

IN THE MATTER OF MICHAEL ROBERT SMITH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D Potts (in the chair)
Mr J R C Clitheroe
Mr J Jackson

Date of Hearing: 26th May 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 Peter Harland Cadman a partner in the firm of Russell-Cooke LLP of 8 Bedford Row, London WC1R 4BX on 10th November 2008 that Michael Robert Smith, a solicitor of 22 Grange Drive, Bristol, BS16 2QW might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations were that Michael Robert Smith had:-

1. Failed to pay professional debts.
2. Failed to reply to correspondence.
3. Practised without a current practising certificate.
4. Left his firm unattended and/or abandoned his practice.
5. Failed to produce accounting reports on request.

6. Failed to keep books of account properly written up.
7. Received into and kept within his firm's office account monies received from the Legal Services Commission specifically to discharge an expert's fee.
8. Improperly and/or contrary to Solicitors Accounts Rule 21 received fees from the Legal Services Commission into a personal account held with the Bradford & Bingley in his name and the name of his wife.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 26th May 2009 when Peter Harland Cadman appeared as the Applicant and the Respondent was not present nor represented.

The Evidence before the Tribunal included the Forensic Investigation Report of 1st April 2008 together with correspondence between the SRA and the Respondent and letters to the Tribunal from the Respondent dated 17th December 2008 and another undated letter but submitted for the hearing of 26th May 2009.

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

The Tribunal Orders that the Respondent, Michael Robert Smith of 22 Grange Drive, Downend, Bristol, BS16 2QW, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 26th day of May 2009 and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

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

1. The Respondent, born in 1966, was admitted as a solicitor in 1999. His name remains on the Roll of Solicitors.
2. The Respondent had practised on his own account under the style of Smith & Co of 1st Floor, Bristol and West House, 1 Hare Lane, Gloucester GL1 2BB. At all material times the Respondent had practised as a sole practitioner. The Law Society had resolved to intervene in the Respondent's practice by decision of 24th July 2008.
3. The Respondent had instructed Dr John Potter to prepare a psychological report on their client CB. In accordance with those instructions, Dr John Potter had prepared the report together with his invoice in a total sum of £794.30 dated 30th August 2007.
4. The Respondent had failed to pay this professional debt despite further correspondence of 16th December 2007 and 23rd December 2007.
5. Dr John Potter had obtained a judgment debt in Northampton County Court against the Respondent on 9th May 2008. That judgment had not been honoured.
6. Dr John Potter had reported the conduct of the Respondent to the SRA by letter of 7th May 2008. The SRA had written to the Respondent on 11th June, 12th June, 26th June,

22nd July and 8th August. The Respondent had failed to reply to any of that correspondence.

7. Dr John Potter had written to Messrs Gordons who were instructed by the SRA, on 7th July 2008 enclosing a copy of a notification that the Respondent had been made bankrupt on 16th May 2008 with outstanding debts to an estimated deficiency of £78,741.00.
8. The matter had been considered by an Adjudicator on 22nd August 2008 who had referred the conduct of the Respondent to the Solicitors Disciplinary Tribunal.
9. The Forensic Investigation Unit of the SRA had conducted an investigation into the books of account of the Respondent's firm. The inspection had commenced on 14th March 2008 giving rise to a report of 1st April 2008.
10. Inter alia, that report had established the following:-
 - (1) At the time of the inspection on 14th March 2008 the Respondent had not been present at his firm since 14th February 2008.
 - (2) There had been no solicitor supervising the practice since the 14th February and the firm's administrator KM had only spoken to the Respondent approximately four times since 14th February 2008.
 - (3) KM had sent a text message to the Respondent's wife and had received a reply from her stating "in meeting, will pass message to Mike. I know he is in Monday".
 - (4) The Respondent had contacted Mr Grehan (FI Officer) by telephone. The Respondent had been requested to provide the firm's bank statements, accounts records and details of his medical problems and arrangements had been made for a meeting to take place at 11am on 17th March 2008.
 - (5) Mr Grehan had met the Respondent and his wife at the firm's offices on 17th March 2008. The Respondent had failed to produce the firm's bank statements, accounts records or details of his medical problems. The Respondent had said that he was unwilling to rush around to get the information but that he was willing to post the information at a later date. No such information had been produced.
 - (6) The Respondent had admitted that he did not have a practising certificate and had understood that he could not practise as a solicitor until he had a valid practising certificate.
 - (7) The Respondent had been handed a handwritten note asking him to produce all relevant documentation at 11am on 20th March 2008.
 - (8) On 20th March 2008 the Respondent had not attended. The Respondent's wife had produced some bank statements but had not provided any other documentation requested.

