

IN THE MATTER OF OKECHUKWU NGWUOCHA
and MOHAMMED ABDUL AZIZ, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Miss N Lucking
Mr S Howe

Date of Hearing: 22nd September 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 by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill Solicitors of 72-74 Fore Street, Hertford, Herts SG14 1BY on 23rd February 2009 that Abuid Karate Kaihiva and James Campbell Onyeme of First Floor, 6 Clements Road, Ilford, Essex IG11 1BA, Okechukwu Ngwuocha of Carl Martin Solicitors, Suite 5, 187 Cranbrook Road, Ilford, Essex IG1 4TA and Mohammed Abdul Aziz of Flat 74, Sirinham Point, Meadow Road, London SW8 1QE 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 right.

An application to sever the proceedings against the First and Second Respondents (Abuid Karate Kaihiva and James Campbell Onyeme) was granted on 8th September 2009 with a substantive hearing listed for 7th January 2010.

The allegations against Mr Ngwuocha and Mr Aziz are:-

1. That they failed to keep their records of account properly written up contrary to Rule 32 Solicitors Accounts Rules 1998 (“SAR”);
2. That they withdrew monies from client account other than as permitted by Rule 22 SAR;
3. That they failed to remedy breaches of the SAR promptly upon discovery contrary to Rule 7 SAR;

Allegation against Mr Ngwuocha alone:-

4. [Withdrawn] [allegation numbered (xi) in Rule 5]

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 22nd September 2009 when Stephen John Battersby appeared as the Applicant, Mr Okechukwu Ngwuocha appeared in person and was not represented and Mr Mohammed Abdul Aziz did not appear and was not represented.

Preliminary Matter

This matter came before the Tribunal for an application for Substituted Service in respect of Mr Aziz on 11th June 2009. On that date the Tribunal, having considered the Applicant’s submissions, was satisfied that the Applicant had adopted the most sensible manner of attempting to communicate with Mr Aziz and made an Order that if Mr Aziz failed to collect the documents left for him at Kaihiva & Company Solicitors by 26th June 2009, then there should be Substituted Service on Mr Aziz by way of an advertisement to be placed in the Law Society Gazette. The Applicant indicated to the Tribunal that such an advertisement had been placed in the Law Society Gazette on 6th August 2009, Mr Aziz had not appeared at the proceedings today and the Tribunal was therefore invited to proceed in his absence. Having considered the matter the Tribunal confirmed that there had been proper service in accordance with the order of 11th June 2009 and that the matter could proceed in Mr Aziz’s absence.

The Evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 Statement of the Applicant together with accompanying bundle and the admission of the facts by Mr Ngwuocha.

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

The Tribunal Orders that the Respondent, OKECHUKWU NGWUOCHA of Carl Martin Solicitors, Suite 5, 187 Cranbrook Road, Ilford, Essex, IG1 4TA, solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen, and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

The Tribunal Orders that the Respondent, MOHAMMED ABDUL AZIZ of Flat 74, Sirinham Point, Meadow Road, London, SW8 1QE, solicitor, do pay a fine of £1,500.00, 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 £3,000.00.

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

1. Mr Abuid Karate Kaihiva (“AK”) set up the firm of Kaihiva and Co in 2005 and remains a Principal. Mr Okechukwu Ngwuocha was a partner from 4th September 2006 until 31st March 2007 but continued to be associated with the firm until he left to set up his own practice of Carl Martin & Co. Mohammed Abdul Aziz was a partner from 8th February 2007 to 1st June 2007.
2. Throughout the relevant period AK was the only Equity Partner in the firm, the other Respondents being salaried partners. They were held out as partners on the firm’s notepaper, and as such had joint responsibility under Rule 6 of the Solicitors Accounts Rules 1998 for complying with the Solicitors Accounts Rules.
3. On 24th May 2007 an Investigation Officer of the SRA (“the FIO”) commenced an investigation of the books of account and other documents of Kaihiva and Co at the Ilford office. At that time there was a second office of the firm at 24a Station Road, Cuffley, Hertfordshire, EN6 1BA, this being the former practice address of Michaels & Co, Solicitors with the partners of whom AK entered into an agreement on 7th February 2007.
4. On 29th May 2007, shortly after the commencement of the inspection, the most recent client account reconciliation with which the FIO was provided was for 30th April 2006 over a year earlier. This indicated a cash shortage at that stage of £2,234.08. The FIO agreed to give AK further time to bring matters up to date and on 21st June 2007 was shown a copy of a reconciliation as at 31st January 2007 which showed an indicated cash shortage of £64.00 at that date. The reconciliation was affected by mispostings which needed to be corrected and the office section of the client ledger had not been written up at all. At the time of the final meeting on 10th August 2007, the position was that no client account reconciliation had been completed since the end of January and the office section of the client ledger had still not been written up since the firm was set up. This remained the situation and at the time when further information was provided to the FIO on 14th March 2008 there was still no evidence that the office section of the client ledger had been written up. It was claimed on behalf of Kaihiva & Co that there had been a breakdown of the firm’s accounts computer in about May 2007 and that the firm’s accounting records had, as a result, been lost. This required them to be re-written from May 2005 – the date when the practice was set up.
5. It was revealed during the inspection that at various stages there had been shortfalls on the firm’s client account, thus indicating that monies had been withdrawn in circumstances other than as permitted. The reconciliation as at 30th April 2006 indicated that on that date there was a shortage of £2,235.08. The Accountant’s Report for the year ended 31st December 2006 revealed that as at 31st July 2006 there had been a shortage of £6,398.00. On 31st January 2007 the reconciliation indicated that there had been a shortage of £64.00. At the Cuffley Office on 30th April 2007 there was a shortage of £1,375.03.

