

IN THE MATTER OF BOON LOW, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss J. Devonish (in the chair)
Mr. J. R. C. Clitheroe
Mr. M. C. Baughan

Date of Hearing: 9th February 2010

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was made on behalf of the Solicitors' Regulation Authority (SRA) by George Marriott, Solicitor and Partner in the firm of Gorvins, on 18th September 2009 that Boon Low of Danny Low & Associates, Cameo House, 11 Bear Street, London, WC2H 7AF 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 considered appropriate.

The allegations against Boon Low (the Respondent) were that he had:-

1. Failed to comply with Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 (SCC).
2. Failed to comply with Rules 2.02, 2.03 and 2.05 SCC 2007.
3. Failed to comply with Rule 5.01 SCC 2007.
4. Failed to comply with Rules 7.01 and 7.07 SCC 2007.
5. Failed to comply with Rule 20.05 SCC 2007.
6. Failed to comply with Rule 32 Solicitors' Accounts Rules 1998 (SAR).
7. Failed to comply with Rule 15 SAR 1998.
8. Maintained debit balances and used one client's monies for another client contrary to Rule 22 SAR 1998.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when George Marriott appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included admissions and oral evidence by the Respondent.

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

The Tribunal ORDERS that the Respondent, Boon Low of Danny Low & Associates, Cameo House, 11 Bear Street, London, WC2H 7AF, solicitor, be suspended from practice as a solicitor for the period of six months to commence on the 9th day of February 2010 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,225.11, such costs not to be enforced without the consent of the Tribunal.

The facts are set out in paragraphs 1–33 hereunder

1. The Respondent, born in 1963, was admitted as a Solicitor in 2004. His name remained on the Roll. At the material time, the Respondent was a sole practitioner practising under the name of Danny Low & Associates from Cameo House, 11 Bear Street, London, WC2H 7AF.
2. The Respondent had been a Partner in the firm Whitehead & Low until 28th February 2008. On 14th March 2008 the Respondent became the sole Principal in Danny Low Associates.
3. The Respondent had failed to obtain Professional Indemnity Insurance with the result that he had entered the Assigned Risks Pool (ARP). As a result, the SRA had made a monitoring visit to his firm in July 2008 resulting in the first Report dated the 22nd October 2008 and a further visit on 10th February 2009 resulting in the second Report dated the 26th February 2009.
4. The ARP covers solicitors who have failed to obtain Professional Indemnity Insurance in the marketplace and a firm may only be within the ARP for a total of 24 months out of 60.
5. Both Reports had identified a number of issues and the Respondent's explanation had been sought, with regard to the first Report, on the 4th December 2008, leading to his reply dated 12th January 2009 and with regard to the Second Report, leading to his reply dated 27th May 2009.
6. At the same time and pursuant to the Solicitors Indemnity Insurance Rules (SIIR), the Respondent had been required to implement special measures by letters dated 5th November 2008 and 4th March 2009. The Respondent had been forewarned of what those might be by the SRA's letters to him following the two visits. The Respondent had acknowledged that he might well be required to implement special measures in his application to the ARP.

7. On the 27th March 2009, the Respondent's conduct with regard to the First Report had been referred to the Tribunal and on 3rd June 2009 his conduct with regard to the Second Report had also been referred to the Tribunal.
8. The Respondent had been issued with Practising Certificates on the 14th January 2008 and 21st January 2009 with conditions that he file six monthly accounting reports within two months of the period prescribed, that he did not accept any new instructions for immigration cases, and that he notified any prospective employer or Partner of the conditions.

The First Visit

Rule 7 SCC 2007

9. It had been noted that the Respondent used the name "Danny Low & Associates", that there was reference to Partners on the firm's notepaper and to "leading" the London office on the firm's website. There had been no reference to the firm being regulated by the SRA. The Respondent had been the sole fee-earner in the firm. The web-site had referred to Stock Exchange work but that type of work had not been listed within the areas of the Respondent's work for insurance purposes.

Business Management (Rule 5 SCC 2007)

10. The Respondent had had no practice manual so as to be able to demonstrate comprehensive and written procedures to incorporate all areas of work to include risk management, business continuity, money laundering, accounting systems and procedures, file management, conflict of interest checks, the identification of clients, equality and diversity.
11. A number of the Respondent's files had been examined and had been found to be non-compliant, in particular, in the following areas.

