

IN THE MATTER OF WING HING HOWARD CHAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mrs E Stanley
Mr J Jackson

Date of Hearing: 19th November 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 James Moreton, solicitor and partner in the firm of Bankside Law Solicitors, Thames House, 58 Southwark Bridge Road, London, SE1 OAS on 15th July 2009 that Wing Hing Howard Chan of Aston Law Association Solicitors, 168 Trinity Road (First Floor), Aston, Birmingham, West Midlands, B6 6HZ 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 were:

- (i) that he failed to deal with professional disbursements other than in accordance with Rule 19 of the Solicitors Accounts Rules 1998 (the 1998 Rules);
- (ii) that he kept a client account other than in accordance with Rule 14 of the 1998 Rules;
- (iii) that he withdrew monies from client account in breach of Rule 23(3) of the 1998 Rules;
- (iv) that he failed to comply with a condition on his practising certificate for the practice year 2006/2007.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS, on 19th November 2009 when James Moreton appeared as the Applicant and the Respondent did not appear and was not represented.

The Respondent had responded to the Tribunal's questionnaire and was aware of the proceedings.

The evidence before the Tribunal included a copy of the Adjudicator's decision to impose a condition on the Respondent's practising certificate, an Investigation Officer's Report and other documents were included in the Applicant's bundle.

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

The Tribunal Orders that the Respondent, Wing Hing Howard Chan of Aston Law Association Solicitors, 168 Trinity Road, (First Floor), Aston, Birmingham, West Midlands, B6 6HZ, solicitor, do pay a fine of £1,000.00, 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 £8,504.04.

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

1. The Respondent, born in 1961, was admitted as a solicitor in 1991. His name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practice on his own account under the style of Aston Law Association Solicitors at Aston, Birmingham. He had previously worked as an in-house solicitor for an organisation in Hull. Aston Law Association Solicitors undertook mainly immigration work. It employed no staff.
3. On 23rd November 2006 an Adjudicator of the SRA made a decision to grant the Respondent a practising certificate for the practice year 2006/2007 subject to the condition that he should not be a sole signatory to a client account cheque. The Respondent was informed of the condition by letter of 30th November 2006. The condition was imposed because the Respondent had an undischarged County Court judgment against him.
4. On 13th December 2007 an Investigation Officer ("IO") of the SRA attended the Respondent's office and carried out an inspection of the books of account and other documents. The IO's Report dated 30th April was before the Tribunal.
5. The IO reported that the Respondent's books of account were not in compliance with the Solicitors Accounts Rules as the client bank account was not in the name of either the Respondent or his firm; funds paid to the Respondent in respect of professional disbursements and lodged into the office bank account had not been paid or transferred to the client bank account by the end of the second working day following receipt; and interest paid on general client account was being credited to the client bank account.

6. The Respondent had explained to the IO that he arranged for his long-standing friend, Mr Islam, to open a client bank account for his firm. Mr Islam was not a solicitor. The title of that bank account was "Mr M Z Islam Trading as Aston Law Association Clients Account".
7. There was little activity on the client account since it opened in September 2006 – ten lodgements and the following transfers made to the office bank account: £240 on 3rd November 2006, £120 on 10th November 2006; £545 on 19th December 2006 and £36 on 30th January 2007.
8. The first two transfers (£240 and £120) were in respect of costs. The Respondent told the IO that he and Mr Islam had instructed the bank orally to effect the transfers. A cheque had not been used.
9. The Respondent explained to the IO that the transfer of the £545 had been made by the bank without his authority to meet an unauthorised overdraft on office account. This was rectified by the Respondent three days later as soon as it was drawn to his attention.
10. The Respondent explained that the bank had transferred the £36 without his authority because his office account had become overdrawn. These funds had been replaced when monthly interest was credited to the client bank account over approximately one year.
11. A list of liabilities to clients, as at 30th November 2007, was produced for inspection and totalled £1,440. A further liability of £176.25 representing Counsel's fees had been lodged in office account and not paid or transferred to client account by the end of the second working day after receipt. A comparison of the total liabilities with cash held on the client bank account at that date revealed a cash shortage of £177.15 caused by the Counsel's fees retained in office account and a 90p book shortage. The Respondent replaced it on 2nd December 2007.
12. In two other cases the Respondent had paid sums to meet Counsel's fees into office account but had neither paid Counsel nor transferred the money to client account.

The submissions of the Applicant

13. The Respondent had responded at length to letters addressed to him by the SRA and the Applicant drew the attention of the Tribunal to those letters.
14. The IO's Report set out the occasions on which it had been established that the Respondent had not dealt with professional disbursements in accordance with the Solicitors Accounts Rules.
15. With regard to the client bank account opened by Mr Islam, Mr Islam was not a solicitor nor a Fellow of the Institute of Legal Executives and was not therefore entitled to be a signatory to a client account cheque. It was submitted that by operating a client account with the assistance of Mr Islam, the Respondent practised in breach of the condition on his practising certificate for the practice year 2006-2007.

