

IN THE MATTER OF UYIOSASERE ONA OBASEKI, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Mr D Green
Mrs C Pickering

Date of Hearing: 3rd July 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Jane Willetts, Solicitor Advocate and Partner in the firm of Hammonds, Solicitors of Rutland House, 148 Edmund Street, Birmingham, B3 2JR on 24th July 2006 that Uyiosasere Ona Obaseki of 10 Redbourne Avenue, Church End, Finchley, London, N3 2BS, 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 fit.

The allegation made against the Respondent at the hearing was that she had been guilty of conduct unbecoming a solicitor in that she had produced misleading correspondence and documents to NML LLP, solicitors.

At the commencement of the hearing submissions were made to the Tribunal and there was discussion between the parties in relation to the allegations as set out in the Applicant's Rule 4 Statement. With the consent of the Tribunal allegation 2 and part of allegation 1 were withdrawn. The allegation set out above is that which was agreed between the parties in their discussions and approved by the Tribunal.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 3rd July 2007 when Jane Willetts appeared as the Applicant and the

Respondent was represented by David Barton, Solicitor Advocate of 13-27 Lower Stone Street, Maidstone, Kent, ME15 6JX.

The evidence before the Tribunal included the admission of the Respondent to the remaining allegation as amended. A bundle of testimonials in support of the Respondent was handed to the Tribunal during the hearing.

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

The Tribunal Orders that the Respondent Uyiosasere Ona Obaseki of 10 Redbourne Avenue, Church End, Finchley, London, N3 2BS solicitor, be Reprimanded and they further Order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.00.

The facts are set out in paragraphs 1-28 hereunder:

1. The Respondent, born in 1967 was admitted as a solicitor in 2004 and her name remained on the Roll of Solicitors.
2. The Respondent is a solicitor and partner with the firm of Nathaniel & Co of 422 Kingsland Road, Dalston, London, E8 4AE. She has practised in Nathaniel & Co since admission as a solicitor and was formerly a trainee with the firm.
3. On 17th February 2005 NML solicitors complained to The Law Society about the Respondent's conduct in relation to the detailed assessment of costs in High Court proceedings. The substantive claim related to a dispute between Mr B (landlord) and Ms A (long leaseholder).
4. On 20th September 2004 Mr B was ordered to pay Ms A's costs as a litigant in person, such costs to be subject to detailed assessment if not agreed.
5. On 16th January 2005 Ms A signed a statement of costs as an Applicant in Person and in which she included a claim for £250 for "advice sought".
6. On 7th February 2005 Ms A wrote to NML (acting for Mr B) stating that the Respondent had advised her for one hour on 14th January 2005 on the assessment procedure. She stated that enclosed with the letter was one example of the Respondent's invoice and that the rest would accompany the rest of the evidence to save on costs. Ms A signed the letter as a litigant in person.
7. Ms A enclosed with the letter an undated invoice ("the first "private" invoice") for private fees charged by the Respondent of £380 plus VAT of £65.50, a total of £446.50. The fees claimed were for an attendance on Ms A (one hour - £250) and attendance on documents (30 minutes - £125) plus photocopying charges of £5. There were no details on the invoice of the dates that this work was carried out. It appeared from Ms A's letter that the advice to which this invoice related was given on 14th January 2005. An invoice for exactly the same amount (£446.50) was entered on the client ledger on 14th June 2004, a date some seven months before Ms A began the detailed assessment proceedings on 19th January 2005 and for which she had taken advice from the Respondent as appeared from the Statement of Costs referred to at

paragraph 5 above. Further the invoice was for a higher figure (£446.50) than the amount claimed in the Statement of Costs (£250).

8. A second letter dated 7th February 2005 from Ms A to NML confirmed that she was seeking advice from the Respondent as she did not have any legal training. Ms A signed the letter as a litigant in person.
9. A third letter dated 7th February 2005 from Ms A to NML confirmed that she was in the process of forwarding their letter to the Respondent for advice. Ms A signed the letter as a litigant in person.
10. On 8th February 2005 NML wrote to the senior partner of Nathaniel & Co, the firm where the Respondent was employed asking for confirmation that the firm had rendered the first "private" invoice and if so, asking for a copy of the invoice on headed notepaper. NML also pointed out that the invoice had not been signed by a partner as required by s. 69(2) of the Solicitors Act 1974 and questioned the hourly rate claimed for the Respondent at £250 as she had only been admitted as a solicitor on 1st June 2004.
11. By an undated fax the Respondent wrote to NML in response to their letter addressed to the senior partner of Nathaniel & Co. The letter was not on headed notepaper and was from the Respondent in her personal capacity. She stated as follows:

"I have provided advice and consultation to Ms A as a completely private matter and not via the firm Nathaniel & Co.

This advice and consultation is therefore at a rate that I wish to charge for private matters not related to the firm of Nathaniel & Co.

...In any event as a Consultant I do not believe there are any rules dictating what I can charge privately. The cost to Ms A remains the same. She is not a client of Nathaniel & Co.

I have not stated that I was acting as Ms A's solicitor and believe this is evident as Ms A had acted in person. However I believe Ms A has the right to claim her legitimate costs for defending proceedings against her."

