right.
2. The conduct complained of on the Respondent's part was that, whilst employed by Rutherfords Solicitors ("RS") of Tamworth he:
 - 2.1 misappropriated clients' funds;
 - 2.2 delayed in paying funds received from clients into the relevant account held by the firm;
 - 2.3 issued unofficial receipts to clients;
 - 2.4 received monies in settlement of invoices and did not account to the firm for these;
 - 2.5 caused client disbursements to be paid from an unknown source of funds without being recorded in the firm's accounting records.
 - 2.6 dealt with client matters without causing them to be entered in the firm's records;
 - 2.7 acted dishonestly, without integrity and with a lack of good faith towards his employers.

Documents

3. The Tribunal reviewed all the documents submitted which included:

Applicant:

- Application dated 6 August 2010;

- Rule 8 Statement with Exhibit dated 6 August 2010;
- Statement of Costs for the hearing on 27 April 2011;
- Extract from the "Tamworth Herald" dated 24 March 2011.

Respondent:

The Respondent did not submit any documents in this matter.

Preliminary Matter

4. In the Respondent's absence, the Tribunal was addressed on the issue of service of the proceedings. Mr Battersby told the Tribunal that the Respondent had not engaged in any correspondence or contact with him or with the Solicitors Regulation Authority ("SRA") with regard to these proceedings. The only explanation the Respondent had put forward with regard to his conduct had been given as part of the internal disciplinary proceedings taken by RS.
5. The first issue the Tribunal had to consider was whether the Respondent knew about the proceedings, and second, whether it was appropriate to proceed in his absence.
6. The Respondent had been personally served with the proceedings on 1 December 2010 at his new home address at 49 Piccadilly, Tamworth, B78 2ER, which address had become known after the proceedings had begun. Further, the Tribunal had notified the Respondent of a hearing in this matter which had been due to take place on 28 February 2011, and that notification had been effective. However, that hearing had been adjourned to 3 March 2011 and the Tribunal's notice of this, sent by 'special delivery', had been returned with an indication that the Respondent was not known at that address.
7. Mr Battersby had been aware of other possible addresses for the Respondent in the Tamworth area. On 3 March 2011 the Tribunal had directed that the notice of hearing could be advertised in the Tamworth Herald, being a newspaper local to the area with which the Respondent had connections. The edition of that newspaper published on 25 March 2011 was produced to the Tribunal and placed on the file.
8. Mr Battersby submitted that the Respondent knew about the proceedings. He had clearly been served with notice of the previous hearing date but had not attended. The advertisement had been placed in accordance with the Tribunal's direction on 3 March 2011 and the Applicant and Tribunal had therefore done all that was possible to bring this hearing to the Respondent's attention. The Civil Evidence Act Notices had been served on the Respondent at the address at 49 Piccadilly and had not been returned.
9. The Tribunal determined that the Respondent was aware of the proceedings and had been served with notice of the hearing. Further, all that was possible had been done to draw to his attention the hearing date. The Respondent was not in attendance but, as it was satisfied that the Respondent was aware of the proceedings, the Tribunal considered it appropriate and proportionate to proceed with the hearing.

Factual Background

10. The Respondent, born in 1970, worked as an unadmitted conveyancer for twelve years before joining RS in September 2001. On 23 January 2008 the Respondent's post became redundant. Following his departure, concerns arose about matters with which he had been dealing and the firm carried out a review of his files. Their investigation revealed wide ranging irregularities in matters dealt with by the Respondent over a period of approximately 15 months prior to his departure. RS reported the matter to the SRA under cover of a letter dated 25 February 2008 and provided a preliminary report and supporting documentation.
11. In response to the report, the SRA carried out its own investigation. The Investigation Officer commenced the investigation on 29 April 2008 at the firm's offices and her report, dated 21 May 2009 was relied on by the SRA. The report listed 100 matters in which irregularities were discovered and monies had been misused. The total amount of monies misused was £23,939.25. It was not suggested that the Respondent had benefited from all of that sum and it had not been possible to quantify the actual shortage or the period during which the misuse of clients' monies had taken place. It appeared that some of the shortages created may have been replaced by later manipulations in what was described as a "teeming and lading" exercise. It was reported that the firm had already made repayments to the affected clients and had confirmed that it would ensure that no client suffered any loss.
12. The Respondent had not taken part in the investigation and so had provided no explanation of what had happened.

Witnesses

13. None.

Findings of Fact and Law

14. **Allegation: The conduct complained of on the Respondent's part is that, whilst employed by Rutherfords Solicitors ("RS") of Tamworth he:**
 - 14.1 **misappropriated clients' funds;**
 - 14.2 **delayed in paying funds received from clients into the relevant account held by the firm;**
 - 14.3 **issued unofficial receipts to clients;**
 - 14.4 **received monies in settlement of invoices and did not account to the firm for these;**
 - 14.5 **caused client disbursements to be paid from an unknown source of funds without being recorded in the firm's accounting records;**
 - 14.6 **dealt with client matters without causing them to be entered in the firm's records;**

