

SOLICITORS DISCIPLINARY TRIBUNAL
SOLICITORS ACT 1974

IN THE MATTER OF CHARLES AYODEMIJI EWAN, solicitor (Respondent)

Upon the application of Victoria Hunt
on behalf of the Solicitors Regulation Authority

Mr I R Woolfe (in the chair)
Mr P Housego
Mr J Jackson

Date of Hearing: 20th May 2010

FINDINGS AND DECISION

Appearances

Ms Carol Featherstone, solicitor, employed by The Law Society at the Solicitors Regulation Authority ("SRA"), of 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE for Victoria Hunt, the Applicant, on behalf of the SRA.

The Respondent appeared and was not represented.

The application was dated 2nd June 2009 with a Rule 7 supplementary statement containing allegations 2 and 3 dated 26th February 2010.

Allegations

1. That the Respondent failed, or in the alternative delayed in delivering Accountant's Reports to the SRA within the permitted time contrary to s.34 of the Solicitors Act 1974.
2. That no proper accounting records had been kept or maintained in breach of Rule 1, 32(2) and (4) of the Solicitors Accounts Rules 1998 ("SAR").
3. That no bank reconciliation had been prepared in breach of SAR 1998 32(7),

Note: Upon Ms Featherstone's application and the Respondent's agreement, allegation 1 was amended to read "s.34" instead of "s.37" and allegation 3 was amended to read "no bank reconciliation" rather than "no bank reconciliation receipts".

Factual background

1. The Respondent, born in 1971, was admitted as a solicitor in 1998 and his name remained on the Roll of Solicitors.
2. At the time material to these allegations the Respondent practised on his own account under the style of Ewan & Co Solicitors at 33 York Road, Ilford, Essex.

First Accountant's Report - for period ending 2nd May 2007

3. The Respondent established his firm on 1st April 2006. The first Accountant's Report was for the period ending 2nd May 2007 and was due to be filed on or before 2nd November 2007. The SRA granted an extension for filing of the report to 2nd February 2008. A further extension was requested by the Respondent and this was granted on 28th February 2008 for the report to be filed by 30th April 2008. However the Respondent requested a further extension in a letter dated 30th April 2008 and this was considered by an Adjudicator on 10th June 2008 and an extension was granted to 30th June 2008 for filing of the outstanding Accountant's Report.
4. The extension was acknowledged by the Respondent when he wrote on 20th June 2008 and requested a further extension to the end of July 2008. A report was prepared in relation to the request and this was forwarded to the Respondent on 21st August 2008 for his representations. A letter in response was received on 22nd September 2008 asking for an extension to make representations to 26th September.
5. The Respondent's representations were received on 20th September 2008 and these were forwarded to the Adjudicator for his consideration. The representations detailed some personal difficulties that the Respondent had been experiencing and also indicated that the Respondent had consulted a new firm of accountants and that he was still proceeding to have the accounts prepared.
6. Upon receipt of the representations the Adjudicator asked the caseworker to make enquiries of the accountants to ascertain what stage they were at and what was the time estimate for delivery. The caseworker contacted the Respondent and then spoke with his accountant who indicated they had not started the report as the Respondent had not still paid his monies on account of costs. They indicated they were instructed in June 2008 but had not done the bookkeeping or the compliance part of the report. The accountant had said that the Respondent had advised him that he would pay him in a week or so but the accountants could not say when the report would be ready.
7. The decision of the Adjudicator was sent to the Respondent on 26th September 2008. The Adjudicator decided to refuse the request for a further extension of time to 31st July 2008 to deliver the Accountant's Report for the period ending 2nd May 2007 but expected the Respondent to deliver the outstanding Accountant's Report by 31st October 2008 failing which the Adjudicator directed that his conduct be referred to the Tribunal without further notice.

