

IN THE MATTER OF CLIVE OWEN LUCAS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr K W Duncan (in the chair)
Mr E Richards
Mr S Howe

Date of Hearing: 10th December 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 (“SRA”) by Patrick Matthew Bosworth, an Assistant Solicitor in the firm of Russell-Cooke of 8 Bedford Row, London WC1R 4BX on 17th November 2008 that Clive Owen Lucas, a solicitor, of 79 Cecil Park, Pinner, London HA5 5HL 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 allegations against the Respondent were:-

1. Breach of undertaking contrary to Principle 18.15 of the Guide to the Professional Conduct of Solicitors (8th Edition) 1999 and Rule 10.05 of the Solicitors Code of Conduct 2007.
2. Failure to respond either properly or at all to the SRA.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 10th December 2009 when Patrick Matthew Bosworth appeared as the Applicant and the Respondent appeared and was represented by Mr Ian Ridd, Counsel, of Farrar’s Building, Temple, London EC4Y 7BD.

The evidence before the Tribunal included the Applicant's Rule 5 Statement and accompanying bundle, the admissions and mitigation of the Respondent together with several testimonials on behalf of the Respondent.

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

The Tribunal Orders that the Respondent, Clive Owen Lucas of 79 Cecil Park, Pinner, Middlesex, HA5 5HL, solicitor, be suspended from practice as a solicitor for the period of two years to commence on the 10th day of December 2009 and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,089.44.

The facts are set out in paragraphs 1 – 17 hereunder:-

1. The Respondent, born in 1958, was admitted as a solicitor in 1986. His name remains on the Roll of Solicitors.
2. The Respondent practised at all material times under the style of T Cryan & Co., Solicitors, 1st Floor, 2 Peterborough Road, Harrow, Middlesex HA1 2BQ.
3. The Respondent was made the subject of a complaint by letter to the SRA dated 25th January 2008 from DJ, another firm of solicitors ("the other firm of solicitors"). The complaint made was that an unqualified undertaking entered into by the Respondent on 7th July 2006 had not been discharged on behalf of a bank in relation to the purchase of a property in Watford.
4. By letter of 12th February 2008, a Customer Services Officer in the Conduct Investigation Unit of the SRA, wrote to the other firm of solicitors requesting further information regarding copies of the questions to the Requisitions on Title and also requesting confirmation as to whether the DS1 regarding the bank's charge had been provided.
5. By letter of 26th February 2008 the other firm of solicitors responded with further information in respect of the Requisitions and confirmed that they still had not received the DS1 in respect of the bank's charge from the Respondent.
6. By letter of 13th March 2008 a caseworker in the Conduct Investigation Unit of the SRA wrote to the Respondent at the address of ALD Legal Limited ("ALD"), in Harrow, Middlesex regarding the allegations of misconduct and notifying him that he was under an obligation to respond to the matters contained within the letter.
7. By letter of 17th March 2008 ALD wrote to the SRA stating that the Respondent had no connection whatsoever with ALD. They did say that a copy of the letter had been forwarded to the Respondent.
8. By letter of 25th April 2008 the caseworker in the Conduct Investigation Unit of the SRA, wrote to the Respondent thanking him for the recent call the Respondent had made on 18th April 2008 and requesting a response from him within 7 days of the matters that had been raised.

9. By letter of 2nd May 2008 the caseworker in the Conduct Investigation Unit of the SRA, wrote to the Respondent about his failure to respond to correspondence from the SRA. The letter gave him an 8 day period to respond to the matters that had been raised.
10. By letter of 9th May 2008 the Respondent wrote to the SRA and gave partial responses to the points that had been raised in previous correspondence. He stated that in his view he was not in breach of an undertaking on the basis of “the prompt transfer of the net proceeds of sale to the lender in question, the sequence of correspondence with the solicitors and the specific limitation of the wording of the undertaking as recorded in the enclosures with your letter.” He went on to state that he had taken legal advice and considered his position carefully and provided a partial response to the questions that had been asked of him. In particular he did not give a response to the question put in the correspondence of 13th March 2008 namely:-

