

IN THE MATTER OF THOMAS OFORDIRE EGOLE
and ELIZABETH RUHUZA, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr K W Duncan (in the chair)
Mrs K Todner
Mr S Marquez

Date of Hearing: 17th 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 ("the SRA") by George Marriott, solicitor and partner in the firm of Gorvins, 4 Davey Avenue, Knowlhill, Milton Keynes, MK5 8NL on 11th July 2008 that Thomas Ofordire Egole of Egole & Co, 283 Hornsey Road, London, N19 4HN, solicitor and Elizabeth Ruhuza of 75 Folkestone Road, London, E6 6AZ, solicitor 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.

Allegations against the Second Respondent were that she:

1. Failed to act in the best interests of clients or to provide a good standard of service to clients by failing to follow client instructions, contrary to Rules 1.04 and 1.05 of The Solicitors Code of Conduct 2007 ("the Code").
2. Failed to keep the books of account properly written up in the period from 1st June 2007, contrary to Rule 32(1) of the Solicitors Accounts Rules 1998 ("the SAR").
3. Held a surplus of funds in client account, contrary to Rule 32(7) of the SAR.

4. Failed to remedy SAR breaches identified by the SRA promptly upon discovery, contrary to Rule 7 of the SAR;
5. Failed to provide accurate costs information to clients, contrary to Rule 1(c) of the Solicitors Practice Rules and the Solicitors Costs Information and Client Care Code for the period prior to 30th June 2007 and contrary to Rules 1.04, 2.02 and 2.03 of the Code in the period from 1st July 2007.
6. [Withdrawn]

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 17th September 2009 when George Marriott appeared as the Applicant. The First and Second Respondents appeared and were not represented.

Preliminary matter

The Applicant informed the Tribunal that the First Respondent had been unwell whilst waiting for the case to start. However, the Applicant had spoken to the First Respondent who had indicated that he had no wish for an adjournment or for the matter to proceed in his absence. He had appeared at that stage to the Applicant to be quite unwell. The Applicant therefore submitted that there was an issue for the Tribunal as to whether they were satisfied that the Applicant was fit to stand trial under Article 6 of the Schedule to the Human Rights Act 1998. The First Respondent had informed the Applicant that each allegation against him was denied. The Applicant indicated that the SRA remained neutral on this matter.

In relation to the Second Respondent, the Applicant submitted that she had a small part in the total allegations and that he had indicated to her that in view of her admissions, he would withdraw allegation 6 against her. On that basis she had indicated to him that she would admit allegations 1-5. The Second Respondent was present and wished to proceed with the case as she wanted finality. The Applicant indicated that he did not object to severing this case. The Tribunal agreed that the Applicant could withdraw allegation 6 against the Second Respondent. He did so.

The First Respondent indicated that he had returned to the UK the previous day and that the sole reason that he had left Nigeria and returned, was to deal with this matter. He wished the matter to proceed today. Since there were allegations of dishonesty involved in the case he had presented himself to the Tribunal notwithstanding that he was not well. He also indicated to the Tribunal that his solicitors still retained all the paperwork and that all he had with him were the papers relating to allegation 2.

The Second Respondent indicated that she wished the matter to proceed.

The Tribunal had considered most carefully all the representations made to it. It was clear that the First Respondent was unwell and indeed he had a hospital appointment that afternoon. In addition, he had none of the paperwork relating to most of the allegations. Whilst the Tribunal appreciated the willingness that he had shown to attend the hearing and to deal with things, in the circumstances and in the interest of fairness to the First Respondent, his case would be adjourned. The case against the Second Respondent would be severed and dealt with immediately.

The evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 Statement of the Applicant dated 11th July 2008 with accompanying bundle and the admissions and Rule 13(4) statement of the Second Respondent.

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

The Tribunal Orders that the Respondent Elizabeth Ruhuza of 75 Folkestone Road, London, E6 6AZ solicitor, be Reprimanded and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £500.

The facts are set out in paragraphs 1 - 35 hereunder:

1. The Second Respondent, Elizabeth Ruhuza, born in August 1958, was admitted as a solicitor in February 2006 and her name remained on the Roll. The Second Respondent became a partner in the firm of Egole & Co Solicitors on 1st June 2007 until her resignation on 30th April 2008. At all material times until 31st May 2007 she was an assistant solicitor.
2. The SRA began an inspection of Egole & Co on 30th May 2007. The First Respondent was unable to provide accounts records because they were held by his auditors with whom he was in dispute. The investigation was suspended for a period in order for the First Respondent to resolve the dispute. The investigation continued from 15th October 2007 at which time the Second Respondent was a partner in the firm, following which investigation the SRA produced a Report.
3. Questions relating to the Report were put to the Respondents by letters of 10th January 2008 and 7th March 2008. The Second Respondent replied by letter of 17th February 2008 and by further letter of 6th June 2008. The Second Respondent was referred to the Tribunal by a decision of an Adjudicator dated 17th June 2008.