6. On 14th March 2003 AK sent the FIO a copy of the latest available reconciliation as at 31st December 2007, this revealed a shortage at that date of £37,419.50 made up of three separate amounts, the largest being £31,699.30.
7. Of the £37,409.51 which was the indicated shortage as at 31st December 2007, AK disputed that £1,723.46 was a genuine shortage. A further £3,996.75 had been rectified, but not until 3rd March 2008 and the remaining £31,699.30 was still outstanding as at 22nd May 2008 and had been for almost a year. AK was seeking a loan to remedy the situation.

The Submissions of the Applicant

8. In relation to Mr Ngwuocha the Applicant indicated that the facts had been admitted but Mr Ngwuocha queried whether that amounted to misconduct on his part. The Applicant submitted that these were absolute offences and although these two Respondents had not been involved in the breaches themselves he relied on Rule 6 SAR as they had been salaried partners and therefore principals during the period in question.

The Submissions of Mr Okechukwu Ngwuocha

9. Mr Ngwuocha admitted that he had been a salaried partner between September 2006 and March 2007 but during that time, due to the conditions of his partnership agreement, he had not been allowed to have any say in the management of the firm or in the financial accounts. He had resigned from the partnership at the end of March 2007 and had only been held out as a partner to facilitate the membership on the panel of mortgage lenders.
10. He had been aware of problems generating the accounts since he was aware that when the accountants had come to the office in March 2007 the bookkeeper (who attended once a week) had said he could not retrieve the accounts from the computer as there had been a software problem. He had been aware that there had been problems before March of 2007 as when he went to Nigeria in December 2006 the bookkeeper had not been attending the offices on a regular basis and on his return in January 2007 he noted that there had been no proper preparation of the accounts. There was no hard copy of the accounts kept and accounting data had been lost. AK had been allowed more time to produce the accounts by the FIO and eventually delivered the reconciliation to January 2007 which showed the small cash shortage.
11. He was also aware that during an SRA monitoring visit in November 2006, reconciliations had been produced to August 2006.
12. Mr Ngwuocha submitted that AK had seen the business as his personal property and he apologised if the accounting records were not in accordance with the SAR but he had throughout made sure that no client was defrauded and he knew that the client accounts were being done on a regular basis. He was not directly involved with the preparation of the accounts and the FIO's visit had happened two months after he had ceased to be a partner. On that basis he did not feel that he had been guilty of conduct unbecoming a solicitor.

The Findings of the Tribunal

13. The Tribunal had listened carefully to the submissions of the Applicant and Mr Ngwuocha and considered fully the documentation put before it. The Tribunal found, as a matter of fact, that both of the Respondents had been held out as partners in the firm during the period in question. They also found as a matter of fact that the records of account had not been properly written up contrary to Rule 32 of the SAR and therefore this allegation was proved against both Respondents.
14. The second allegation was based upon reconstituted accounts which showed a deficit on 31st January 2007 of £64.00. There must be some doubt as to whether this reconciliation could itself be relied upon and Mr Ngwuocha was entitled to the benefit of that doubt and the allegation against him was therefore not proved. In relation to Mr Aziz there had been a cash shortage of £2,234.08 on 30th April 2006, covering a period when he had been held out as a partner in the firm. There had therefore been a technical breach by Mr Aziz and this matter had been proved.
15. In relation to allegation 3, evidence had been adduced against both Respondents that they had not rectified the breaches of the SAR promptly upon discovery. In particular in regard to Mr Ngwuocha, he had realised on his return from Nigeria in January 2007 that there was a problem with the accounting system but had taken no personal action to remedy it. He could have resigned on his return but did not do so. There was no evidence that Mr Aziz took any action to remedy the breaches. This allegation was therefore proved against both Respondents.
16. Allegation 4 had been withdrawn by the Applicant against Mr Ngwuocha.

Previous Findings against Mr Aziz

17. On 26th October 2006 Mr Aziz had appeared before the Tribunal where allegations of conduct unbecoming a solicitor had been admitted and proven in respect of the following:-
 - (i) He failed to keep his accounts properly written up;
 - (ii) He withdrew monies from client account other than as permitted by the Solicitors Accounts Rules;
 - (iii) He failed to provide material information to lender clients in conveyancing transactions;
 - (iv) He failed to exercise proper and adequate supervision over Stephen Anthony John-Cyrus, an unadmitted member of staff.

On that occasion Mr Aziz was ordered to pay a fine of £1,000.00 and to pay one third of the costs on a joint and several basis of £8,000.00.

18. The Tribunal Ordered that the Respondent, OKECHUKWU NGWUOCHA of Carl Martin Solicitors, Suite 5, 187 Cranbrook Road, Ilford, Essex, IG1 4TA, solicitor, do

pay a fine of £1,000.00, 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 £1,000.00.

19. The Tribunal Ordered that the Respondent, MOHAMMED ABDUL AZIZ of Flat 74, Sirinham Point, Meadow Road, London, SW8 1QE, solicitor, do pay a fine of £1,500.00, 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 £3,000.00.

Dated this 23rd day of January 2010
On behalf of the Tribunal

D J Leverton
Chairman