12. On 10th February 2005 NML wrote again to the senior partner of Nathaniel & Co asking him to confirm whether the first "private" invoice had been rendered by the firm and also requesting a copy of the client care letter.
13. On 14th February 2005 Nathaniel & Co wrote to NML. The reference on the letter was "JO", a fee earner at Nathaniel & Co. JO later confirmed that the Respondent was her sister. The letter did not show the reference of the senior partner. The letter confirmed that:
 1. The invoice rendered did not come from Nathaniel & Co, solicitors.
 2. The invoice was charged by Ms Sasere Obaseki for private consultation work not done under this firm. As such we do not hold information relating to the same.

If you have any queries please contact Ms Sasere Obaseki directly."

14. On 14th February 2005 NML wrote to the Respondent at Nathaniel & Co requesting a copy of the client care letter. On 16th February 2005 NML wrote to Ms A requesting a copy of the letter of engagement given to her by the Respondent.
15. On 16th February 2005 Ms A lodged with the Court a further Statement of Costs in connection with a detailed assessment hearing which included claims for "advisers' fees". The statement was signed by Ms A. Ms A also lodged with the Court and served upon NML a request for a detailed assessment hearing which stated that there were no solicitor's invoices as the Respondent was not her solicitor and had not been instructed by her to be her solicitor.
16. Further correspondence between NML and Ms A followed. On 2nd March 2005 Ms A wrote to NML that she was a litigant in person and that the Respondent provided occasional support.
17. On 13th April 2005 The Law Society wrote to the Respondent requesting an explanation as to her practising on a private basis and possible breach of the Indemnity Insurance Rules.
18. The Respondent's solicitors provided a response to The Law Society by letter dated 25th May 2005 and provided inter alia copies of the following documents:
 - (i) a letter from Ms A to The Law Society dated 13th May 2005 stating that she had been a client of the firm from 10th March 2004 under the legal help scheme and that she had received a client care letter. She further stated that after public funding ended she had received a client care letter as a private client of Nathaniel & Co, she had not paid any fees to date and that she had agreed with Nathaniel & Co that she would pay all outstanding costs when the sale of her property was completed;
 - (ii) a client care letter to Ms A from the Respondent dated 15th June 2004 showing an hourly charging rate of £250 per hour for the Respondent.
19. By letter dated 14th May 2005 the senior partner of Nathaniel & Co wrote to The Law Society confirming that at all times during the proceedings Ms A was represented by Nathaniel & Co, that the Respondent had written the undated letter (paragraph 11 above) without access to the file and under enormous pressure and bombardment by Ms B of NML and that as a result the Respondent was covered by the firm's professional indemnity insurance. He also stated that as Ms B was acting for her father Mr B in the proceedings, her independence in the matter was questionable. Also enclosed with the letter was a copy of a letter dated 8th March 2005 from The Law Society to the Respondent confirming that it did not intend to take the complaint by NML any further. The reasons for the decision were contained in a letter also dated 8th March 2005 from The Law Society to NML confirming inter alia that it was a matter for the court to investigate costs in litigation proceedings by way of detailed assessment. In fact The Law Society did continue investigating this matter further as is evidenced by subsequent correspondence.

20. On 16th June 2005 the Law Society wrote to Nathaniel & Co asking whether they were representing the Respondent. On 16th June 2005 Ms A wrote to NML confirming that the Respondent was her adviser and had assisted her with the legal proceedings. By letter dated 30th June 2005 The Law Society wrote to the Respondent requesting her explanation as to the fees of £446.50 contained in the first "private" invoice which appeared to have been raised outside the Respondent's employment with Nathaniel & Co.
21. On 5th July 2005 a Notice of Acting was lodged with the High Court confirming that Nathaniel & Co were acting on behalf of Ms A.
22. By letter dated 14th July 2005 the senior partner of Nathaniel & Co responded to The Law Society explaining that as far as he was concerned the Respondent did not operate another practice different from Nathaniel & Co and that the firm's Management Committee would conduct an internal investigation.
23. Further correspondence between NML and Nathaniel & Co followed.
24. On 8th August 2005 a letter from Nathaniel & Co was received by NML confirming that the letter dated 14th February 2005 should not have been sent, that Ms A had always been and continued to be a client of the firm.
25. By letter sent by fax on 1st September 2005 the Respondent advised the Law Society that:

"The letters were written were done so without access to the file. Mistakes can be made and if or in any way has prejudiced anyone, it prejudiced our client.

Once all the files were put together Ms A's status became clear. Work done for Ms A has always been billed or invoiced from the firm and this had been confirmed in the High Court action brought by Ms B on behalf of her father, as the legitimate costs of Ms A."