- (9) No proper accounting records had been presented by the Respondent in the course of the inspection.
- (10) The Respondent had instructed the Legal Services Commission to make payments due to the Respondent's firm not into the firm's office account but into an account held at the Bradford & Bingley Building Society in the name of the Respondent and his wife. That account could not even have been a solicitor's office account because it had been in the name of the solicitor and a non solicitor.
- (11) The firm had received the sum of £2,831.86 as a result of a Crown Court determination involving an interim payment to pay an expert's report compiled by KBC. That sum of money had been paid into the firm's office account on 16th May 2007. However, as at 26th March 2008, the Respondent had neither made any payment to KBC nor had transferred the monies into client account as he had been obliged to do under the Solicitors Accounts Rules.
- (12) Among the debts owed by the Respondent had been the following:-
- (i) Brian R Head, solicitor and former consultant of the firm, had been owed the sum of £2,363.00. Mr Head had obtained judgment against the Respondent on 28th February 2008.
 - (ii) Mr Hopson, a self employed fee earner of the firm, had been owed £4,500.00. Solicitors had been instructed to recover the sum.
 - (iii) Gloucester Self Storage had been owed the sum of £494.48 and had served a notice to vacate. The notice to vacate had stated that unless the outstanding amount was cleared the contents of the unit would be disposed of as at 1st April 2008. The firm's archived matter files had been stored there.
 - (iv) John Potter Global had been owed the sum of £794.30.
11. The Respondent's practising certificate had been terminated on 12th December 2007 as he had failed to lodge any application for renewal. The Respondent then had lodged an application for a practising certificate supported by two cheques. Both cheques had been dishonoured. The Respondent therefore had not held a current valid practising certificate between 12th December 2007 and 16th April 2008. A practising certificate had been granted to the Respondent on 16th April 2008 but had been suspended as a result of his bankruptcy on 16th May 2008. The Respondent had therefore practised without a practising certificate during the period 12th December 2007 to 16th April 2008.
12. The SRA had written to the Respondent. The matter had been considered by an Adjudicator on 24th July 2008. The conduct of the Respondent had been referred to the Solicitors Disciplinary Tribunal and at the same time the Adjudicator had resolved to intervene in the Respondent's practice.

The Submissions of the Applicant

13. The Applicant took the Tribunal through the facts with reference to the relevant documentation. He referred to the Respondent's letter of 17th December 2008 in which the Respondent had admitted allegations 1 - 3 and 5 - 8. The Applicant noted that the only medical evidence available was in the form of a letter dated 19th March 2008 from the Respondent's General Practitioner. The Applicant referred the Tribunal to the undated letter dealing with mitigation and also to a letter of 15th March 2009 from the Respondent to the Applicant in which he confirmed that he was not contesting any issues. The Applicant confirmed that the Respondent had been made bankrupt on 16th May 2008 but that he was unaware of the Respondent's current position.

The Decision of the Tribunal

14. Having considered all the evidence, including the letters from the Respondent and the helpful submissions of the Applicant, the Tribunal found all the allegations proved. While not underestimating the seriousness of the Respondent's conduct, the Tribunal was mindful of the very difficult circumstances in which the Respondent had found himself. There had been no allegation of dishonesty and although the Tribunal did not consider it appropriate for the Respondent to return to practice in the near future, the Tribunal did not wish to indicate that the Respondent should never return to the Profession. Accordingly, the Tribunal made an Order for indefinite suspension together with an Order for costs to be assessed if not agreed.

Dated this 8th day of December 2009
On behalf of the Tribunal

D Potts
Chairman