Failure to keep accounts up to date (from 1st June 2007)

4. The Second Respondent told the SRA that she was aware of the issues relating to the accounts of the firm when she became a partner but did not have access to the accounts as a partner and principal in the practice. Despite her knowledge of these difficulties, which both Respondents attributed to the firm's accountants, and despite the First Respondent having told the SRA that he was engaging a new accountant in May/June 2007, by the time that the SRA investigation recommenced on 15th October 2007, the books of account to 5th April 2007 had still not been completed and a new accountant had still not been engaged.
5. On 16th October 2007, the auditors confirmed to the SRA that the books of account to 5th April 2007 were complete. A copy of all of the accounting records which were maintained for the Respondents were faxed to the SRA by the auditor's principal consisting of a client cash book and bank reconciliation statements for the period April 2006 to April 2007.

6. The reconciliations prepared by the auditors were not in accordance with the SAR.

Failure to maintain accounts' records from 1st June 2007

7. The auditors confirmed that no accounting work had been completed for the Respondents since the period ending 5th April 2007.
8. The Respondents failed to maintain properly written up accounts records to accurately record and show the position of the firm's dealings with client money or with office money relating to client matters. The Second Respondent accepted that the Respondents should have been able to produce accounts records to the SRA but stated that they were prevented from doing so by the firm's previous accountants.
9. Further, reconciliations were not carried out, client ledgers were not being properly maintained and the Respondents were unable to provide the SRA with an accurate client listing.

Cash surplus in client account

10. As at 7th September 2007, the client account contained a surplus of £88,810.95.
11. The Second Respondent disputed this calculation and told the SRA that it would be difficult for her to remedy the surplus.
12. The Second Respondent had not given any explanation for the surplus.
13. The SRA wrote to the Respondents on 7th March 2008 requesting confirmation that the books of account were up to date and that the cash surplus identified in the client account had been rectified, as well as asking the reason for the accumulation of the surplus.
14. The Second Respondent replied on 26th March 2008. The Second Respondent suggested that the Respondents had tried their best to resolve matters by reporting the accountants to ACCA and that in so doing had discharged their duty under Rule 7 of the SAR to remedy the breaches. The SRA disputed the suggestion that the mere reporting of the accountants in any way discharged the Respondents' duty to remedy the accounts anomalies.
15. On 25th March 2008 the Respondents' new accountants wrote to the SRA expressing their concern at the state of the Respondents' books of account and stating, in terms, that they were unable to determine whether accounting records were being maintained.
16. The Second Respondent has failed to provide evidence that the breaches have been remedied and has failed to provide the SRA with any explanation at all for the accumulation of the surplus.

Conveyancing transactions

17. The SRA identified a number of issues relating to conveyancing transactions. The Second Respondent was the head of the conveyancing department at the material time. The Second Respondent, having less than three years post qualified experience, was not qualified to supervise alone.

Failure to follow client instructions and to comply with CML Handbook

18. The Second Respondent acted for E in his purchase of two properties from the seller, Mr and Mrs KA. The two agreements entered into in respect of the purchases, both dated 5th September 2007, stated that the purchase price agreed for each property purchased was £170,000.
19. The client matter file contained a letter of 31st August 2007 from Mr KA to the Second Respondent confirming that he would pay the stamp duty and legal fees arising from the transactions. Despite this, following the completion of the transactions, stamp duty land tax ("SDLT") was paid by the Respondents' firm in the sum of £1,700 for each of the properties on 9th October 2007.
20. A further letter from Mrs KA to the Second Respondent, dated 5th September 2007, informed her that there was a 10% gifted deposit in respect of each of the two properties. This amounted to a reduction by £17,000 in the purchase price of each property.
21. E purchased the properties with the benefit of a mortgage from CHL. CHL instructed the Respondent's firm on 24th July 2007. The instructions incorporated the CML Handbook and included the mortgage offers, in the sum of £153,000 for each of the two properties, based upon their stated purchase prices of £170,000.
22. The client matter file which was inspected by the SRA contained no indication that CHL had been advised of the discounted sale price.
23. The two mortgage loans were received into the firm's client account on 31st August 2007 in the sum of £306,000.
24. Simultaneous exchange and completion took place on 5th September 2007 at which time two payments of £149,886.75 each were made to KA's solicitors, being the monies required to complete each transaction. These amounts were confirmed by letter. The two payments totalled £299,773.50.
25. The client ledgers provided to the SRA by the Second Respondent showed two payments to the seller's solicitors on a different date (11th October 2007) and in a different sum (£153,000 each). Clearly the client ledgers did not accurately reflect the transactions.
26. On 2nd October 2007 a further payment of £6,237.50 was made to the seller's solicitors. The client matter file gave no explanation for the further payment. The Second Respondent explained that this payment was in respect of two payments of £3,118.75 (one for each of the properties) which had been deducted "to enable

registration to be effected", and was then recovered from the client and forwarded to the seller's solicitors.