16. In correspondence with the SRA the Respondent had admitted that he had been aware of the latest by early May 2007 that Mr Islam should not be a signatory on the client account and he had confirmed that Mr Islam was neither a solicitor nor a Fellow of the Institute of Legal Executives.
17. The Applicant pointed out that the Respondent had responded to the questionnaire sent to him by the Tribunal in which he indicated that he admitted some of the allegations. He had not specified which of the allegations was admitted. The Applicant told the Tribunal that he had written to the Respondent but had received no response from him.
18. In answer to a question by the Tribunal the Applicant said that a practising certificate had been issued to the Respondent which was subject to conditions that would prevent him from acting as a sole practitioner amongst other things.

The submissions of the Respondent

19. The Respondent did not appear and was not represented at the hearing. The Tribunal has noted under this heading the explanations for absence given by the Respondent in letters which he addressed to the SRA.
20. The Respondent accepted the contents of the IO's Report and accepted his sole responsibility for what had happened. He said he was extremely sorry to have let The Law Society down.
21. He explained that he had checked by telephone with The Law Society (Professional Guidance Unit) on a number of occasions in about October or November 2006 with regard to the issue of disbursements in agreed fixed fee cases. It was at about that time that he realised that it was not necessary to have a client account to operate a legal practice and certainly not in the areas of law in which he wished to practise. He said he had been told that it was in order to treat disbursements as office money because the firm was ultimately responsible for disbursements. The Respondent said that he fully accepted that even if he had been given the wrong information he remained liable.
22. The Respondent had pointed out that only a small amount of interest had been credited to the client account.
23. The Respondent's relationship with Mr Islam had been one purely of a long-term friendship. He had been volunteering in the Respondent's firm a few hours each week. Mr Islam had opened the client account for the Respondent in order to help him. Since realising the mistake which the Respondent had made, Mr Islam had simply kept the account on until such time as the Respondent could close it formally. The Respondent trusted Mr Islam completely.
24. The Respondent had pleaded for leniency and sympathy and hoped all the mitigating factors might be taken fully into account.
25. It was the Respondent's position that he had made genuine mistakes and never formed any intention deliberately to breach any rules or conditions imposed upon him.

26. The Respondent had practised as a solicitor for 17 or 18 years and had an unblemished record.
27. The Respondent had tried to close the offending bank account but this had not been straightforward. The Respondent pointed out that he had previously been an employed solicitor who had not been in private practice until he opened his own practice specialising in immigration and nationality matters in September 2006. He had mistakenly believed that a client account was essential for a legal practice and had only realised that was not the case one or two months later.
28. Sums of money held in client account had been extremely modest.
29. He had suffered a punishing insurance premium under the Assigned Risks Pool and he was facing an uncertain future.
30. The Respondent had also pointed out that the matter had caused him anxiety and worry. He was a person of extremely limited means having lived in rented accommodation all his life. He did not own a car or a television.

The Findings of the Tribunal

31. The Tribunal found allegations (i), (ii) and (iii) to have been substantiated. The Tribunal gave the Respondent credit for the letters of explanation that he had written to the SRA and noted that in those letters he accepted liability for compliance with the Solicitors Accounts Rules. Punctilious compliance with those Rules was a fundamental requirement of a solicitor in private practice. Those Rules were in place to protect the public and so that the public could be confident that moneys passed to a solicitor were not being placed in jeopardy. The Tribunal did take into account the fact that the amounts of money involved were small. The Tribunal accepted that the opening of a client account with an unqualified person as a signatory was a mistake on the part of the Respondent. However the Respondent is a solicitor and where a solicitor wished to derive the benefits of professional practice, he must also comply with the Rules and Regulations relating to professional practice.
32. With regard to allegation (iv) the Tribunal found that allegation not to have been substantiated. The Tribunal was told that the condition placed on the Respondent's practising certificate for the practice year 2006/2007 was that he should not be sole signatory to a client account cheque. There was no evidence before the Tribunal that the Respondent had signed any cheques. Indeed, the Respondent had confirmed to the IO that transfers for costs had been made by oral instructions to the bank.
33. It appeared to the Tribunal that the bank account with Mr Islam as a joint signatory was a misguided attempt to comply with the condition rather than, as suggested by the Applicant, an attempt to circumvent that condition.
34. The Tribunal took into account the mitigating factors set out by the Respondent in the course of his correspondence with the SRA. Whilst the Tribunal emphasised the importance of full compliance with the Solicitors Accounts Rules, the Tribunal took into account that the sums involved in this case were extremely modest and that the

Respondent appeared to be in difficult personal financial circumstances. The Tribunal concluded that a fine would indicate to the public and to the solicitors' profession that such non-compliance with the Solicitors Accounts Rules could not be tolerated and that a fine of £1,000 was proportionate in all the particular circumstances of this case. It was right that the Respondent should pay the costs of and incidental to the application and enquiry. The Tribunal noted that the Applicant sought costs in the sum of £8,504.04 and considered it right that the Respondent should bear such costs. In making that Order, having considered the Respondent's financial circumstances, the Tribunal considered that cost to be entirely reasonable and made the Order aware as it was that the SRA would not inappropriately seek to enforce such Order.

Dated this 12th day of January 2010

On behalf of the Tribunal

A H B Holmes
Chairman