

IN THE MATTER OF OLUTAYO OLANIRAN AROWOJOLU, ISAAC NEWTON
PATRICE CARTER, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D. Glass (in the chair)
Mr. J. R. C. Clitheroe
Mrs N. Chavda

Date of Hearing: 11th June 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts SG14 1BY on 21st August 2008 that Olutayo Olaniran Arowojolu of Tayo Arowojolu & Co, Helen House, 214-218 High Road, South Tottenham, London N15 4NP and Isaac Newton Patrice Carter of 19 Leyburn Road, Edmonton, London N18 2BG, solicitor be required to answer the allegations contained in the statement which accompanied the application and that such Order be made as the Tribunal should think right.

The allegations against the First Respondent, Olutayo Olaniran Arowojolu were that:

1. He failed to keep his books of account properly written up, contrary to Rule 32 of the Solicitors Accounts Rules 1998.
2. He withdrew money from client account other than as permitted by Rule 23 of the Solicitors Accounts Rules 1998.

3. He failed to remedy breaches of the Solicitors Accounts Rules promptly on discovery contrary to Rule 7 of the Solicitors Accounts Rules 1998.
4. He retained monies representing costs in client account, contrary to Rules 19 and 20 of the Solicitors Accounts Rules 1998.
5. He provided misleading information to clients in conveyancing matters as to his firm's costs contrary to Rule 3a of the Solicitors Costs Information and Client Care Code 1999.

The allegations against the Second Respondent, Isaac Newton Patrice Carter were that contrary to Rule 1 of the Solicitors Practice Rules 1990, he:

6. Acted towards other solicitors with a lack of frankness and good faith.
7. Continued to act in conveyancing transactions which had suspicious features bearing the hallmarks of mortgage fraud.
8. Provided misleading information to an Officer of the Solicitors Regulation Authority during the course of an investigation.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Stephen Battersby appeared as the Applicant, the First Respondent appeared and was represented by Mr Winston James of Counsel, and the Second Respondent appeared and was represented by Richard Nelson.

The evidence before the Tribunal included the admissions of the First Respondent to allegations 1-5, and the admissions of the Second Respondent to allegations 6 & 8, together with a number of references for the Second Respondent.

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

The Tribunal Orders that the Respondent, Olutayo Olaniran Arowojolu of Tayo Arowojolu & Co, Helen House, 214 - 218 High Road, London, N15 4NP, solicitor, do pay a fine of £5,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,300.

The Tribunal Orders that the Respondent Isaac Newton Patrice Carter of 19 Leyburn Road, Edmonton, London, N18 2BG, solicitor, be reprimanded and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000.

The facts are set out in paragraphs 1 – 12 hereunder:

1. The First Respondent was born in 1962 and admitted as a solicitor on 2nd March 1998. At all material times he was sole Principal in the firm of Tayo Arowojolu & Co until 1st November 2007 when he was joined by Ms B as a salaried partner. The Second Respondent was a consultant with Tayo Arowojolu & Co at the material times but was not Principal. The names of both Respondents remained on the Roll of Solicitors.

2. On 8th January 2008, an inspection of the books of account and other documents of Tayo Arowajolu & Co was commenced by the Solicitors Regulation Authority (“SRA”) and the investigation report dated 29th February 2008 was before the Tribunal.

The First Respondent

Allegation 1

3. Because of the inadequate way in which the firm’s accounts were kept, the SRA was unable to determine whether the firm held sufficient monies in its client account to meet its liabilities to clients as at 30th November 2007. The firm operated a client matter ledger entitled ‘Unknown Transfers’. A solicitor should only use a suspense client ledger account of this nature where its use could be justified, for instance for temporary use on receipt of an unidentified payment if time was needed to establish the nature of the payment or the identity of the client (Rule 32 (16) Solicitors Accounts Rules 1998). It was suggested that the First Respondent, by making payments into such an account failed in his duty to keep accounts properly written up.

Allegation 2

4. It was revealed during the investigation that there was a minimum cash shortage on client account as at 30th November 2007 totalling £85,334.67. This was due to a combination of debit balances on client ledger accounts and unallocated transfers from client to office account.
5. In respect of three individual client matters, there were debit balances totalling £32,219.52. In the case of Mr DSA a number of payments had been made out of client account when funds were not available to meet them.