27. The SDLT fee for each property was £1,7000. The receipt of funds "recovered from the client" was not recorded either in the client matter file or on the ledger. The mortgage advance of £306,000 was received from CHL and a total of £299,773.50 was sent to the seller's solicitors upon completion. This left a surplus of £6,226.50 of the mortgage funds in client account.
28. The total cost of all recorded disbursements, payments in respect of SDLT and land registration, profit costs and added charges (indemnity insurance contribution and transfer fees) recorded on the client ledger amounted to less than £3,118.75 (the actual total being £3,017).

Failure to provide adequate costs information

29. The SRA noted that it was the firm's practice to charge clients:
 - (i) £50 in respect of bank transfer fees;
 - (ii) £35 plus VAT for "care and conduct";
 - (iii) £150 plus VAT for contributions towards the indemnity premium.
30. The SRA was informed that all fees charged were set out in the client care letters, a copy of which was retained on each file. Despite this assurance, the SRA noted from a review of client matter files that client care letters did not always contain this information. The SRA was told that the telegraphic transfer fee was discussed with clients at their first meeting.

Purchase by D

31. D instructed Egole & Co in the purchase of a freehold property from S and E for the sum of £222,000.
32. The firm's client care letter of 3rd October 2006 stated that its charges would be £600 in respect of the transfer and £450 for acting for her mortgagee. The letter also referred to a £50 charge in respect of telegraphic transfer fees to remit completion monies to the seller's solicitors which the SRA noted was a standard clause contained in the majority of the firm's client care letters in conveyancing transactions.
33. The client care letter failed to specify any fee for the completion of the SDLT return and for indemnity insurance. Despite this, the completion statement included charges of £120 plus VAT in respect of the SDLT return and £150 plus VAT in respect of the indemnity insurance premium.

Purchase by A

34. A instructed the Respondents' firm in a property purchase transaction. The client care letter specifically stated that no fee would be charged for indemnity insurance. The letter made no mention of any charge in respect of the SDLT return.
35. Despite this, the client ledger revealed that A was charged £150 for the indemnity insurance and £105.75 for completion of the SDLT return.

The Submissions of the Applicant

36. The Applicant told the Tribunal that the Second Respondent now admitted all of the allegations against her and that he made an application for allegation 6 against her to be withdrawn. With regard to allegation 1 the Second Respondent admitted that her work had fallen below the standard of which she should have attained.
37. In regard to the other allegations, 2-4, these had been admitted by virtue of her position as a partner in the firm. When the Second Respondent had realised just how bad the position was, she resigned on 31st April 2008. In regard to allegation 5, again she admitted these as a partner of the firm.
38. The Second Respondent invited the Tribunal to make an assessment of the amount of total costs of £58,224.69 attributable to the Second Respondent, the vast majority of the costs being attributable to the First Respondent.

The Submissions of the Second Respondent

39. The Second Respondent admitted that she had not been in control of running the firm even though she had been a partner. She had not been permitted by the First Respondent to have anything to do with the running of the finances.
40. In relation to the costs in the matter, she was a single parent with heavy financial responsibilities and no support. She had not renewed her practising certificate and was not working. She had become very depressed as the result of being unable to support her family.

The Findings of the Tribunal

41. The Tribunal found all of the allegations against the Second Respondent to have been substantiated, indeed they were not contested. Whilst not wishing to detract from the seriousness of the allegations against the Second Respondent, the Tribunal was of the view that a reprimand was a most appropriate penalty in this case. The conduct had only taken place over a relatively short period of time and the Second Respondent had been a junior partner in the firm at the time. In addition, the Tribunal had taken into account the recent decision in the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin) where it had been decided by the Court that the Tribunal should take into account the Respondent's financial circumstances in arriving at a costs order.

42. The Tribunal Ordered that the Respondent Elizabeth Ruhuza of 75 Folkestone Road, London, E6 6AZ solicitor, be Reprimanded and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £500.

Dated this 7th day of December 2009
On behalf of the Tribunal

K W Duncan
Chairman