

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF FRANCIS JOEL AARONSON, solicitor (First Respondent) and
LINDA FRANCES AARONSON, registered foreign lawyer (Second Respondent)

Upon the application of Jayne Willetts
On behalf of the Solicitors Regulation Authority (SRA)

Mr. A. H. Isaacs (in the chair)
Mr. D. Potts
Mr. M. R. Hallam

Date of Hearing: 4th May 2010

FINDINGS AND DECISION

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

Appearances

Jayne Willetts, Solicitor Advocate & Partner of Townshends LLP, Cornwall House, 31 Lionel Street, Birmingham, B3 1AP, the Applicant, on behalf of the Solicitors Regulation Authority (SRA).

The Respondents, who were present, were represented by Gregory Treverton-Jones QC.

The initial application to the Tribunal, on behalf of the SRA, was made on 11th September 2008 and a Supplementary Statement was filed on 24th September 2009.

In addition, the Applicant sought an Order that the direction of the Adjudicator, dated 15th April 2009, be treated for the purposes of enforcement as if it were contained in an Order made by the High Court pursuant to paragraph 5(2) of Schedule 1A of the Solicitors' Act 1974.

Allegations

The allegations against both Respondents were that:-

1. Their books of account had not been in compliance with the Solicitors' Accounts Rules 1998 (SAR) in that:-
 - (i) Withdrawals had been made from client account otherwise than as permitted by Rule 22 SAR
 - (ii) Bills of costs or other written notification of costs had not been delivered to clients before transferring monies from client account, in breach of Rule 19(2) (as clarified by Note(x) to Rule 19) SAR
 - (iii) Debit balances had been maintained in client account in breach of Rule 22(5) SAR
 - (iv) Accounting records had not been properly written up in breach of Rule 32 SAR
2. In allowing the name of their firm to be listed on the Bar Council's Withdrawal of Credit Scheme on 13th February 2006 for non-payment of Counsel's fees, they had compromised or impaired or had been likely to compromise or impair the good repute of the solicitors' profession, contrary to Practice Rule 1(d) of the Solicitors' Practice Rules 1990 (SPR).

The further allegations, as against the First Respondent only, were that he had:-

3. Failed to advise his client to take independent legal advice where there had been a conflict or potential conflict between his interests and those of his client in breach of Rule 1(c) and 1(d) of the SPA and Rule 1.06 of the Solicitors' Code of Conduct 2007 (SCC) and Principle 15.04 of the Guide to the Professional Conduct of Solicitors 1999 (8th Edition).
4. Failed to comply with a direction of a Law Society Adjudicator, dated 15th April 2009, made pursuant to Schedule 1A of the Solicitors' Act 1974 in breach of Rule 1.06 of the SCC.
5. Failed to discharge a default judgment, dated 5th February 2009, obtained in the High Court by his client Ms B in breach of Rule 1.06 of the SCC.
6. Failed to deal with the SRA and with the Legal Complaints Service (LCS) in an open, prompt and co-operative way in breach of Rule 20.05 of the SCC.

Factual Background

1. The First Respondent, born in 1952, was admitted as a solicitor in 1978. The Second Respondent, born in 1952, was registered as a foreign lawyer. Both were partners in the firm of Aaronson & Co, practising at 197a Kensington High Street, London, W8 6BA.

Allegation 1

2. Following an inspection, a Forensic Investigation Report (the FI Report) dated 21st December 2006, had been prepared. The FI Report had identified breaches of the

SAR for which the Respondents, as principals of the practice, had been responsible.

3. The Investigation Officers (the IOs) had noted six transfers from client account to office account, totalling £86,200, between 20th September 2004 and 4th March 2005, the largest of which had been for £35,000. (Those transfers had previously been identified in the firm's Accountant's Report, dated 30th December 2005, as not in accordance with Rule 22(3) SAR).
4. The transfers had been made by cheque and the First Respondent had confirmed that he had been the only person within the practice entitled to sign cheques.
5. The office bank account statements had identified the overdraft and the overdraft facility as at the date of each of the transfers from client to office account. At the date of each of the six transfers, the overdraft facility had either exceeded or been near its limit.
6. The total of the transfers had been £86,200. A schedule of invoices, totalling £32,373.69, had later been produced by the Respondents to justify the transfers. However, no evidence had been produced to justify the withdrawal from client account of the balance of £53,826.31.
7. As at 31st March 2006, the IOs had ascertained that there had been a cash shortage on client account of £81,761.50. That cash shortage had been caused by £53,826.31 – unallocated client to office transfers; £17,916.43 – duplicated client to office transfers; £9,254.77 – debits on 21 client account ledgers and £763.99 – an unidentified book shortage.
8. On 28th April 2006, the Respondents paid £53,826.31 to rectify the shortage on client account.