Accountant's Report for the period ending 2nd May 2008

8. The Accountant's Report for the period ending 2nd May 2008 was due to be filed with the SRA on 2nd November 2008. This Accountant's Report remained outstanding.
9. A letter was sent to the Respondent on 20th January 2008 regarding two outstanding Accountant's Reports but no response was received.
10. A further letter was sent to the Respondent on 6th February 2009 seeking his explanation and asking for a response within 14 days. The Respondent replied on 23rd February 2009 offering his sincere apologies for the delay in replying, saying that he needed to contact his accountants to appraise the position as to the bookkeeping and accounts and that he would respond within seven days.
11. No further response was received until 13th March 2009 when the Respondent wrote saying that he had been in contact with his accountants and that he had also had an Investigating Officer from the SRA attend his office on 9th and 13th March. The Respondent indicated that his accountants were completing the bookkeeping for the accounts and there were just a few matters to be dealt with which he would be attending to on Monday, 16th March. He indicated that he had stressed the urgency to the accountants and that as soon as they had all the necessary information they indicated it would take them approximately 3-4 weeks to complete the reports. The Investigation Officer had informed him of the importance and consequence of not filing the reports on time and that he would forward the Accountant's Reports as quickly as possible.
12. A dispute between the Respondent and S Limited, accountants, regarding fees culminated in the Respondent instructing a different accountant to produce the outstanding reports and the caseworker wrote to the new accountant on 11th June 2009 seeking their confirmation as to the extent of their instructions and for a timescale within which they were likely to deliver the outstanding Accountant's Reports. The caseworker also wrote to the Respondent on the same day asking that he confirm the date that he initially instructed his original accountants with regard to bookkeeping.
13. The accountants, A International, replied on 23rd June and confirmed that they had been instructed in relation to the Accountant's Reports for the year end 2nd May 2007 and 2nd May 2008 but did not provide details of any timescales.
14. On 1st July 2009 the caseworker again requested a timescale for the submission of the outstanding Accountant's Reports. The caseworker requested a reply within seven days.
15. On 8th July 2009 the Respondent replied enclosing correspondence relating to the accountants and the issue of the bookkeeping. The Respondent said that he had received an email from S Accountants indicating that the finalising of the bookkeeping and that he would forward correspondence and updates very shortly. He indicated that A International were awaiting the bookkeeping from S Limited before they could complete the May 2007 report and with regard to the May 2008 report, the accountant said they would be complete within approximately two months.

16. The outstanding Accountant's Report for the period ending 2nd May 2007 was due to be filed on 30th June 2008. This report was filed with the SRA on 5th August 2009. The report that was filed was unqualified.
17. In relation to the outstanding Accountant's Report for the period ending 2nd May 2008, this was due to be filed by 2nd November 2008. No extension request was requested in relation to this outstanding Accountant's Report. The report was filed on 14th December 2009 and was unqualified.

No Proper Accounting Records

18. An inspection of the Respondent's firm by the SRA commenced on 9th March 2009 resulting in a Forensic Investigation Report dated 26th March 2009. The Senior Investigating Officer ("the SIO"), observed that the Respondent had not maintained proper books of accounts since he set up his practice in April 2006, in as much as he had not maintained client account cashbook and not carried out any monthly bank reconciliations. Due to the lack of bookkeeping the Investigating Officer said that he could not express an opinion as to whether the Respondent held sufficient funds to cover liabilities to clients. It was also noted that the Respondent had not delivered the Accountants Reports for either of the periods ending 2nd May 2007 or 2nd May 2008.
19. On 15th May 2009 a caseworker wrote to the Respondent seeking his explanation. The Respondent was also asked what steps he had taken to rectify the position and to provide documentary evidence. The Respondent replied on 2nd June 2009 stating:

"As I explained to [the SIO] I was not aware of the format relating to bookkeeping of the practice although I have now been educated and assisted in this regard."

The Respondent then went on to explain that he had now sought the assistance of a certified accountant so that an Accountant's Report would be available shortly. The Respondent said the accountants were dealing with bringing his accounts and books up to date and stated that documentary evidence was to follow. The Respondent did not provide any further explanation as to why his books had not been kept in compliance with the Rules but instead provided documentary evidence indicating that he had instructed a firm of accountants but there then appeared to be a dispute in relation to costs relating to the rectification of the accounts and also the preparation of the Accountant's Reports.