26. By letter dated 1st September 2005 the Respondent advised the Caseworker that she considered that any referral of her conduct to the Tribunal as suggested in the report for adjudication was harsh and an overreaction.
27. By letter dated 7th September 2005 Nathaniel & Co wrote to the Caseworker confirming that the firm's Management Committee had reprimanded the Respondent "for writing a wrong letter" and had cleared the Respondent of the allegation of potential breach of the indemnity rules. Nathaniel & Co provided with their letter a report of their investigation that included a disciplinary hearing on 10th August 2005. The report records that at the disciplinary hearing on 10th August 2006 the Respondent said she had written the letters without access to the files and that she had acted under pressure from the other firm of solicitors. The report further stated that she admitted her mistake but mentioned that all her actions were in good faith and not misleading in any way.

28. On 13th September 2005 NML reported to The Law Society that at a costs assessment hearing on 15th August 2005 before Master Seager Berry the Respondent had stated inter alia that her undated letter to the firm (paragraph 11 above) and her firm's letter dated 14th February 2005 (paragraph 13 above) were "mistakes" and should not have been sent out. The Respondent stated that Ms A had been a client of the firm for some 14 months.

The Submissions of the Applicant

29. Following the discussions between the parties the matter would proceed on an agreed basis. The Respondent would admit that the undated letter and the letter dated 14th February 2005 (paragraphs 11 and 13 above) were misleading and would also admit the invoice (paragraph 7 above) was misleading. This meant that three misleading documents had been produced to NML. The Respondent would say that the "invoice" was never intended to be used as an invoice. She had however, perpetuated the misunderstanding by the reference to the invoice in the letter of 14th February 2005.
30. Although the Respondent's solicitors had written on her behalf to The Law Society in May 2005 this was not sent to NML by The Law Society so the period of misrepresentation had lasted until 8th August 2005.
31. The Applicant did not accept that both of the misleading letters were written on the same date.

The Submissions on behalf of the Respondent

32. The undated letter had been signed by the Respondent, written by her and sent to NML. It contained a factual mis-statement in the second paragraph. She had provided advice in consultation to Ms A but this had been done through Nathaniel & Co.
33. The letter of 14th February 2005 had been signed by JO, the Respondent's sister. The Respondent stated however that she had discussed the matter with her sister which resulted in the production of the letter. The Respondent would therefore say that it was her letter and she accepted responsibility for its contents.
34. Both letters had been sent on the same day to the same recipients and repeated the mis-statement that the work done was not done through the firm when it was.
35. The Respondent had however not sought to mislead MNL or indeed anyone else. The documents given to the client had been intended to be no more than a statement to the client of the costs in the High Court proceedings. It had not been the Respondent's intention that they be used in any other way. The client herself had drawn up the costs invoice.
36. The Respondent had attended the appeal hearing with Master Seager Berry on 15th August 2005 and had said that the documents were mistakes. This had required personal courage.

37. While the Respondent herself made no personal criticism of Ms B, her representative would draw the Tribunal's attention to the fact that Ms B had been criticised by two Judges in the proceedings. The Respondent had not been criticised.
38. The Respondent felt bombarded by faxes from Ms B seeking information on the professional relationship between Nathaniel & Co and Ms A. There had been no dishonest intent on the part of the Respondent. She had felt that the letters might "shut Ms B up". She accepted that the letters contained a mis-statement of fact. No-one had been financially disadvantaged. There had been no personal gain for the Respondent or her client through the letters. Her client had faced vigorous litigation and all work had been properly done.
39. The Respondent looked back with regret on what she had done as a day of madness. She apologised in the clearest of terms. She had said throughout that she had had no intention to mislead and her honesty had never been questioned by The Law Society. She was however disappointed in her own conduct. She had never wavered from her acceptance that the two letters were wrong.
40. The Tribunal was given details of the Respondent's personal and professional background.

The Findings of the Tribunal

41. The Tribunal found the allegation to have been substantiated, indeed it was not contested. The Tribunal commended both parties for the agreement they had been able to reach in discussions at the commencement of the hearing.
42. The Respondent had admitted being responsible for the production of two misleading letters and through the correspondence perpetuating a misleading costs invoice. The background to this was that the Respondent had acted for Ms A, a client of Nathaniel & Co and had done all she could to help this impecunious client. The Respondent had described as "a day of madness" the day on which she wrote the letters. Her actions were irrational and unwise and she had apologised and regretted her actions. She had said that she did not have the file in front of her at the time and was feeling under great pressure from the other solicitor. She was also recently qualified. She had admitted that the letters were wrong some considerable time ago. She attended personally in the costs appeal before Master Seager Berry and told him that the letters were a mistake.
43. It remained the case however that to write misleading letters was conduct unbefitting a solicitor. The Tribunal had read the impressive testimonials in support of the Respondent. It was clear that the Respondent worked hard and diligently and was well respected in the areas in which she worked both within and without the law. Having considered the background to the Respondent's actions in this matter and the facts as they now appeared before the Tribunal, the Tribunal was satisfied that the appropriate penalty was a reprimand. The Tribunal would also Order the Respondent to pay the Applicant's agreed costs in the sum of £7,000.
44. The Tribunal Ordered that the Respondent Uyiosasere Ona Obaseki of 10 Redbourne Avenue, Church End, Finchley, London, N3 2BS solicitor, be Reprimanded and they

further Order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.00.

Dated this 5th day of November 2007
On behalf of the Tribunal

D J Leverton
Chairman