Allegation 3

6. Payments over and above what was held on his behalf had been made out of the ledger of Mr DSA and the resulting shortage which had not been replaced, had been in existence from 24th November 2005. The First Respondent was clearly aware of this. Furthermore there was a retention in client account of monies representing costs as outlined below.

Allegation 4

7. A review of the November 2007 cashbook showed that client to office bank account transfers were being recorded on the relevant client matter ledgers as costs transfers, but no such transfers were shown on the relevant bank account statements. The firm had been offsetting its undrawn costs against the ‘Unknown Transfer’ ledger.

Allegation 5

8. In conveyancing transactions, the firm was charging clients £30.00 plus VAT or more in respect of payments made by telegraphic transfer, although the bank only charged the firm £20.00 for each such transaction. A client care letter also described ‘postage,

copying, forms (inc VAT)' as a disbursement in the sum of £35.25 whereas this should have been part of the firm's costs. This information was misleading to clients and effectively enabled the firm to make a secret profit over a six month period calculated at £1,860.

The Second Respondent

Allegations 6 and 7

9. The Second Respondent was employed by Tayo Arowojolu & Co as a consultant solicitor dealing with conveyancing matters. It emerged during the inspection that he had acted for a client called Mr L in three back to back transactions, each of which involved the client purchasing a property and selling it on immediately at a profit. In each of the three cases, the ultimate purchaser was represented by NTI & Co Solicitors. Correspondence from their client files caused the Investigation Officer ("IO") to believe that not all of the purchase monies were going through the Arowojolu & Co client bank.

10. One of the transactions related to the purchase and sale of a flat at M Court, which Mr L was purchasing for £193,000 from Mr K who was represented by H & Co Solicitors. The property was to be purchased from Mr L by Mr B for £247,000. The sale and purchase took place on 23rd November 2005 and it was clear that Mr L's purchase of the property from Mr K was dependent upon his receipt of funds from the final purchaser Mr B. From Mr L's client ledger accounts the IO saw that on 23rd November 2005 £206,016.64 was received by telegraphic transfer from NTI & Co, leaving a balance of £40,983.36 outstanding of the final purchase price. A letter from NTI & Co dated 23rd November 2005 said 'We confirm that we have today telegraphed the sum of £206,016.64 after receipt of your fax confirming that you are in receipt of £40,983.36 directly from our client by way of completion on the above matter'. However, there was no trace of the fax referred to in NTI & Co's letter from Tayo Arowojolu to NTI & Co on the Tayo Arowojolu file, nor was there any trace in the firm's bank accounts of the sum of £40,983.36 having been received. A copy of the fax from Tayo Arowojolu to which NTI & Co referred was provided to the IO from their file and stated 'We now confirm receipt of the funds from your client and now await receipt of the balance monies from you'. The Second Respondent told the IO that he had sent this letter to NTI & Co and could not explain why it was not on his own file. In fact there was a letter on the file from Mr L to the Second Respondent confirming that he had arranged with Mr B for funds to be paid directly to him – it was therefore clear that the letter sent by the Second Respondent to NTI & Co informing them that he had received the deposit money was misleading.

11. The Second Respondent told the IO that what had taken place in the M Court transaction was an isolated matter. This was not the case because the same pattern had been followed in respect of the other two back to back purchases which related to Flat 5, H Street and Flat 7, R House.

Allegation 8

12. It was claimed by the First Respondent on behalf of the Second Respondent that it was not unusual for funds to change hands directly between clients and that all parties

(including the Solicitors, NTI) were aware of the financial arrangements between the clients. It was a regular procedure for the client to buy and sell properties as part of his business, often buying and selling within a short time frame. The documentation made it clear that his client was not the owner of the property. The Second Respondent's recollection of what had happened in the transactions almost three years before the interview had been hazy and his denial that there were other similar transactions had not been deliberate.

