

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10580-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ASABE GEORGINA ADEYEMO

Respondent

Before:

Mr R Nicholas (in the chair)

Mr R Prigg

Mr S Hill

Date of Hearing: 21st February 2011

Appearances

Peter Steel, solicitor (Capsticks Solicitors LLP, 1 St George's Road, Wimbledon London SW19 4DR) for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent in the Rule 5 Statement dated 27 July 2010 were that she:-
 - 1.1 Failed to comply with an undertaking given by her firm on 8 January 2009 to GC & Co in breach of Rule 10.05(1) of the Solicitors Code of Conduct 2007 (“SCC”).
 - 1.2 Failed to comply with an undertaking given by her firm on 7 March 2008 to R Solicitors in breach of Rule 10.05(1) of the SCC.
 - 1.3 Failed to deal with the SRA in an open, prompt and co-operative way in breach of Rule 20.05 of the SCC.
2. The allegations against the Respondent in the Rule 7 Statement dated 14 October 2010 were that she:-
 - 2.1 Failed to comply with an undertaking to O Legal on 4 August 2008 in breach of Rule 10.05(1) of the SCC.
 - 2.2 Failed to comply with undertakings given to her lender client, Bank of Scotland Plc trading as Birmingham Midshires dated 4 March 2008.
 - 2.3 Failed to comply with undertakings given to her lender client Bank of Scotland PLC trading as Birmingham Midshires dated 15 September 2008.
 - 2.4 Failed to act in the best interests of a client or provide a good standard of work, in that she failed to register that client’s title to a property and failed to pay Stamp Duty Land Tax due on the transaction in breach of Rules 1.04 and 1.05 of the SCC.
 - 2.5 Failed to act with integrity contrary to Rule 1.02 of the SCC.
 - 2.6 Behaved in a way that was likely to diminish the trust that the public places in the legal profession contrary to Rule 1.06 of the SCC.
 - 2.7 In respect of the further matters described in this supplemental statement she has failed to deal with the SRA in an open, prompt and co-operative way in breach of Rules 20.05 of the SCC.

Documents

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:-

Applicant:

- Rule 5 Statement dated 27 July 2010 with exhibit
- Rule 7 Statement dated 14 October 2010 with exhibit
- Bundle of Notices/Service Documents for hearing on 21 February 2011

- Costs Schedule dated 21 February 2011

Respondent:

- None.

Preliminary Matter

4. The matter had originally been scheduled to be heard on 24 November 2010. On that day while the Tribunal was satisfied that the Rule 5 Statement had been served it was not satisfied that the Rule 7 Statement had been served within the Solicitors (Disciplinary Proceedings) Rules 2010. It had therefore adjourned the substantive hearing and gave various directions for service. On behalf of the Applicant the Tribunal's attention was drawn to the witness statement of a process server dated 22 November 2010 identifying a new address for the Respondent and evidencing service of documents including the Rule 7 Statement. Notice of the proceedings had also been advertised in accordance with the Tribunal's earlier direction.
5. Having regard to the great care which the Tribunal was required to take in arriving at a decision whether to proceed in the absence of the Respondent it was submitted that the SRA had been trying since September 2009 to engage with the Respondent. The Respondent's former partner at the firm in question had informed the Solicitors Regulation Authority ("SRA") that she too had had difficulties in attempting to make contact even though she had several times tried by mobile phone. Mr Steel submitted that in all the circumstances it was reasonable to draw an inference that the Respondent had chosen not to engage with and attend the proceedings.
6. The Tribunal decided that its earlier directions had been properly complied with and the Rule 7 Statement and notice of the substantive hearing had been properly served on the Respondent in accordance with Rule 10. The Tribunal therefore decided to exercise its power under Rule 16 to hear and determine the application against the Respondent notwithstanding that she had failed to attend in person and was not represented at the hearing.

Factual Background

7. The Respondent was born in 1964 and admitted to the Roll of Solicitors on 15 December 2005. At the time of the matters with which the application was concerned the Respondent practised in partnership at George Emanuel Solicitors (the firm) of South Croydon.

