

IN THE MATTER OF TOPER HASSAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. L. N. Gilford (in the chair)
Mr A G Ground
Mr. J. Jackson

Date of Hearing: 8th October 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 Margaret Eleanor Bromley, solicitor of Bevan Brittan LLP Kings Orchard, 1 Queen Street, Bristol BS2 0HQ on 6th April 2009 that Toper Hassan of 59 Ashridge Gardens, London N13 4JY, a solicitor be required to answer the allegation contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent are that in breach of Section 34 of the Solicitors Act 1974 he has failed to file his Accountant's Report for the years ended:

1. 31st July 2005
2. 12th April 2006
3. 12th April 2007

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 8th October 2009 when Margaret Bromley appeared as the Applicant

and the Respondent appeared and was represented by Peter Cadman solicitor and partner in the firm of Russell-Cooke Solicitors of 8 Bedford Row, London WC1R 4BX.

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

The Tribunal Orders that the respondent Toper Hassan of 83 Ellison Road, London, SW16 5DB, 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 £2,879.08.

The evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 Statement dated 6th April 2009 together with accompanying bundle, the statement of the Respondent dated 7th October 2009 with accompanying bundle and the admissions of the Respondent. The Respondent also gave sworn evidence before the Tribunal.

The facts are set out in paragraphs 1-18 hereunder:

1. The Respondent was born in August 1966 and was admitted as a solicitor in September 1997.
2. He practised on his own account under the style of Toper Hassan & Co at 1A Turnpike Lane, Green Lanes, London N15 3LA until 12th April 2006, when the practice closed.
3. The Respondent, who was made bankrupt in March 2006, is not currently practising and he does not hold a practising certificate.
4. On 13th April 2006 the SRA wrote to Mr Hassan requesting, inter alia, details as to when the firm closed and when Mr Hassan ceased to hold client money. Mr Hassan replied on 15th May 2006 when he confirmed that a firm ADH Law had taken over his open conveyancing files and that client money relating to those matters had been transferred to ADH Law's bank account on 12th April 2006.
5. On 19th May 2006 ADH Law wrote to the SRA enclosing a list of the files that they had acquired from Toper Hassan and details of client monies transferred. The total monies transferred amounted to £44,139.10.
6. On 12th September 2006 an adjudicator found Mr Hassan to be in breach of Section 34 of the Solicitors Act 1974 in that the Accountant's Report for the year ended 31st July 2005, which was due to be delivered to The Law Society by 31st January 2006, remained outstanding. The adjudicator expected Mr Hassan, within 28 days of being notified of the decision, to deliver either his Accountant's Report or copies of client account bank statements for the whole of the period August 2004 to the date when he transferred the balance of that account to ADH Law.
7. A copy of the decision was sent to Mr Hassan on 18th September 2006.

8. On 5th March 2007 the SRA wrote to Mr Hassan in respect of the Accountant's Report due for the period ending 12th April 2006 which was due to be delivered on or before 12th October 2006. The letter made it clear that this had not been received and requested Mr Hassan's explanation in writing.
9. On 13th November 2007 the SRA wrote to Mr Hassan in respect of his Accountant's Report for the period ending 12th April 2007 which was due to be delivered by 12th October 2007 indicating that the report had not been received. The letter stated that if Mr Hassan had ceased to hold client money then he was asked to provide details in writing including the exact date on which the client account reached a nil balance.
10. On 7th December 2007 Mr Hassan wrote to the SRA. He indicated that he had been in contact with someone at the SRA about requesting a waiver because he could not afford to pay for the Report.
11. On 28th December 2007 the SRA wrote to Mr Hassan requesting his explanation for his failure to file Accountant's Reports for the years ended 12th April 2006 and 12th April 2007.
12. On 15th January 2008 the SRA wrote to Mr Hassan indicating that they needed to know the exact date on which he had ceased to hold client money and that Accountant's Reports were still required up and until that date. On 28th January 2008 the SRA sent to Mr Hassan's new address a copy of the letter sent to him on 28th December 2007.
13. On 26th March 2008 Mr Hassan submitted an application for his name to be removed from the Roll of Solicitors since he intended to apply to the Bar Council for registration. In that form he indicated that he had ceased to hold client money on 10th March 2006.
14. On 14th April 2008 the SRA wrote to Mr Hassan following up the letter of 28th January 2008 and making it clear that the SRA had not received copies of client bank account statements. The letter reiterated that until a Cease to Hold Accountants Report was filed then the SRA would continue to contact him.
15. On 12th May 2008 the SRA wrote again to Mr Hassan enclosing a copy of the report which had been prepared for adjudication and indicating that any representations should be made within 14 days.
16. Mr Hassan acknowledged that letter on 14th May 2008 and enclosed copies of bank statements for the period from January 2005 until February 2006 which were the only copies he had. He said he was unable to pay for the provision of further copies from the bank.
17. Those bank statements showed that as at 21st February 2006 there was a balance of £200,762.31 in client bank account. The amount sent to ADH Law in April 2006 was only £44,139.10. No evidence had been produced to show when the remainder of the money was transferred from client account when the balance was reduced to nil.