- 14.7 acted dishonestly, without integrity and with a lack of good faith towards his employers.**
15. The Tribunal was satisfied so that it was sure that the whole of this allegation had been proved.
 16. The Respondent had employed four different methods in manipulating money during his employment at RS.
 17. Method A involved issuing clients with unofficial receipts upon them paying him cash amounts on account of costs. The firm's accounting system was thus by-passed and the Respondent was enabled to retain the monies. The Tribunal saw an example of an official receipt given by the firm and an example of the receipt given to a Mr H for £100 by the Respondent. Although this receipt may have appeared official to a client, as it was stamped with the firm's name, it was not the firm's official receipt. The Tribunal heard, and accepted, that none of these 'unofficial' receipts had been found on client files and they had been discovered only on investigation by RS when they were provided by clients who had paid money to the Respondent.
 18. Method B involved the Respondent receiving amounts of cash from clients and not paying those sums into the firm's accounting system until sometime later, thus enabling him to carry out a 'teeming and lading' exercise. By way of example, the Tribunal noted the matter of Miss M who had paid £200 to the Respondent on 20 December 2007 and been issued with an unofficial receipt. That sum was not paid into the relevant client account until 21 January 2008, which was just after the Respondent had been told of his imminent redundancy. The Respondent, on being told he was to be made redundant had asked to take files home in order to work on them and the Tribunal accepted that this had been for the purpose of enabling the Respondent to try to "cover his tracks". The Tribunal further noted the example given of Mr and Mrs D who had paid £300 to the Respondent in August 2007 in cash, but that sum had not been paid into the firm's account until 21 January 2008.
 19. Method C involved the Respondent receiving monies from clients at the end of matters in payment of the firm's costs and issuing them with unofficial receipted invoices, thus enabling him to retain the monies without the firm becoming aware of the payments. The Tribunal noted in particular the matter of Mr N who had instructed the Respondent concerning a transfer of equity. That matter completed in August 2007. As at January 2008, no bill appeared on the firm's accounting system but when RS contacted the client he provided an unofficial invoice and receipt which the Respondent had given him on Mr M's payment to him of the sum shown on the invoice.
 20. Method D involved the Respondent opening files without them being recorded at all in the firm's central or accounting records. This enabled the Respondent to receive monies on account and in payment of invoices and retain these without the firm becoming aware of the payment. The Tribunal noted by way of example the matter of Mr and Mrs S where a file was 'opened' in November 2006. There was no record on the firm's accounting system of such a file and it was only found following the Respondent's departure. It appeared that the Respondent had received £308.50 in payment of an 'invoice' dated 1 November 2006. The clients confirmed that they had paid the Respondent directly. A similar case, that of Mr CS, was also exemplified.

21. The Tribunal was satisfied that the Respondent had dealt with monies as set out in the SRA's report. The only explanations given by the Respondent were contained in a note of interview dated 5 February 2008 and in a telephone call on 6 February 2008. Briefly, the Respondent's explanation was that he had made some mistakes or overlooked matters, or there had been a lapse in procedure. The Respondent had been unable to produce the receipt book that he had used.
22. The Tribunal noted that the SRA investigation had considered whether there had been any issues concerning supervision of the Respondent by RS. The SRA had concluded that the partners had not breached their duties so no action had been taken against the firm.
23. Having heard and read the evidence presented, the Tribunal was satisfied that the Respondent had been determined to escape supervision. It was surprising in the circumstances that no criminal proceedings had been brought against the Respondent. It may well be the case that the Respondent had paid back some of the sums which he had manipulated, but what he had done was a significant breach of trust.
24. The Tribunal had been asked to consider the issue of whether the Respondent had been dishonest. The Tribunal found so that it was sure that in dealing with client monies in the ways outlined above the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal was further satisfied so that it was sure that the Respondent did not have an honest belief that: (a) issuing clients with unofficial receipts; (b) receiving cash from clients and not paying that cash into the firm's accounting system until sometime later; (c) receiving monies from clients at the conclusion of matters and issuing unofficial receipted invoices and, in particular; (d) opening files without them being recorded at all in the firm's central or accounting records, which enabled the Respondent to retain monies without the firm being aware of any payment having been made, was appropriate or proper in any way. The Respondent therefore knew that what he was doing was dishonest by the standards of reasonable and honest people.
25. In all of the circumstances, the Tribunal was satisfied that the allegation against the Respondent had been proved, and that the Applicant had proved that the Respondent had behaved dishonestly in acting as he did.

Previous Disciplinary Matters

26. None.

Mitigation

27. No mitigation was put forward by or on behalf of the Respondent.

Sanction

28. The Tribunal could Order only one sanction against an unadmitted person. The serious allegation against the Respondent had been proved and it was appropriate for an Order to be made under s.43 of the Solicitors Act 1974 (as amended)

Costs

29. The Applicant submitted a claim for costs totalling £18,445.98. A little under £13,000 of those costs related to the SRA's investigation costs with further costs being incurred in dealing with service of papers on the Respondent. The Tribunal was told that the SRA's investigation costs had been incurred to a significant degree in respect of the supervision issue. However, that investigation would not have been needed but for the Respondent's conduct.
30. The Tribunal considered that it was appropriate for the Respondent to be Ordered to pay the Applicant's costs of the proceedings. Further, it had been appropriate for the SRA to carry out a full investigation, which had been needed only because of the Respondent's conduct. The Tribunal was satisfied that the costs as claimed were reasonable and proportionate. The Respondent had provided no information concerning his financial circumstances and so there was no reason for the Tribunal to make any Order other than that the Respondent should pay the costs as claimed in full.

Statement of Full Order

31. The Tribunal Ordered that as from 27th day of April 2011 except in accordance with Law Society permission:
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Neil Bromley of 49 Piccadilly, Tamworth, B78 2ER;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Neil Bromley;
 - (iii) no recognised body shall employ or remunerate the said Neil Bromley;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Neil Bromley in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Neil Bromley to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Neil Bromley to have an interest in the body;

and the Tribunal further Ordered that the said Neil Bromley do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,445.98.

Dated this 25th day of May 2011
On behalf of the Tribunal

Mrs K. Todner
Chairman