

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JOHN ROBERT DEVILE
and IAN ALEXANDER GOLDSMITH, (the Respondents)

Upon the application of Margaret Bromley
on behalf of the Solicitors Regulation Authority

Mr J P Davies (in the chair)
Mr P Housego
Mr M Palayiwa

Date of Hearing: 5th October 2010

FINDINGS & DECISION

Appearances

Margaret Bromley, solicitor, of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ, the Applicant, appeared on behalf of the Solicitors Regulation Authority (“SRA”).

George Marriott, solicitor, appeared on behalf of both Respondents. The First Respondent was present but the Second Respondent was not in attendance. Mr Marriott advised that the Second Respondent was aware of the hearing and was content for it to proceed in his absence, and the Tribunal accepted this.

The application had been made by way of a Statement pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007 (“the Rules”) dated 23rd January 2008. In addition, the Tribunal had a Supplementary Statement, pursuant to Rule 7 of the Rules, dated 12th June 2008. The Supplementary Statement gave further information concerning the allegations but did not contain fresh allegations.

Allegations

Against both Respondents it was alleged they had failed to comply with the Solicitors Accounts Rules 1998 (“SAR”) in that:

1. They had failed properly to carry out bank account reconciliations.
2. They had failed to establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with SAR in breach of Rule 1.
3. They had failed to keep proper accounting records to show accurately the position with regard to the money held for each client in breach of Rule 1.
4. They had failed to remedy breaches of the SAR promptly upon discovery in breach of Rule 7.

Preliminary Matters

It was noted that the hearing of this application had been adjourned on previous occasions, due primarily to the Second Respondent’s ill health. It was noted further that on previous occasions it had been unclear whether the Second Respondent had been able to give instructions to a representative. Mr Marriott stated to the Tribunal, in response to a question, that in his view the Second Respondent now had the ability to give instructions. He had a letter from the Second Respondent confirming his instructions and his admissions in this matter. The Tribunal accepted that this was so.

Mr Marriott provided to the Tribunal a small bundle of documents including a brief medical report on the Second Respondent.

Ms Bromley handed to the Tribunal an additional bundle, being the report of Helen Maskell, Investigation Officer, dated 23rd September 2010.

The Tribunal adjourned to consider both bundles of documents. It was subsequently confirmed to the Tribunal that Section G of the Report of 23rd September 2010 should be disregarded.

Factual Background

1. The First Respondent, born in 1953, was admitted to the Roll of Solicitors on 15th June 1977.
2. The Second Respondent, born in 1951, was admitted to the Roll of Solicitors on 15th November 1975.
3. At all material times the First and Second Respondents practised in partnership as Carter Devile Solicitors at 592 Green Lane, Goodmayes, Ilford, Essex IG3 9SG and at two further offices at Buckhurst Hill, Essex and Barking Essex. At the latter office the firm practised under the name of Hargreaves.

4. The SRA authorised the inspection of the books of account and other documents of the Respondents under SAR and the Solicitors Practice Rules (“SPR”). The inspection began on 28th March 2006.
5. The report of the Forensic Investigation Officer (“FIO”), Mr Sage, is dated 14th July 2006. A further Forensic Investigation Report (“FIR”) carried out for the SRA is dated 18th April 2008, and that report was prepared by the FIO, Mr Hill. A further FIR dated 23rd September 2010 was prepared by Ms Maskell of the SRA.
6. The first FIR had been authorised due to concerns about the accounts of Carter Devile. On 26th June 2002 the firm’s reporting accountants wrote to the Respondents and drew attention to breaches of SAR. The firm was visited by the Practice Standards Unit (“PSU”) in 2004, at which point the First Respondent confirmed that the action required by the PSU would be taken.

Findings of Fact and Law

7. The First and Second Respondents admitted the allegations and the facts underlying those allegations.
8. Problems with the firm’s accounts had begun in 1997. These historic problems had never been fully resolved and had been carried forward each year. A shortage of £6,666.68 on client account was shown by the books. However, it had never been clear whether this figure represented a real shortfall on client account or was due to accounting errors. The sum of £6,666.68 had been paid into client account by the Respondents in January 2008.
9. The most recent FIR appeared to show a shortage of £177,942.14 as at 30th April 2010. Again, it was thought that this could be due to technical errors on the account and this was not a situation where there was a real loss to clients. The First Respondent had paid into client account a sum to cover the apparent shortfall, which amount had itself been arrived at following the instruction of new accountants by the Respondents to investigate their accounts. It could be, therefore, that the client account was in surplus. The Tribunal did not have the information to make any determination of what sum, if any, represented a true shortfall on client account. Nevertheless, it was clear that the Respondents had failed to carry out bank account reconciliations or establish and maintain proper accounting systems, or keep proper accounting records so as to uncover and then deal with these errors on the accounts. Further, there had been a failure to remedy the breaches promptly, given that problems with the accounts were noted in 2002.
10. The Tribunal found all the allegations to have been substantiated against both Respondents, and noted that the allegations had been admitted in all material respects.

