No. 10533-2010

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF DOMINIC JOSEPH MURRAY, solicitor's clerk (The Respondent)
A person (not being a solicitor) employed or remunerated by a solicitor

Upon the application of Ian Ryan
on behalf of the Solicitors Regulation Authority

Mr D J Leverton (in the chair)
Mr K W Duncan
Mr M C Baughan

Date of Hearing: 8th November 2010

FINDINGS & DECISION

Appearances

Ian Ryan, solicitor and partner of Finers Stephens Innocent LLP, 179 Great Portland Street, London, W1W 5LS appeared on behalf of the Solicitors Regulation Authority ("SRA").

The Respondent did not appear and was not represented but had submitted to the Tribunal a statement dated 2 November 2010.

The application was dated 17 May 2010 and was supported by a Rule 5 statement of the same date. A Rule 7 statement dated 6 September 2010 contained further allegations.

Allegations

(i) The allegation in the Rule 5 Statement against the Respondent is that he, having been involved in a legal practice but not being a solicitor, had, in the opinion of the SRA occasioned or been party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice. In particular, that he received cash and did not account for it with his employer.

(ii) The further allegation, in the Rule 7 Statement, was that he had been convicted of criminal offences which disclosed such dishonesty that in the opinion of the SRA it would be undesirable for him to be employed or remunerated by a solicitor in connection with his practice. In particular, that on 12th July 2010 he pleaded guilty to three allegations of theft from his employer at Preston Crown Court, and was sentenced to a total of 21 weeks imprisonment suspended for 18 months and ordered to carry out 240 hours unpaid work and to pay compensation of £527.13 to the victim.

The Applicant sought an Order pursuant to s.43(2) of the Solicitors Act 1974 (as amended).

The Applicant asked for the matters set out in the Rule 5 Statement to lie on the file as the allegation contained therein was superseded by the criminal conviction set out in the Rule 7 Statement.

Factual Background

1. The Respondent was born on 30 August 1976. His last known address was 16 Wellington Road, Ashton, Preston PR3 1BU.

Findings of Fact and Law

2. The Respondent was convicted of criminal offences of dishonesty. In particular, on 12 July 2010 the Respondent pleaded guilty to three allegations of theft from his employer and was sentenced to a total of 21 months imprisonment suspended for 18 months and was ordered to carry out 240 hours unpaid work and pay compensation of £527.13 to the victim. The convictions had arisen from events whilst the Respondent was employed by Vincents Solicitors, Castle View, Bridge Street, Garstang, Preston, Lancashire, PR3 1YB as an unadmitted clerk. The Tribunal noted that the convictions arose in circumstances in which the Respondent had taken cash from clients of the firm for which he had not accounted in the firm's records.

3. In the light of the conviction, the Tribunal was satisfied so that it was sure that the allegation contained in the Rule 7 Statement had been proved.

Mitigation

4. The Tribunal noted the Respondent's statement and testimonial.

Sanction and Reasons

5. The Tribunal noted the comments of His Honour Judge Cornwall, the sentencing Judge at Preston Crown Court on 28 July 2010. In particular it was noted that the Judge had said:

> "I'm afraid this can only really be properly regarded as a grave breach of trust, hugely damaging to the solicitors' general reputation, extremely upsetting and embarrassing for the clients to be called upon to pay money that they had already paid. Those clients have an entirely understandable and entirely

legitimate grievance against you which, as I say, is ultimately damaging to your employer's reputation."

6. The Tribunal was satisfied that the Respondent's offences, to which he had pleaded guilty, reflected badly on the Respondent and on the solicitors' profession. This was a clear case in which a s.43 Order should be made, and the Tribunal would so Order.

7. The Tribunal Ordered that the allegations contained in the Rule 5 Statement dated 17 May 2010 should lie on the file.

Costs

8. The Applicant requested an Order that the Respondent should pay costs assessed at £12,970.09. It was noted that the costs figure was quite high, given that ultimately the Applicant had relied on the Respondent's conviction, rather than on the matters set out in the Rule 5 Statement.

9. The Applicant explained that most of the costs had been incurred in connection with preparation of the Rule 5 Statement. As much of the work as possible had been undertaken by an assistant solicitor in order to keep the costs low. However, a great deal of work had been needed as the Applicant could not have been sure at the time of the Rule 5 Statement that there would be a conviction on all or any of the matters brought against the Respondent. An amount of work had been done in considering those matters which were part of the criminal proceedings and identifying those matters which ought to be brought against the Respondent. Had there not been convictions on which the Applicant could base the application, it would have been necessary to prove the allegations in the Rule 5 Statement to the criminal standard of proof.

10. The Applicant further submitted that an amount of work had been done, in particular in connection with the Respondent's handling of the matter of Mr M. It had been necessary to interview Mr M at his home in order to support the proceedings. Ultimately, this was not a matter in connection with which the Respondent had been convicted but the Applicant submitted that it had been reasonable to gather the evidence and raise the matters contained in the Rule 5 Statement.

11. The Tribunal noted that the Respondent's statement recorded that he was not working and had requested that there should be no Order for costs.

Decision as to costs

12. The Tribunal decided that it was appropriate to make an Order for costs against the Respondent as it was not appropriate for the costs of this matter to be borne wholly by the profession. However, it noted his present circumstances. An explanation had been given by the Applicant of the amount of costs sought and the Tribunal agreed that it would Order the costs to be fixed at £12,970.09 and that those costs should be paid by the Respondent. However, the Order for costs should not be enforced without permission of the Tribunal and such permission would depend on the Respondent's financial and other circumstances.

Order

13. The Tribunal Ordered that as from 8th day of November 2010 except in accordance with Law Society permission:

    (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Dominic Joseph Murray of 16 Wellington Road, Ashton, Preston, PR2 1BU;

    (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Dominic Joseph Murray;

    (iii) no recognised body shall employ or remunerate the said Dominic Joseph Murray;

    (iv) no manager or employee of a recognised body shall employ or remunerate the said Dominic Joseph Murray in connection with the business of that body;

    (v) no recognised body or manager or employee of such a body shall permit the said Dominic Joseph Murray to be a manager of the body;

    (vi) no recognised body or manager or employee of such a body shall permit the said Dominic Joseph Murray to have an interest in the body;

And the Tribunal further Ordered that the said Dominic Joseph Murray do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,970.09, such costs not to be enforced without the permission of the Tribunal.

DATED this 26th day of November 2010
on behalf of the Tribunal

D J Leverton
Chairman