Allegation 1.1

8. In a letter dated 12 March 2009 GC & Co reported their difficulties in obtaining a file from the firm on behalf of Mrs EG for whom the firm had previously acted in the purchase of a property. Mrs EG needed the file in connection with possession proceedings she wished to take against a tenant of the property. The firm responded to GC & Co on 23 October 2008 indicating that they were obtaining the file. They wrote again on 8 January 2009 in response to a further letter from GC & Co demanding a written undertaking. In the response the firm stated "We confirm that we now have in our possession the file you request and you will be in receipt of a

copy of the file no later than 12 January 2009.” Throughout the involvement of the SRA in this matter the file was not provided.

Allegation 1.2

9. On 17 April 2009 R Solicitors wrote to the SRA to complain of their inability to obtain the release of a sum of £2,000 retained by the Respondent on behalf of her purchaser clients as part of a transaction concerning a property in Croydon. The Respondent had written to R Solicitors on 7 March 2008:-

“Further to our telephone conversation today and your subsequent faxed letter, we undertake to hold £2,000 to cover the arrears of ground rent and service charges for the period 24/03/07 until 06/03/08. If there are no arrears the full balance of £2,000 is to be returned to you to reimburse your client. If there are arrears, then any balance will be returned to you within one month of completion.”

Completion took place in March 2008. On 3 April 2008 R Solicitors wrote to the Respondent to indicate that the managing agents of the property had informed them that the Respondent had not served notice of Assignment of the Lease on them and requesting the return of the retention as a matter of urgency. Despite subsequent chasing as at 17 April 2009 the retention monies had not been returned.

10. In respect of allegations 1.1 and 1.2 the SRA wrote separate letters concerning each matter to the Respondent on 4 September 2009. The SRA also wrote to the Respondent’s partner in the firm Ms A. On 8 September 2009 Ms A wrote two separate letters to the SRA in which she stated that she had been a partner in the firm but had ceased to be so in mid September 2009. During her time there she asserted that the Respondent “took all the major management decisions as she had worked as a property solicitor for a number of years.” Regarding the complaint the subject of allegation 1.1 Ms A said that she had contacted the Respondent on several occasions in order for her to resolve the matter and had managed to do so in July 2009. The Respondent had apparently told her that she would deal with the matter. Ms A asserted the Respondent “undertook full responsibility and possession of all the files.” While the undertaking regarding the file the subject of allegation 1.1 was not fulfilled, Ms A fulfilled the undertaking the subject of allegation 1.2 and paid to R Solicitors £2,000 in March 2010.

Allegation 1.3

11. In respect of correspondence from the SRA detailed above relating to complaints giving rise to allegations 1.1 and 1.2 the Respondent made no response.

Allegation 2.1

12. O Legal reported their concern about the firm on 1 July 2009. O Legal had acted for a lender ME in connection with a charge over a property at Green Lanes, London. The firm acted for the purchasers of the property. The purchase completed on 2 September 2008. The firm had undertaken to O Legal on 4 August 2008 to provide on completion the signed TR1 and to attend to stamping formalities. The relevant documentation had never been produced to O Legal who were therefore unable to complete their client’s application for registration.

Allegation 2.2

13. This related to another aspect of the transaction referred to under allegation 1.2. The Respondent's clients Mr KD and Mr JD were buying the property subject to a mortgage from Bank of Scotland trading as Birmingham Midshires. The purchase completed on 5 March 2008. The day before the Respondent signed the certificate of title containing the usual implied undertakings set out in Appendix to Rules 6(3) of the Solicitors' Practice Rules 1990, that is to complete the mortgage, arrange for the issue of a Stamp Duty Land Tax Certificate if appropriate and deliver to the Land Registry the documents necessary to register the mortgage in favour of Birmingham Midshires within the period of protection afforded by priority searches. The charge was not registered and neither were the two Mr D's registered as registered proprietors. The work was undertaken by the lender's solicitors whose fees (£1718.38) were then debited to the mortgage account. In addition Mr KD received a late payment penalty of £200 from HMRC because of delay in returning the Land Transaction Return which it appears he was required to submit himself.