Mitigation

11. The Respondents were lawyers, not accountants, and had relied on accountants and others to treat client money as sacrosanct. Their trust had sometimes been misplaced but it was accepted that accountability rested with the principals of the firm.

12. The Respondents had relied in particular on a Mr T, a self employed accountant who worked for the firm part time. It had been assumed that he was carrying out his role properly until these proceedings had been issued in 2008. Since then the Respondents had instructed new accountants and their advice was being followed.
13. The problem throughout was a failure to carry out proper bank reconciliations. Mr T was not carrying out those reconciliations in accordance with Law Society and SAR requirements. Historically, the problems had first arisen from a decision in 1997 to adopt a computerised accounting system.
14. The Second Respondent had had some responsibility for the firm's accounts but had been only a salaried partner. He had suffered a mental collapse in 2008 and felt that he should have done more to ensure the firm's accounts were accurate. He had not worked since then but the First Respondent had remained loyal to him. They remained in partnership and the First Respondent paid a salary to the Second Respondent.
15. The Respondents' firm had done all that it could to ensure there was no shortfall on client account. Efforts would continue to be made to check the historic errors on the account. It was clear that some of the historic figures in the accounts were unreliable. It was in mid August of 2010 that the new accountants had given specific advice that the First Respondent should pay a sum of money into client account to cover what was described as the "worst case scenario". A payment of £160,171.57 had been made by the First Respondent on 1st October 2010. Earlier in the year the sum which may be due had appeared larger but had been reduced following work on the accounts. Further work was being done to trace historic errors in the accounts. This had shown that the apparent shortfall was being reduced rather than increasing.
16. The Respondents' firm now has two offices in East London/Essex with twelve employees including three solicitors, three clerks and six support staff/bookkeepers. The firm had had to lose some staff due to current trading conditions. The firm's accounting systems were now running smoothly. The firm's new reporting accountants were not concerned that the Respondents continue to use Mr T to carry out functions to investigate historic transactions. His work had uncovered a number of cases where, for example, cheques were not presented and were thus reissued but the first issued cheque had not been "cancelled" on the ledger. It was understood that all postings since 2005 had been correct and reliable.

Application for Costs

17. The Applicant applied for costs of £15,000. The Respondents had agreed that sum as appropriate and that it would be appropriate to make a costs order on a joint and several basis.

Sanction and Reasons

18. This matter had been under consideration for a long time. The hearing was first listed about two years ago but there had been adjournments due to the Second Respondent's ill health.

19. Accounting issues had been drawn to the Respondent's attention in 2002 but it appeared that it was only at the door of the Tribunal that matters had been resolved. This had been due to the appointment of accountants who knew what they were doing and could give appropriate advice to the Respondents. Their very conservative advice had been that the Respondents' should pay a sum of approximately £160,000 into client account to deal with anomalies in the accounts dating back to 1997, and that advice had been followed.
20. The Tribunal was impressed by the way in which the First Respondent had stood by the Second Respondent. The latter had had some administration and financial responsibilities in the firm. Accounting issues are the responsibility ultimately of the owner/principal. It is the principals' responsibility to ensure that the accounting systems are adequate and that the right number of properly qualified people are employed to deal with the accounts.
21. The allegations before the Tribunal had been admitted. It was not clear precisely when those admissions had been made but the Tribunal thought this would have been due to advice received by the Respondents about the need to face up to their responsibilities.
22. The Tribunal had found, so that it was sure, that all of the breaches alleged had been proved.
23. As this matter had been within the Respondents' knowledge since 2002 but had only fully been dealt with in the last year, with the payment of approximately £160,000 being made in the last few weeks, a financial penalty was in order. This would be larger for the First Respondent as he was the principal of the firm. Although neither Respondent had benefitted from the breaches of SAR, they had failed to deal with the breaches sufficiently promptly. It was not suggested that clients had lost money; rather that the firm's bookkeeping had been inadequate.
24. In all of the circumstances it was appropriate that the First Respondent should be fined £20,000 and the Second Respondent fined £10,000.

Decision as to Costs

25. The Tribunal accepted that the Applicant's costs were appropriate and that in all of the circumstances the Respondents should be Ordered to pay the costs of £15,000 on a joint and several basis.

Order

26. The Tribunal Ordered that the Respondent, John Robert Devile of 592 Green Lane, Goodmayes, Ilford, Essex, IG3 9SG, solicitor, do pay a fine of £20,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00, such costs to be joint and several between the Respondents.
27. The Tribunal Ordered that the respondent, Ian Alexander Goldsmith of 592 Green Lane, Goodmayes, Ilford, Essex, IG3 9SG, solicitor, do pay a fine of £10,000.00, such

penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00, such costs to be joint and several between the Respondents.

Dated this 24th day of November 2010
on behalf of the Tribunal

J P Davies
Chairman