Allegation 2

9. In March 2006, the Bar Council had informed the Law Society that the Respondents' firm had failed to pay Counsel's fees and that a Withdrawal of Credit Direction had been made against the firm on 13th February 2006.
10. A schedule of outstanding fees had shown fees due between 26th September 1995 and 3rd September 2003 of some £14,205.92 for legal aid cases and some £2,084.92 for private cases. Moreover, some ten letters had been sent from the Chairman of the Bar Council to the Respondents between 30th November 1998 and 5th October 2005.
11. On 28th September 2006, following extensive correspondence, much of which had been unanswered by the Respondents, the Adjudicator had directed that if the Respondents failed to pay the outstanding Counsel's fees within 56 days they were to be referred to the Tribunal. The Respondents had not responded or paid the outstanding fees.
12. Subsequently, the Respondents had explained that they had not received some of the relevant correspondence. By letter dated 21st May 2008, the Bar Council had provided a revised schedule showing £8,638.98 as outstanding for 28 legal aid matters and £2,084.38 as outstanding for nine private matters.

13. The total outstanding in May 2008 had been £10,723.36, a reduction over two years of £5,566.94.

Allegations 3 - 6

14. By letter of 8th October 2008, Russell-Cooke Solicitors had made a complaint to the LCS on behalf of their client, Ms B, a former client of the First Respondent. The complaint had concerned a loan of £350,000 made by Ms B to the First Respondent. The loan had been made from the proceeds of sale of a flat owned by Ms B. The First Respondent had acted for Ms B on the sale of that flat.
15. The Loan Agreement between the First Respondent and Ms B had been dated 14th April 2006 and had provided for a loan of £350,000 repayable with interest at 2% over base rate at the end of eight months i.e. December 2006. The First Respondent had not advised his client, Ms B, to seek independent legal advice and the loan had not been repaid.
16. A Supplemental Agreement had been entered into between the parties dated 5th June 2008. That Agreement had provided for the First Respondent to use his best endeavours to repay Ms B the original loan and interest by 11th July 2008. The First Respondent had not advised his client to take independent advice about the Supplemental Agreement. The loan and interest had not been repaid.
17. On 21st July 2008, Russell-Cooke had written a pre-action letter to the First Respondent, on behalf of Ms B, requiring repayment of the loan and interest in the sum of £411,515.56. Subsequently, proceedings had been issued by Ms B and a judgment in default had been obtained against the First Respondent for £417,442.24 on 5th February 2009. That judgment had not been paid.
18. An investigation by the LCS had begun on 16th October 2008. After some delay, the First Respondent had provided an explanation in his letter of 22nd December 2008. He had stated that he did not accept that Ms B had not had independent legal advice, as she had had a colleague, who worked in the legal department of a bank, with her when the loan had been discussed.
19. Subsequently, in the absence of any further responses from the First Respondent, the Adjudicator had made a finding of inadequate professional services (IPS) against the First Respondent and had ordered him to make a payment of £1,000 within seven days to Ms B. That payment also remained outstanding.
20. The matter had been referred to the Conduct Investigation Unit of the SRA. Letters dated 13th February 2009, 30th March 2009, 14th May & 19th June 2009 had been sent to the First Respondent, requesting his explanation and comments but he had failed to respond.

Documentary Evidence before the Tribunal

21. The Tribunal reviewed the Rule 5 Statement and the Supplementary Statement, together with the accompanying bundles and a further small bundle handed in during the hearing by the Applicant. Just before the hearing, the First Respondent had handed in two statements dated 2nd & 3rd May 2010 and the Second Respondent a

statement dated 3rd May 2010, with appendices. The Tribunal also reviewed the witness statement of Irena Byrdina (Ms B) dated 30th November 2009 with exhibits.