The submissions of the Applicant

13. The Applicant confirmed allegations 1-5 were admitted by the First Respondent and allegations 6 & 8 were admitted by the Second Respondent. The only allegation denied was allegation 7, which was denied by the Second Respondent.
14. In relation to the First Respondent, the breaches related to the Solicitors Accounts Rules and the Applicant confirmed the First Respondent had replaced the deficit from his own resources. Concerning the matter of telegraphic transfer fees, this had taken place over two years ago and the SRA had now given the firm guidance on the matter. Indeed, the firm had changed its procedures to ensure compliance with the Solicitors Costs Information and Client Care Code 1999.
15. In relation to the Second Respondent, the Applicant submitted that the characteristics of the three transactions before the Tribunal should have put the Second Respondent on his guard as to the risk of mortgage fraud on the basis of the following:-
 - They were all back to back transactions in which Mr L was not registered as the proprietor at the time he purported to sell each property.
 - Tayo Arowojolu did not have control over all the purchase monies allegedly paid.
 - The Second Respondent had misleadingly informed NTI & Company on each occasion that his firm had received the balance of the purchase price directly from the purchaser when this was not the case.
16. The Applicant referred the Tribunal to the Guide to the Professional Conduct of Solicitors 1999 which he submitted applied at the relevant time. This contained a Green Card warning which gave signs of property fraud for solicitors to watch out for. The signs included monies being paid direct to the seller, and clients reselling property at a substantial profit.
17. The Applicant relied upon an admission made by the Second Respondent to the IO where he confirmed the matter of Mr L was an isolated incident and there were cases when Mr L received funds direct. The Applicant admitted that he did not have a copy of the faxed letter dated 8th November 2005 referred to by the Second Respondent, which he had sent to NTI & Company Solicitors confirming he had received a payment of £79,500 direct into client account from his client relating to a property at Flat 5, H Street. However, the Applicant submitted that the Second Respondent had clearly accepted funds had passed direct between clients and that there was sufficient evidence that funds did not go through client account. He submitted that the Second

Respondent should not have become involved in these transactions as they were suspicious, as described by the green card on the basis that the client was selling at a substantial profit and was buying and selling properties quickly.

The submissions of the Second Respondent on allegation 7

18. Mr Nelson on behalf of the Second Respondent confirmed that allegation 7 was denied. He submitted that if a transaction was legitimate, then a solicitor should be able to conduct it and this was a case of whether a solicitor was entitled to conduct a legitimate transaction regardless of whether the property or mortgage looked strange. It was submitted that there were instances where there may be a very complex transaction involving lots of organisations who wished to achieve a purpose and whilst this may initially look bad, it could be perfectly legitimate.
19. Furthermore, Mr Nelson submitted that the Green Card warning was issued to solicitors to protect themselves. It was simply a warning but not a rule and was there to warn solicitors of mortgage fraud. The Tribunal were referred to findings in the case of David John Geoffrey Williams, Kevin Fingal O'Donnell and Peter Thorpe [8441/2001] in which the Tribunal stated:

“The Tribunal is entirely clear that solicitors are not obliged “to comply” with The Law Society’s guidance on mortgage fraud. They are to have cognisance of it in order to protect their own positions, to make them aware of what are warning signs of mortgage fraud in an endeavour to ensure that no solicitor assists with the perpetration of a mortgage fraud. A transaction might bear every hallmark of mortgage fraud and yet still be entirely legitimate.”

Mr Nelson submitted that the essence of the Green Card warning on mortgage fraud was that if a solicitor ignored the warning, it could put him at a disadvantage. If there was no mortgage fraud in the first place, then the solicitor was not implicated. If a solicitor was alerted by unusual circumstances, he should investigate the matter further but having paid heed to the Green Card warning, if the solicitor still decided it was a legitimate transaction, he could proceed.

20. In this case, there was no allegation of dishonesty or fraud against the Second Respondent, no proceedings were taken against NTI & Company Solicitors and the transaction was legitimate. Mr Nelson submitted there was no need for the Second Respondent to withdraw from the transaction particularly as both parties had agreed there was no evidence of fraud.

The Tribunal’s decision on allegation 7

21. The Tribunal had listened carefully to the submissions of both parties and had considered all the documentary evidence. The Tribunal had taken note of the fact that both parties had agreed there was no evidence of mortgage fraud and in view of this, the Tribunal accepted Mr Nelson’s argument that the mere fact of a transaction appearing to be suspicious would not prevent a solicitor from acting in that transaction, providing the transaction was legitimate and the solicitor had paid proper heed to the Green Card warning on mortgage fraud.