Clients' Relations (Rule 2 SCC 2007)

12. The files had demonstrated that the Respondent had:-
 - (i) Failed to show whether any conflict of interest check had been made.
 - (ii) Failed to comply with the Money Laundering Regulations 2007.
 - (iii) Failed to keep up to date the client matter ledgers.
 - (iv) Failed to give information concerning costs, complaints or the client's objectives.

Books of Account (Rule 32 SAR 1998)

- (i) The accounting function had used Excel spreadsheets
- (ii) The client matter ledgers had not been up to date but had been updated to the 30th June 2008 during the course of the visit.

(iii) There had been no reconciliation statements.

(iv) The Client Account cashbook total had not agreed with the (adjusted) client bank account balance.

The Second Visit

Failed to co-operate with the SRA (Rule 20 SCC 2007)

13. A second visit had been planned to take place on 27th January 2009 because of the findings made during the first visit. The SRA had notified the Respondent of that second visit and the Respondent had expressed concerns, on 14th January 2009, about the costs of a second visit so soon after the first.
14. On the 20th January 2009, the Respondent had faxed a letter to the SRA indicating that his office would be closed for two weeks starting the day before the proposed visit and that all his clients were to be notified of the closure. The SRA had requested an explanation from the Respondent as to why he had not disclosed the closure on the 14th January 2009. The Respondent had not offered any explanation. However, the SRA had postponed their visit to 10th February 2009. During that visit the Respondent had told the SRA that his practice had not been closed for that two week period. Moreover, there had been no evidence that any clients had been notified of closure. In fact, during the 26th to the 29th January 2009, the Client Account cashbook had recorded 10 entries, including five cheques and four TTs.

Rule 1 SCC 2007: Lack of integrity and Diminishing Public Confidence

15. The SRA had noted that the Respondent had completed a form to PYV for Professional Indemnity Insurance dated 5th March 2008 which had given estimated fees for the next financial year of £30,000. However, seven days later (12th March 2008) the Respondent had completed an application to the APR which had given estimated fees for the next financial year of one third less, namely £20,000.
16. The Respondent had given three reasons for applying to the APR namely that obtaining a quote took too long, he had a new firm and that Quinn had quoted him £60,000.
17. The premium applied by the APR is calculated on the basis of the Respondent's estimated gross fees.
18. On 15th September 2008, the Respondent had completed a form for Professional Indemnity Insurance with Prime Professions. To questions concerning monitoring visits from the Law Society or the SRA over the previous three years, the Respondent had stated that there had been no visits.
19. The Respondent had also completed an APR proposal form dated 2nd October 2008 in which he had stated that his gross fees for 2008 had been £24,000.

20. The Respondent had been the only fee-earner in the practice, and to questions as to whether any fee-earner had been granted a conditional Practising Certificate, the Respondent had answered in the negative. This had been subject to a declaration of truth.

Client Relations (Rule 2 SCC 2007)

21. The files that had been looked at during the second visit had shown that the Respondent had failed to:-
- (i) Demonstrate whether any conflict of interest checks had been made.
 - (ii) Give sufficient or accurate information concerning costs, complaints or clients' objectives.
 - (iii) Comply with Money Laundering Regulations 2007.
 - (iv) Keep up to date with client matter ledgers.

Business Management (Rule 5 SCC 2007)

22. There had still been no documentary procedures for the firm.

Publicity (Rule 7 SCC 2007)

23. As at 10th August 2009 and at the date of the hearing, the firm's website had still referred to the Respondent as "leading" the London office.

Breach of Special Measures Directions

24. The Respondent had been required to implement eight special measures by letter dated 5th November 2008.
25. The Respondent had been further required to implement 11 special measures by letter dated 4th March 2009.
26. Of the 11 special measures, six had been repeats of what had already been set out earlier and had covered the following areas of work:
- (i) standard costs and client care information,
 - (ii) complaints handling,
 - (iii) written procedures,
 - (iv) publicity,
 - (v) training and
 - (iv) Solicitors' Accounts Rules deficiencies.

27. Statements and complete Office Account records had not been available beyond the 31st July 2008, although the Client Account had been reconciled up to the 31st January 2009.