Allegation 2.3

14. The Respondent also acted for Mr KD in the purchase of a property in Croydon again subject to a mortgage with Birmingham Midshires. The pre-completion statement set out the payments that the firm was to make on behalf of Mr KD including Stamp Duty Land Tax of £1,900.50 and the firm's fees of £700. The transaction completed on or about 22 September 2008. Before that the Respondent signed a certificate of title addressed to the Bank of Scotland plc giving the implied undertakings set out in the Appendix to Rule 3 of the SCC. They were similar to those set out under allegation 2.2. Again the transfer and the charge were not registered and the lender's solicitors had to undertake registration. Again fees for so doing were charged to the mortgage account, this time in the amount of £2,142.96. Mr KD had to pay interest of £68 and again there was a penalty of £200 for late submission of the Land Transaction Return.

Allegation 2.4

15. In March 2009 the firm's client Mr B complained to the Legal Complaints Service that the firm had failed to register his title to a property where they had acted for him in the purchase. Mr B had put the firm in funds for the balance of monies over and above his mortgage loan and for their fees and other disbursements including Stamp Duty, all totalling £18,945.34. SDLT was not paid and Mr B instructed another firm of solicitors to reconstruct and complete his title to the property. This involved him paying £1,139.75 in legal fees and £2,396.00 by way of disbursements including Stamp Duty Land Tax, registration fees and penalties demanded by HMRC. Save for the penalties he had already paid the Respondent's firm for all this work.

Allegation 2.5

16. The factual background to allegations 2.2, 2.3 and 2.4 in respect of billing of Mr KD and Mr B for work not completed also formed the background to this allegation.

Allegation 2.6

17. The factual background to allegations 2.2, 2.3 and 2.4 concerning property transactions involving Mr KD and Mr JD, Mr KD alone and Mr B where

disbursements had not been paid out, money received in respect of disbursements was not accounted for to clients and work billed for was not done, also formed the background to this allegation.

Allegation 2.7

18. In respect of all of the transactions referred to in the Rule 7 Statement the SRA had sought explanations from the Respondent and received no reply. This had also been the case in respect of a complaint submitted by Mr and Mrs R on 21 October 2009 when Mr R wrote to the Legal Complaints Service about the service he had received from the Respondent's firm in connection with the re-mortgage of his property. The SRA had not been able to obtain the file or client's ledger and therefore could not make any determination on the merits of the complaint.

Witnesses

19. None.

Findings of Fact and Law

20. **Allegation 1.1. Failed to comply with an undertaking given by her firm on 8 January 2009 to GC & Co in breach of Rule 10.05(1) of the Solicitors Code of Conduct 2007.**
- 20.1 The Tribunal found that the Respondent's firm had given an undertaking on 8 January 2009 to GC & Co which had never been fulfilled and that this allegation was proved.
21. **Allegation 1.2. Failed to comply with an undertaking given by her firm on 7 March 2008 to R Solicitors in breach of Rule 10.05(1) of the SCC.**
- 21.1 The Tribunal found that the Respondent's firm had given an undertaking on 7 March 2008 to R Solicitors and that the Respondent had not fulfilled the undertaking in a reasonable time or at all. Monies had been paid instead by her former partner Ms A to discharge the undertaking in March 2010. The Tribunal found this allegation proved against the Respondent.
22. **Allegation 1.3. Failed to deal with the SRA in an open, prompt and co-operative way in breach of Rule 20.05 of the SCC.**
- 22.1 The Tribunal found that the Respondent had failed to respond to the SRA's enquiries concerning the undertakings given to GC&Co and R Solicitors and that this allegation had been proved on the evidence.
23. **Allegation 2.1. Failed to comply with an undertaking to O Legal on 4 August 2008 in breach of Rule 10.05(1) of the SCC.**
- 23.1 The Tribunal found that the Respondent's firm had given an undertaking on 4 August 2008 to O Legal which had never been fulfilled and that this allegation was proved.
24. **Allegation 2.2. Failed to comply with undertakings given to her lender client, Bank of Scotland Plc trading as Birmingham Midshires dated 4 March 2008.**