“Why did you not perform your undertaking within a reasonable time and how did you keep [the other firm of solicitors] informed of the reason for the delay?”
11. By letter of 14th May 2008, the caseworker in the Conduct Investigation Unit of the SRA wrote to the Respondent thanking him for his response of 9th May 2008 and passing on correspondence contained in the letter dated 27th March 2008 received from the other firm of solicitors that confirmed that the bank never agreed for the sale of the property in Watford to proceed and that the second charge remained due and payable by his former clients, Mr and Mrs G.
12. By letter of 5th June 2008, the caseworker in the Conduct Investigation Unit of the SRA, wrote to the Respondent enclosing a copy letter dated 30th May 2008 from the other firm of solicitors for his consideration. He was asked to respond to this letter and copy correspondence within a 7 day period.
13. By letter of 23rd June 2008, the caseworker in the Conduct Investigation Unit of the SRA, wrote to the Respondent enclosing copies of letters that had been sent to him on 14th May and 5th June 2008 to which there had been no reply. The SRA gave the Respondent a further 8 days to respond.
14. By letter of 25th June 2008 the caseworker in the Conduct Investigation Unit of the SRA, wrote to the Respondent informing the Respondent that the bank was now proceeding on a claim for possession of the property in Watford. The letter requested again full responses from the Respondent and requested those responses to be sent in full to that letter and any previous correspondence by 1st July 2008.
15. By letter of 8th July 2008 the caseworker in the Conduct Investigation Unit of the SRA, wrote to the Respondent stating that there had been no response to his letter of 25th June 2008 and gave him another 8 days with which to respond.
16. A Land Registry search was made on 23rd October 2008 in relation to the property in Watford. The search showed that the charge in relation to the bank remained outstanding.

17. The Respondent did not respond to that or any other correspondence from the SRA. The matter was considered by an Adjudicator who on 16th September 2008 referred the conduct of the Respondent to the Solicitors Disciplinary Tribunal.

The Submissions of the Applicant

18. Both allegations were now admitted by the Respondent who had been cooperative and helpful. Costs had been agreed in the sum of £4,089.44.

The Respondent's Submissions in Mitigation

19. It was submitted on behalf of the Respondent that he had done his best to cooperate fully with the SRA. Whilst the circumstances that had led to his appearance before the Tribunal today were straightforward, mitigation could be put forward on behalf of the Respondent.
20. The Respondent had not failed to comply with the undertaking out of forgetfulness or inattention but because he had misunderstood the extent of his obligations.
21. There had been two mortgages upon the property in Watford and the undertaking was to discharge both of them. The first had been paid in full but there were insufficient funds to pay the second, he did however believe that he had discharged the undertaking. Once the Respondent had realised his difficulties he had told his insurers who had redeemed the mortgage. The purchasers had therefore suffered no loss, neither had he gained any advantage in not honouring the undertaking.
22. Circumstances had meant that the Respondent had become the only surviving partner in the practice and there were difficulties with the financial aspects which were beyond him. In December 2006 he had begun to close it down with efforts to find someone else to buy it out. He had been unsuccessful in these efforts and the firm had ultimately closed at the end of September 2007. The Respondent had not practised since that date.
23. The Respondent admitted that he had been dilatory in responding to the SRA's correspondence. The first letter had been sent by the SRA to another firm in the same building which had caused a little delay. The Respondent had therefore telephoned the caseworker and asked the SRA to send future correspondence to the correct address. However, the SRA had then commenced to address correspondence to his home address as requested, but a number of letters had not reached him due to difficulties with the postal service at that address. He apologised to the Tribunal for any delays in dealing with the correspondence.
24. The Respondent had found running down his practice difficult but had disposed of all monies except for £20,000 of client money belonging to clients he could not trace despite making every effort through advertisements, enquiry agents and the DWP. The Forensic Investigation Officer ("FIO") had come to inspect his run off procedures and this had taken up huge amounts of his time. In addition his bookkeeper had spent a lot of time with the FIO.