22. The Tribunal were influenced by the decision of the previous Tribunal in the Williams, O'Donnell and Thorpe case and took note of the point that a solicitor was not obliged to comply with The Law Society's Guidance on Mortgage Fraud, although that guidance was there to protect a solicitor's position and due heed should be paid to it. Having considered all these factors the Tribunal did not find allegation 7 to have been proved.

Mitigation

The submissions of the First Respondent

23. Mr James on behalf of the First Respondent confirmed that whilst the First Respondent had appeared before the Tribunal previously on 7th October 2008, the matters before the Tribunal today had only just materialised at that time and could quite properly have been dealt with then. The First Respondent had been given very short notice of the additional allegations and did not have enough time to deal with them. The Tribunal were asked to proceed on the basis that the First Respondent had not reoffended and to give him due credit on that basis.
24. The First Respondent fully admitted all the breaches and accepted responsibility as equity partner for the breaches regardless of whether they had anything to do with him. Allegation 5 related to secret profits concerning conveyancing transactions and the Tribunal were advised that the First Respondent did not carry out any conveyancing work at all but accepted responsibility on a strict liability basis. He had not been aware of the charges for "postage, copying, forms (including VAT)" and it was simply a case of this description being in the wrong place.
25. All the deficits indentified had been promptly rectified by the First Respondent and no further difficulties had been identified. The First Respondent was 46 years of age and had been a solicitor for eleven years. He now had three equity partners and the practice dealt mainly in immigration work.
26. The First Respondent was married with four children who were all at school and more recently he had suffered ill health due to an operation earlier this year. He had been off work for six weeks. He worked voluntarily and preached at his local church. He considered himself to be a responsible and respectable solicitor and was shocked when the breaches were drawn to his attention. He rectified them immediately and the Tribunal were referred to his letter to the SRA dated 29th April 2008 which set out in detail the steps he had taken and the explanations he had given.
27. In relation to the previous appearance in October 2008, he had been a partner in another practice at that time and the allegations related to accounts breaches which had nothing to do with the First Respondent. He had suffered a small financial penalty at that time and had accepted strict liability for the breaches as a partner of the practice. As a result of those findings, conditions had been placed on his practising certificate for six monthly accountant's reports to be filed and that he should not practise alone. He had been a salaried partner in that practice.

The submissions of the Second Respondent

28. Mr Nelson submitted on behalf of the Second Respondent that there had been no allegation of dishonesty or fraud. The Second Respondent had admitted allegations 6 and 8 and should be given credit for doing so, particularly in light of the fact that allegation 7 had been found not proved.
29. The Second Respondent had worked at Tayo Arowojolu & Co Solicitors from May 2004 to January 2007 prior to which he had been employed by various local authorities as an employee. By the time of the SRA investigation, he had already left the firm to go back to working in the comfort of local authorities as he had found working in private practice much more pressurised and preferred working within local authorities doing mainly planning law.
30. The Tribunal were referred to the character references provided for the Second Respondent which showed he had been heavily involved with his local church for some time. Indeed, he had met Mr L, who was a property dealer, through his local church while he was still working within local government. When the Second Respondent went into private practice, he asked Mr L if he could act for him, he knew Mr L well and he knew what he did for a living. He did not act for any lenders. The Second Respondent also knew the company NTI & Co Solicitors well.
31. The admissions made at the interview with the IO in January 2008 had been made at a time when the Second Respondent was working back in local authority and related to transactions from 2005. The Second Respondent had not been given any caution at the outset and as he was not a litigious lawyer, he tried to cooperate and deal with the SRA as best he could. He had not deliberately misled the IO and it was submitted that the information he gave could be described as inaccurate.
32. The Second Respondent did not believe that NTI and Company Solicitors had been misled, or compromised in any way as they knew the situation fully. The Second Respondent accepted that he had not read letters accurately, he had been naive and, should have done things differently and his errors were due to the busy work load. The Second Respondent was highly regarded by his clients, employers, managers and trainees, he was a professional, diligent, thorough and reliable solicitor and indeed, his children were following him into the law. The Second Respondent was very sad to be before the Tribunal today, he had found the experience tremendously stressful and had lived with this hanging over him for some time. There was an assumption by him that the Tribunal would strike him off and he had been fearful for his future for some time.