Witnesses

22. Irena Byrdina gave sworn oral evidence adopting her statement of 30th November 2009. Both Respondents also gave oral evidence adopting their statements.

Findings as to fact and law

Allegation 1 – That the books of account of the Respondents’ firm had not been in compliance with the Solicitors’ Accounts Rules 1998 (SAR) in various respects.

23. The allegation, relating to breaches of the Solicitors’ Accounts Rules, was admitted by both Respondents and found by the Tribunal to have been substantiated on the facts.

Allegation 2 – That in allowing the name of their firm to be listed on the Bar Council’s Withdrawal of Credit Scheme on 13th February 2006 for non-payment of Counsel’s fees, the Respondents had compromised or impaired or had been likely to compromise or impair the good repute of the solicitors’ profession contrary to Practice Rule 1(d) of the Solicitors’ Practice Rules 1990 (SPA).

24. The allegation which was denied by both Respondents was not found proved by the Tribunal.
25. The Second Respondent, who at the relevant time had been a Registered Foreign Lawyer and so subject to the same rules of conduct as applied to the First Respondent, gave evidence regarding the circumstances in which their Firm had become subject to an order made by the Bar Council that credit should be withdrawn in respect of instructions given by the Firm to Counsel. The Tribunal found the Second Respondent to be a credible and trustworthy witness. She explained the problems that had arisen, particularly in connection with Green Form cases and in a number of very old claims by Counsels’ Clerks for payment of fees where, especially in immigration cases, matters were still before the Home Office and no determination had been made. Completion of the matter was a pre-condition to payment and the Second Respondent recognised the ethical dilemma for the Firm of paying Counsel in circumstances where the obligation to make payment had not arisen. The Second Respondent explained why it was difficult or impossible to establish whether the payment was due or to whom money was owed and stated that in her view and after careful investigation, none of the sums claimed, totalling about £10,700, was in fact due. Enquiry of the Bar Council had not produced any greater elucidation than that Counsels’ clerks were inviting payment. In these circumstances it was, in the view of the Tribunal, not established that the obligation to pay had been sufficiently demonstrated.
26. Although the making of a withdrawal of credit order was undoubtedly damaging to the reputation of the Profession, the Tribunal was not satisfied that the two Respondents were, beyond reasonable doubt, in breach of their professional duties when they had failed to prevent the Bar Council from making the “blacklisting”

withdrawal of credit order. Accordingly, the Tribunal considered it would be unjust to find the allegation proved.

Allegations 3 & 5 – That the First Respondent had failed to advise his client to take independent legal advice where there had been a conflict or potential conflict between his interests and those of his client in breach of Rule 1(c) and 1(d) of the SPA and Rule 1.06 of the Solicitors’ Code of Conduct 2007 (SCC) and Principle 15.04 of the Guide to the Professional Conduct of Solicitors 1999 (8th Edition) and that he had failed to discharge a default judgment, dated 5th February 2009, obtained in the High Court by his client Ms. B in breach of Rule 1.06 of the SCC.