Solicitors Accounts – Other Breaches

28. Upon examining the Respondent's bank statements, the SRA had noticed that client monies had been received into the Respondent's Office Bank Account on the following occasions:-
- (i) On the 11th July 2008, £181,219.38 re. M
 - (ii) On the 11th July 2008, £330,924.13 re. W
 - (iii) On the 28th July 2008, £360,000 re. W
29. The monies had been disbursed as follows:-
- (i) On the 14th July 2008, £79,893.51 to Client A/c (M)
 - (ii) On the 14th July 2008, £ 272,273.00 to W & Co (W)
 - (iii) On the 14th July 2008, £160,023.00 to Colemans (W)
 - (iv) On the 28th July 2008, £360,000 to Client A/C (W)
30. All those client monies had been received from the firm, of which the Respondent had been a Partner until 28th February 2008. The monies had been advanced by Institutional Lenders, on behalf of M & W, to that firm, and then had been sent, by that firm, to the Respondent where they had remained client monies belonging to the Institutional Lenders until the completion of the transactions.
31. M had been purchasing 4 C. Rd for £230,000 with a deposit of 10%. The client ledger (produced by the Respondent) showed receipt on 11th July 2008 of a mortgage advance of £181,219.38, into the Office side of the ledger. Then, on the 14th July 2008, a transfer of £79,831.51 into Client Account. This sum, together with other monies already paid into Client Account, meant that the Respondent's records showed that £106,449.51 had already been held for M in Client Account.
32. On the same day £60,750.00 had been debited from the client ledger of an unrelated client, W, and credited to the client ledger of M. £207,000.00 had then been debited from M's client ledger to complete M's purchase which had left an overdrawn balance on M's ledger of £39, 800.49.
33. At the same time a transfer of the balance of the mortgage advance (less charges) of £101,304.87 had been transferred from Office Account to the credit of the same unrelated client, W. According to the ledger, the Client Account for M had then been over-corrected by transferring two payments from client W, of £14,458.98 on 24th July 2008 and £26,145.26 on 29th July 2008.

34. The effect of those transactions had been that the Respondent had received, on behalf of his client M, £181,219.38, had wrongly paid it into his Office Account, had transferred only a part of it to his Client Account, had completed M's purchase with that and other monies received from M and an unrelated client, leaving a debit balance recorded on the client ledger, had transferred the other part to the unrelated client W and then, some time later, had transferred a greater sum back from the unrelated client W to M.
35. There had been no connection between clients M and W and there had been no authority from the clients to effect the transfers.

The Submissions of the Applicant

36. The Applicant took the Tribunal through the allegations and the relevant facts. He noted that the Respondent had admitted all of the eight allegations. In relation to allegation four, the Applicant explained that while the Respondent had stated that he had given instructions to remove the phrase "leads the London office" from his firm's website, it had not been removed as at 10th August 2009.
37. Turning to the various estimates provided to the ARP and other insurers, the Applicant submitted that the Respondent had provided inaccurate and misleading figures as it was inconceivable that his estimate would have reduced by one third over a period of some seven days.
38. Moreover, the Applicant submitted that the answers given by the Respondent, on his request for the PII policy, had been inaccurate and misleading as his practice had been subject to a monitoring visit on behalf of the ARP in July 2008 and the Respondent had been given a Practising Certificate with conditions.
39. In addition, he submitted that the Respondent's failure to implement the special measures had amounted to a breach of Rule 10.3 of the SIIR.
40. The Applicant stressed that the Solicitors' Accounts Rules provided vital protection to the public. In relation to clients W and M, the Respondent had received monies belonging to institutional lenders on behalf of those clients and had not only paid those monies into Office, rather than into Client Account, but had also mixed the monies between the purchases for his two clients. Although the overpayment of monies to the eventual benefit of M, at the expense of W, had only been £49.37, the Applicant submitted that the potential mischief had been enormous.
41. The Applicant noted that the Respondent's explanation for the monies being in his Office Account had been that his bank had printed Client Account on the Office Account cheque book. However, the Respondent had offered no explanation for the transfers that had been effected between the Client Account ledgers. The Applicant noted that the monies from institutional lenders, paid into Office Account on three occasions only, had all come via the Respondent's old firm over a period of some 17 days. According to the Respondent's ledger, from the 14th July 2008 to the 29th July 2008, M's ledger had been overdrawn by between £25, 195.63 and £39,800.49.