- 24.1 The Tribunal found that the Respondent had signed a certificate of title on 4 March 2008 giving undertakings to her lender client which she had never fulfilled and that this allegation was proved.
25. **Allegation 2.3. Failed to comply with undertakings given to her lender client Bank of Scotland PLC trading as Birmingham Midshires dated 15 September 2008.**
- 25.1 The Tribunal found that the Respondent signed a certificate of title dated 15 September 2008 giving undertakings to her lender client which she had never fulfilled and that this allegation was proved.
26. **Allegation 2.4. Failed to act in the best interests of a client or provide a good standard of work, in that she failed to register that client's title to a property and failed to pay Stamp Duty Land Tax due on the transaction in breach of Rules 1.04 and 1.05 of the SCC.**
- 26.1 On behalf of the Applicant it was submitted that in billing Mr KD and Mr B for work that was not completed, the Respondent had breached Rule 1.04 by failing to act in the best interest of a client in that she had failed to take appropriate post completion steps on behalf of her clients and lender clients; that she had breached Rule 1.05 regarding standard of service as the conduct alleged indicated clearly that she had failed to provide a good standard of service. The Tribunal found this allegation to have been proved on the evidence.
27. **Allegation 2.5. Failed to act with integrity contrary to Rule 1.02 of the SCC.**
- 27.1 On behalf of the Applicant it was submitted that the Respondent failed to act with integrity in that she billed Mr D and Mr B for work that was not completed. The Tribunal found this allegation to have been proved on the evidence.
28. **Allegation 2.6. Behaved in a way that was likely to diminish the trust that the public places in the legal profession contrary to Rule 1.06 of the SCC.**
- 28.1 On behalf of the Applicant it was submitted that the Respondent had breached Rule 1.06 relating to public confidence in that in failing to pay Stamp Duty Land Tax and other disbursements on behalf of Mr KD and on behalf of Mr B, in failing to account to either Mr KD or Mr B for the money she had received for this purpose and in billing clients for work that ultimately she did not do the Respondent had behaved in way that was likely to diminish the trust the public placed in her or in the solicitors' profession. It was further submitted that the Respondent's conduct had already resulted in claims on the compensation fund as at 29 November 2010 in the sum of £12,192.25 and further claims were expected.
29. **Allegation 2.7. In respect of the further matters described in this supplemental statement she has failed to deal with the SRA in an open, prompt and co-operative way in breach of Rules 20.05 of the SCC.**
- 29.1 The Tribunal found that the Respondent had failed to respond to the SRA's enquiries concerning transactions referred to in the Rule 7 Statement and that this allegation had been proved on the evidence.

Previous Disciplinary Matters

30. None recorded against the Respondent.

Mitigation

31. The Respondent had not submitted any mitigation to the Tribunal.

Sanction

32. Whilst the Tribunal had noted that no allegations of dishonesty had been made against the Respondent they considered that the allegations proved against her which were numerous were of a serious nature. Clients' monies had disappeared and no explanation had been offered. Lack of integrity had been proved against the Respondent. Her misconduct had affected several clients whom she abandoned along with her practice and her former partner. Her conduct was considered to have been likely to diminish public trust in the profession. It was also felt that having regard to the need to protect the public it was no longer appropriate for the Respondent to practise as a solicitor. The Tribunal had initially considered whether an indefinite suspension would suffice but the circumstances were such that it was not feasible in the circumstances to identify conditions which the Respondent might be required to fulfil in order for it to be appropriate for her to apply for such a suspension to be lifted. In all the circumstances the Tribunal felt that it had no choice but to strike the Respondent from the Roll.

Costs

33. Costs were awarded to the Applicant in the amount claimed £12,509.05 inclusive of VAT and the costs of the investigation.

Statement of Full Order

34. The Tribunal Ordered that the Respondent, Asabe Georgina Adeyemo of 14 Bells Hill, Barnet, Hertfordshire, EN5 2RY, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,509.05 such costs not to be enforced without leave of the Tribunal.

Dated this 15th day of March 2011

On behalf of the Tribunal

R Nicholas
Chairman