27. Allegations 3 and 5 related to a loan made by Ms B to the First Respondent. The loan was made pursuant to a loan agreement, drafted by the First Respondent, which was signed by the client, Ms B, at a London hotel in the presence of Mr PC on 14 April 2006. The loan was repayable at the end of eight months, with interest, said, by the First Respondent, to be at a “preferential” rate of 2% above base rate.
28. The loan agreement had been varied on or about 5th June 2008 to extend the repayment date to 11th July 2008. This second agreement was also drafted by the First Respondent. As at the date of the Hearing, neither the principal sum nor any interest on the loan had been paid by the First Respondent and a default judgment had been obtained by Ms B for the sum of £417,500 on 5th February 2009 which had not been satisfied though there had been some negotiations which might lead to the judgment debt being secured by a charge over a London property owned by the First and Second Respondents. The First Respondent said that this might result in the judgment debt being set aside.
29. The Tribunal had no doubt that it was a fundamental requirement of the Rules binding members of the Profession that a solicitor should be, and be seen to be, independent, not affected by any conflict of interest or duty and should put the interests of the client before his own interests. The Tribunal noted that Rules of Conduct seek to enforce those principles and specifically in relation to certain transactions between the client and his solicitor, such as a loan, there is a requirement that the client must have independent legal advice.
30. The First Respondent, in evidence and through his counsel, had sought to persuade the Tribunal that his client, as an intelligent and financially knowledgeable employee of a banking institution, had not been in need of the protection afforded by the Rules. In addition, it had been suggested that Mr PC, an employee of the banking institution and a friend of Ms B, had been able to, and had, in fact, rendered independent legal advice regarding the loan. It had been inferred that he had done so because he had accompanied Ms B to view a property in Dorset, which had belonged to the First and Second Respondents and had been in need of restoration. Moreover, Mr PC had, later that day, witnessed the original loan agreement. It was suggested by the First Respondent that he had offered to secure the loan but that his suggestion had been refused by Ms B. However, the loan had not been specifically for the building work at the Dorset property and it had been admitted in evidence that it had not been exclusively used for that purpose.
31. The Tribunal had not received any evidence that Mr PC was legally qualified except that the First Respondent asserted his belief that Mr PC had worked in the legal

department of the banking institution which was involved in project finance overseas. Ms B, in evidence, said that Mr PC was not legally qualified in England and that he had not rendered any legal advice to her. The Tribunal accepted her evidence and found that he was not qualified to give any such advice, did not do so and, by witnessing Ms B's signature on the loan agreement, did not come close to satisfying the requirement that she should have had the benefit of independent legal advice. The Tribunal noted that there was no evidence that Ms B had received any advice with regard to the variation of the loan agreement.

32. The Tribunal found Ms B to be a truthful witness. She had explained that she had loaned the money for what she had thought would be a short period and had done so on the footing that she could trust a solicitor and that she did not need to rely on security. The Tribunal accepted her evidence on those points. Accordingly, the Tribunal found that the First Respondent had failed lamentably to ensure, if he had been contemplating accepting a loan of monies held in his client account for Ms B, that she was separately and adequately advised. In the absence of such advice, the First Respondent should have declined to act further in the matter and he should not have accepted the loan. The Tribunal rejected, as irrelevant and regrettable, an argument advanced by the First Respondent, during the course of his evidence, that by the time the loan had been taken, he had had no current matters for Ms B so that effectively she had ceased to be his client. That did not in any event appear to the Tribunal to be the case as the First Respondent had not completed all outstanding matters for Ms B.

Allegation 4 – That the Respondent had failed to comply with a direction of a Law Society Adjudicator, dated 15th April 2009, made pursuant to Schedule 1A of the Solicitors' Act 1974 in breach of Rule 1.06 of the SCC.

33. Allegation 4 related to the direction made by the Law Society that the First Respondent should pay to Ms B the sum of £1,000 in respect of inadequate professional services. The direction had been made under the statutory provisions in Schedule 1A to the Solicitors Act 1974 and it was clear, from the detailed analysis of those statutory provisions in two previous cases, that the direction was not enforceable unless made so by the Tribunal and that the Solicitor could not appeal against the direction. Unless and until the matter was before the Tribunal and an order made it did not appear to the Tribunal that it could hold the solicitor to have been in breach of any duty. Therefore the Tribunal considered itself to be constrained in holding that the non-payment of a sum, directed to be paid, was a breach of professional conduct. Accordingly, the Tribunal did not find the allegation proved but on the basis of the facts established in relation to the First Respondent's professional services rendered to Ms B, the Tribunal had reviewed the matter and had no hesitation in deciding that the Direction had been properly made and that the Tribunal should therefore make the order sought, that the Direction be enforceable as if it were an Order of the High Court.

Allegation 6 - That the Respondent had failed to deal with the SRA and with the LCS in an open, prompt and co-operative way in breach of Rule 20.05 of the SCC.

34. In the Tribunal's view the evidence that the First Respondent had failed to respond to the Regulatory Authority and to the LCS in a timely and open way had been overwhelming and the Tribunal found the allegation proved. The Tribunal had

accepted that there had been some difficulties experienced by the Respondents in receiving both postal and DX deliveries but was satisfied that these difficulties did not explain the general failures in responding to all forms of communication.