42. In response to a question from the Tribunal, the Applicant confirmed that the SRA expected there to be an office procedures manual with written procedures even if the firm was that of a sole practitioner.
43. The Applicant produced a Schedule of Costs and sought an order for costs in the sum of £10,225.11

The Submissions of the Respondent

44. The Respondent confirmed that he admitted all of the allegations but he sought to explain that they had happened as a result of earlier litigation involving a finding of dishonesty against him on the balance of probabilities. Although he had gone to the Court of Appeal, he had lost his appeal, involving a claim of £27,000 and costs of some £200,000 to £300,000. However, a subsequent allegation of dishonesty, before the Tribunal, had not been proved beyond all reasonable doubt but he had been ordered to pay costs of £7,000.
45. The Respondent explained that he had lost some £40,000 to £60,000 in leaving his previous partnership and he had tried, and failed, to get private insurance cover so had had to join the ARP. However, at the outset, he had been concerned about the potential costs of monitoring visits but had been reassured by the ARP saying that such visits were unlikely. Unfortunately, he had a monitoring visit within a couple of weeks of joining the ARP which added a couple of thousand pounds to the costs that he was already paying, by way of £500 each month, to the SRA.
46. Moreover, the Respondent said that the monitoring visits had added pressure and caused him stress. As a sole practitioner, he considered that the various rules and procedures should have been applied to him on a modified basis. The Respondent explained that he opened all the post and all the files. In starting a new business, he had had to prioritise and documented procedures had not been among his priorities. He had to pay some £3,000 for each monitoring visit and had needed some breathing space to get some fees in.
47. The Respondent explained that he did not have the money to pay a web-designer to amend his web-site. Moreover, he was trying to close his practice before his insurance expired in March 2010 and did not believe that anyone would be misled by the information on his web-site. Much of the information on his site had reflected his past experience in Malaysia.
48. In response to a question from the Tribunal, the Respondent explained that if he had enquiries for work that he did not do, like Stock Exchange work, he would pass that enquiry on to a friend. In any event, the Respondent explained that he did not wish to continue in practice and that he no longer took on new work. The practice was being wound down and would be closed by the end of March 2010. He did not wish to practice law.
49. Dealing with his estimates in insurance applications, the Respondent said that it had taken him a week to realise that his gross fees would be reduced because of his inability, as a sole practitioner, to act for lenders.

50. The Respondent explained his bank's mistakes in mis-naming his firm's cheque books and produced four bank books, together with letters, for the consideration of the Tribunal. He said that he had not requested funds from his old firm because he was acting for the lenders but so that he could complete purchases for his clients and could forward the lenders' monies to the sellers. He had not realised that he had given an incorrect account number.
51. The Respondent handed to the Tribunal copies of his accounts for March – September 2008 showing net profit of £12, 226. He said that he had complied with most of the special measures except for the written procedures and had also started paying the ARP premium by instalments of £500 each month.
52. The Respondent provided details of his means to the Tribunal.

The Decision of the Tribunal

53. Having considered all of the evidence, together with the submissions of both the Applicant and the Respondent, the Tribunal found all of the allegations both admitted and proved.
54. The Tribunal noted the importance of the maintenance of professional standards be it by a sole practitioner or by a partner within a large partnership. The rules and procedures sought to maintain standards both for the protection of the public and to uphold the reputation of the Profession. The Tribunal was extremely concerned to note that the Respondent was making a second appearance before it in relation to allegations of breaches of the Solicitors Accounts Rules, albeit, as on the previous occasion, admitted breaches.
55. Another concern to the Tribunal was the Respondent's persistent failure to correct matters brought to his attention by his Regulator and, of even greater concern, the Respondent's untruth to his Regulator about his firm closing for two weeks.
56. Although the Tribunal was aware of the many difficulties involved in being a sole practitioner, the regulation of the Profession could not be compromised. In the circumstances the Tribunal determined that the appropriate penalty was a suspension for a period of six months. The Tribunal was satisfied that costs should be awarded to the Applicant and that the sum claimed was reasonable. However, given the financial position of the Respondent, such costs were not to be enforced without the permission of the Tribunal.

Dated this 16th day of March 2010
On behalf of the Tribunal

Miss J. Devonish
Chairman