25. As a result of the closure of his practice the Respondent had reconsidered his professional life and realised that working on his own was not a role that had suited him or played to his strengths. However, in his submission the matters before the Tribunal today were not a case for striking off as the seriousness would not justify such a penalty, nor did the public interest require that he be struck off today. The Respondent wished to resume employment as an employed solicitor in the fields where he had been most successful in the past, as an accredited duty solicitor for criminal work and on the children's panel for child protection issues.
26. It was submitted that a financial penalty would not be appropriate in this case. Since the closure of the firm the Respondent's financial position was parlous. Whilst he was reasonably confident that he could stave off bankruptcy his finances would not allow for the payment of any significant financial penalty.
27. It was submitted that a fair and equitable penalty on the two admissions before the Tribunal today would be a term of suspension from practice. The Respondent had no wish to return immediately to practice and a period of suspension would reflect his culpability in these circumstances. He was and remained a competent solicitor. The current proceedings had been brought about because he had been swamped by administrative matters and he would never again be at the helm of a practice.
28. As well as a letter recommending T Cryan & Co from the Harrow Women's Centre there were a number of personal testimonials put before the Tribunal to say that despite the Respondent's failures, he had a lot to offer in the field of child and criminal law.

Previous matters before the Tribunal

29. The Respondent had been before the Tribunal on 12th February 2002 and 5th October 2006.
30. The 2002 proceedings related to a failure to issue clinical negligence proceedings within the three year period. The Respondent did not immediately notify his partners or the firm's insurers of the circumstances which gave rise to a claim in negligence against the Respondent's firm. On that occasion the allegations were admitted and substantiated and the Tribunal found that it was clear that the Respondent was a solicitor of integrity and probity who worked hard to advance the interests of his clients. He was fined £1,000 and ordered to pay costs in the sum of £1,500.
31. At his appearance before the Tribunal in 2006 the allegations against the Respondent were those of breach of undertaking, as well as administrative failings including failing to deal promptly and/or substantively with correspondence from the Law Society concerning complaints. The allegations were admitted and substantiated and the Tribunal found that the allegations proved against the Respondent were serious. He was fined a total of £12,500 and ordered to pay costs in the sum of £10,000.

The Tribunal's Decision and its Reasons

32. The Tribunal found the allegations admitted and proved.

33. The Tribunal was concerned to note at paragraph 38 of the findings of 5th October 2006:-

“The Respondent should be in no doubt however that any further appearance before the Tribunal would almost certainly result in his removal from practice in one way or another.”

34. These were serious allegations and there was a repetition of the Respondent’s behaviour that had been before the Tribunal in October 2006. The Tribunal found that breaches of undertakings were extremely serious as solicitors had to rely absolutely on other professionals in their giving of undertakings in conveyancing matters. This was the third time the Respondent had been before the Tribunal in a period of seven years and it involved a further breach of undertaking. In those circumstances the Tribunal had given very careful consideration as to whether the Respondent should be struck off.
35. However, the Tribunal had listened very carefully to the mitigation given on the Respondent’s behalf and considered that a lengthy period of suspension would be the appropriate penalty in this case as well as the imposition of a condition upon any practising certificate that he applied for on conclusion of that period of suspension, that he only practised in an employed capacity.
36. The Tribunal Ordered that the Respondent, Clive Owen Lucas of 79 Cecil Park, Pinner, Middlesex, HA5 5HL, solicitor, be suspended from practice as a solicitor for the period of two years to commence on the 10th day of December 2009 and they further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,089.44.
37. The Tribunal also recommended to the SRA that on completion of the period of suspension, a condition be imposed upon any practising certificate that the Respondent applied for that he could only practise in an employed capacity.

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

K W Duncan
Chairman