Mitigation

35. Leading Counsel referred the Tribunal to the Briefing Note prepared by the First Respondent to explain the circumstances of the accounts breaches in allegation 1, including the difficulties of the firm's former and very experienced book-keeper. He also addressed the Tribunal on the lack of any dishonesty on the part of the First Respondent and provided details of the First and the Second Respondent's professional history and the circumstances of their firm.

Costs Application

36. The Applicant requested fixed costs in the sum of £41,008.58. She handed a Schedule of Costs to the Tribunal and reminded the members that there had been two directions hearings and that a previous hearing had been fully prepared for and subsequently adjourned at short notice. Leading Counsel, on behalf of the Respondents, submitted that the costs, as detailed, were somewhat high and asked the Tribunal either to fix a significantly lower sum or to order that the costs be subject to a detailed assessment.

Sanction and Reasons

37. The Tribunal found that the First Respondent's conduct was one of the most serious kinds of breach of professional duties. It had been such as to put in jeopardy both his own and the Profession's reputation for integrity and trustworthiness. It had been wholly irreconcilable with ensuring that a solicitor could, in Lord Bingham's memorable phrase, be trusted "to the ends of the earth". For this reason, the Tribunal considered that the First Respondent had forfeited his right to remain a member of the Profession. His Counsel had urged on the Tribunal a penalty which would not deprive the First Respondent of the right to continue in practice. Leading Counsel had said that there had been no allegation of dishonesty and that the First Respondent had carried on, over many years, a well respected practice with many loyal clients. The Tribunal had no independent evidence of that but equally, had no reason to suppose it was not the case. However, even if true and supported by a wealth of glowing references, and notwithstanding the acknowledgment that the First Respondent "felt bad" about his inability to repay the loan, none of those considerations would, in the Tribunal's judgment, have been sufficient to justify the First Respondent's failures both to observe the Rules of Conduct and, more importantly, to act in a manner which upheld the fundamental ethical principles upon which the Profession is based.
38. The Tribunal recognised that its decision would be a catastrophe for the First Respondent but accepted the request of Leading Counsel that the First Respondent should be given time to dispose of his practice. The Tribunal noted that the Respondents were not subject to any conditions upon their right to practise and accepted that a period of three months would be reasonable. Accordingly, the Tribunal suspended its strike off order for that period, without prejudice to any further application which might be made. The Tribunal, having decided that the appropriate sanction for the proven allegations 3 and 5 was a strike off, did not impose any further

penalties in respect of allegation 1, which had been admitted and allegation 6 which had been found proved. However, the Tribunal noted that it would have imposed fines in respect of each had they been the only allegations found proved as against the First Respondent.

39. The Second Respondent had been responsible, as a partner, for the accounts breaches (allegation 1) but the Tribunal was satisfied that the major culpability rested with the First Respondent, who controlled the accounts and was the only partner authorised to sign cheques. There had been no finding against the Second Respondent in respect of allegation 2. The other allegations had been as against the First Respondent only. The Tribunal considered that the appropriate penalty in respect of the Second Respondent was that she should be reprimanded

Decision as to Costs

40. The Tribunal fixed the Applicants' costs in the sum of £30,000.

The Orders of the Tribunal

41. The Tribunal Ordered that the Respondent, Francis Joel Aaronson of Aaronson & Co 197a Kensington High Street, London W8 6BA , solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,000.00.
42. The Tribunal directs that the direction of the Adjudicator dated 15th April 2009 in respect of inadequate professional services be treated for the purposes of enforcement as if it were contained in an order of the High Court pursuant to paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.
43. The Tribunal further Ordered that the effect of its Order dated 4th May 2010 in respect of Francis Joel Aaronson of Aaronson & Co, 197a Kensington High Street, London, W8 6BA, solicitor, be stayed for a period of three months commencing on 4th May 2010 with liberty to apply.
44. The Tribunal Ordered that the Respondent Linda Frances Aaronson of Aaronson & Co, 197a Kensington High Street, London W8 6BA, former registered foreign lawyer, 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 £5,000.00.

Dated this 16th day of June 2010
On behalf of the Tribunal

A.H. Isaacs
Chairman