18. The matter was considered by the Adjudication Panel on 26th June 2008 and the Panel resolved to refer Mr Hassan's conduct to the Tribunal. Mr Hassan was notified of that decision by letter dated 27th June 2008.

The Submissions of the Applicant

19. The Applicant indicated that the allegations were admitted.
20. The Applicant told the Tribunal that new evidence had been given to the Applicant on the previous day in the form of the statement dated 7th October 2009 and the accompanying bundle. There was a statement from Natwest Bank showing a balance of £1,024.17 on client account. The Applicant indicated that it was a pity that this information had not been provided earlier as it would have been helpful to the SRA.
21. The Applicant noted that there was a continuing obligation to file accounts until such time as a solicitor ceased to hold client money. The Respondent had failed to honour his duty both before and after his bankruptcy proceedings.
22. In relation to the proceedings issued against the Respondent referred to in his statement and relating to a dispute with a client, in September 2007 there had been a claim on the compensation fund of £32,722 which had all been taken by the LSC under a statutory charge. A further claim was pending but this would not exceed the sum of £50,000.

The Submissions of the Respondent

23. The Respondent's financial difficulties had arisen from a dispute with a client concerning representation of a defendant in criminal proceedings on a private basis. A sum of £40,000 had been paid in fees to cover the firm's fees and Counsel's fees. There followed a dispute as to whether the matter should have been covered by Legal Aid and proceedings were issued against the Respondent in February 2005. Judgement was obtained against him for the return of the £40,000. This eventually caused his firm to collapse and as a result of that judgement an application was made to make him bankrupt. He also had other creditors including his accountants who were aware that their outstanding fees were not going to be paid and they were not then prepared to undertake any further work. This directly led to the failure to prepare accounts for the periods in the allegations.
24. The Respondent made proper arrangements for all office current files and current client account money to be transferred to another firm of solicitors. At that stage all the monies were handed over to them and no complaints were made by any client and the solicitors confirmed that the files were in good order.
25. At the request of the SRA the Respondent had requested copy bank accounts but the bank refused to deal with him as he was bankrupt. Subsequently they would only provide him with bank statements if he paid them a substantial amount of money to obtain further copies. The accountants would also not assist as they were asserting a

lien on the bank statements. He did however give the SRA a written authority to request statements from the bank and the receiver.

26. In relation to the amount of £1,024.17 on client account this money was owed to one client a Mr G. The Natwest had frozen the account and refused to send the money to Mr G.
27. The Respondent had applied to the SRA for a waiver from the obligation to lodge accounts but this was not granted. So far as he was aware the SRA had made no approach to the bank consequent upon his written authority.
28. With regard to the Respondent's engagement in the process with the SRA he had been out of the country for a considerable period of time, was now living with his sister and had no financial support but wanted to return to practice at the Bar as he had originally been a barrister.
29. It was submitted on behalf of the Respondent that reference to the compensation fund rather than insurers was not helpful since dishonesty had never been alleged against him.

The sworn evidence of the Respondent

30. The Respondent described what had happened to the £200,762.31 shown on client account on 21st February 2006. All of this money related to conveyancing matters and so far as he was aware probably represented a residential conveyancing matter in the sum of around £150,000 - £160,000 at the end of February or beginning of March 2006. These monies would have been used in the conveyancing matter. The rest of the monies had gone straight to ADH Law, apart from the small residual matter of Mr G. The Respondent confirmed that ADH Law had said there had been no complaints from any clients in the 3-4 year period that they had been dealing with matters.

The Findings of the Tribunal

31. The Tribunal had listened very carefully to what had been said by both the Applicant and the Respondent and had taken careful note of the contents of the papers in front of them. It noted that the SRA had been unaware until very recently as to the financial position on the client account and was disappointed that the Respondent had not engaged in the process with the SRA until the last moment. This had led to his appearance before the Tribunal which may have been avoided if he had not been cooperative.
32. In reaching their decision in this case the Tribunal based it upon the assertion that steps will now be taken to regularise the amount of money owed to Mr G and an application to The Law Society for waiver of the obligation to produce the outstanding accounts will be made. Based on these assumptions, and knowing that failure to regularise the position could bring the Respondent back before the Tribunal for a continuing breach, the Tribunal was in this case minded to impose a reprimand upon the Respondent. It would also grant in full the Applicant's costs of £2879.08.

33. The Tribunal Ordered that the Respondent Toper Hassan of 83 Ellison Road, London, SW16 5DB, 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 £2,879.08.

Dated this 11th day of December 2009
On behalf of the Tribunal

L N Gilford
Chairman