Costs

33. The Applicant provided the Tribunal with a schedule of costs and confirmed costs had been agreed with both parties in the sum of £9,300 but that these would need to be apportioned between each Respondent and the Tribunal was asked to decide on that apportionment. The Applicant accepted that the cases against each Respondent had been separate and could have been dealt with in separate proceedings therefore he was not requesting an Order for costs to be payable jointly and severally. The Applicant was unable to confirm how much time had been spent by the IO on investigating the

accounts breaches, and how much time had been spent on the three files referred to in relation to the conveyancing breaches. However he imagined that more time was likely to have been spent on the accounts breaches.

34. The First Respondent submitted that any apportionment should be 50/50 between each Respondent. It appeared the IO had done an equal amount of work on both the accounts breaches and the conveyancing matters. At the outset it had appeared the Second Respondent was faced with more serious allegations even though no dishonesty had been alleged against either. The allegations against the First Respondent had dominoed in that once one allegation had been identified, the other allegations followed.
35. The Second Respondent took a different view and submitted that the majority of the time had been spent dealing with the accounts breaches. Concerning the allegations against the Second Respondent, it was just a matter of looking at the relevant files which was a small part of the investigation that could be measured in hours and not days. He submitted that as matters had unfolded, it was clear the more serious allegation was not against the Second Respondent and an equal split between the two would be unfair to the Second Respondent who had been an employee at the practice for a short time, against a long term partner who had been there.

The Tribunal's decision

36. The Tribunal had found allegations 1-5 and allegations 6 and 8 to be proved, indeed they were admitted. Allegation 7 against the Second Respondent had not been proved. The Tribunal had listened carefully to the mitigation, and had considered all the documents and references provided by both parties. Dealing firstly with the First Respondent, he was the senior equity partner in the practice of Tayo Arowojolu & Co and was responsible for the accounts breaches taking place within the firm which were of a serious nature. The purpose of the Solicitors Accounts Rules 1998 was to ensure client funds were properly protected and utilised and these were important regulatory requirements that enabled The Law Society to fulfil its regulatory function. Failure to comply with those rules was a serious matter. However, in this particular case there had been no allegation of dishonesty and the Tribunal confirmed it had not taken account of the First Respondent's previous appearance in October 2008 having accepted the submissions of the First Respondent that the matters before the Tribunal today could and should have been dealt with at the same time as the matters before the Tribunal in October 2008. In all the circumstances, the Tribunal considered the appropriate sanction was to fine the First Respondent the sum of £5,000.
37. In relation to the Second Respondent, the Tribunal were of the view that he was less culpable than the First Respondent and noted that when he was interviewed by the IO, no caution had been given to him in circumstances which were particularly stressful. The Second Respondent had admitted allegations 6 & 8 which the Tribunal did not consider to be of the most serious nature although the Tribunal accepted that it was appropriate for those allegations to be referred to the Tribunal. The Tribunal accepted the Second Respondent's submissions that the solicitors on the other side had been fully aware of the circumstances of the transaction and that the Second Respondent had not deliberately misled the IO when interviewed some three years after events had

taken place. In all the circumstances, the Tribunal considered the appropriate sanction was to reprimand the Second Respondent.

38. In relation to the question of costs, these were apportioned as £6,300 to be paid by the First Respondent, and £3,000 to be paid by the Second Respondent.
39. The Tribunal Ordered that the Respondent, Olutayo Olaniran Arowojolu of Tayo Arowojolu & Co, Helen House, 214 - 218 High Road, London, N15 4NP, solicitor, do pay a fine of £5,000, 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 £6,300.
40. The Tribunal Ordered that the Respondent Isaac Newton Patrice Carter of 19 Leyburn Road, Edmonton, London, N18 2BG, solicitor, be reprimanded and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000.

Dated this 18th day of January 2010

On behalf of the Tribunal

Mr D Glass
Chairman.