Monthly Bank Reconciliations

20. The SIO found that the Respondent had not carried out any monthly bank reconciliations since he set up his practice in April 2006.
21. This issue was put to the Respondent by the caseworker in a letter dated 15th May 2009. The Respondent replied on 2nd June 2009. Although the Respondent did not comment specifically upon this issue in response to that letter he does refer to instructing accountants bringing his accounts up to date and said documentary evidence would follow.

22. On 1st July 2009 the caseworker wrote again to the Respondent asking for further comments regarding the cashbooks and monthly reconciliations. The caseworker requested a reply within seven days.
23. On 8th July 2009 the Respondent replied enclosing correspondence relating to the accountants and the issue of the bookkeeping. He said that he had received an email from S Accountants indicating the finalising of the bookkeeping and that he would forward correspondence and updates very shortly.
24. The Respondent then went on to say, that he could confirm that:
- "I do maintain a cashbook and effect monthly reconciliations with my accountant's/bank statements in accordance with the Solicitors Accounts Rules 1998. Since the visitation to my office by the SRA namely the Investigation Officer and his advice he has given I have followed the same as well as rectified the issues raised as quickly as possible. I enclose herewith a copy of the up to date cashbooks as requested for your records."
25. The Tribunal reviewed all of the documents submitted by the Applicant which included the Rule 5 Statement dated 2nd June 2009 together with accompanying bundle, the Rule 7 Statement dated 26th February 2010 together with accompanying bundle and the published Decision of the Adjudicator of the SRA dated 31st March 2010.

Findings as to Fact and Law

Allegation 1: that the Respondent failed, or in the alternative delayed, in delivering Accountants Reports to the SRA within the permitted time contrary to s.34 of the Solicitors Act 1974

26. The allegation related to the late filing of Accountant's Reports for the periods ending 2nd May 2007 and 2nd May 2008. The Applicant told the Tribunal that the Respondent admitted this allegation and he had now filed all of his outstanding Accountant's Reports and all were unqualified.
27. The Respondent admitted this allegation and the Tribunal found it substantiated on the facts.

Allegation 2: that no proper accounting records had been kept or maintained in breach of Rule 1, 32(2) and (4) of the Solicitors Accounts Rules 1998.

28. A Forensic Investigation had commenced at the Respondent's firm on 9th March 2009 with the result that a short Forensic Investigation Report had been produced dated 26th March 2009. The Head of Forensic Investigation had discovered that the Respondent had not maintained proper books of accounts since he set up his practice in April 2006 in that he had not maintained a client cash book. There was a credit balance of £126,004.64 on the client deposit account and it was Ms Featherstone's submission

that the SRA could not be certain that client money was being properly dealt with in these circumstances.

29. The Respondent admitted this allegation and the Tribunal found it to have been substantiated on the facts.

Allegation 3: that no bank reconciliations had been prepared in breach of SAR 1998 32(7)

30. The Head of Forensic Investigation had also discovered that no monthly bank reconciliations had been carried out since the Respondent had established his practice in April 2006. In Ms Featherstone's submission reconciliations were important because they identified any errors and were central to effecting compliance with the regime.
31. The Respondent admitted this allegation and the Tribunal found it to have been substantiated on the facts.

Mitigation

32. The Respondent told the Tribunal that he was still practising as a sole practitioner. On 31st March 2010 an Adjudicator had granted him a practising certificate with quite extensive conditions but he had appealed that decision and the appeal was yet to be considered. Since the investigation by the SRA, he had taken extensive steps to rectify the position with his accounts and he employed bookkeepers, used appropriate software and made regular checks. There had never been any issue as to client funds being at risk or any misappropriation. He had rectified the position as soon as possible. In this regard he had ridden above his personal difficulties and had admitted his failures in this regard and done everything he could to rectify the position. There had been no complaints. The bookkeeper now prepared reconciliations and the Respondent checked bank statements. The bookkeeper attended once a month.
33. The Respondent had opened a second office in Swiss Cottage last year and was running the same accounting system in both offices. In total he employed five staff including one other qualified solicitor.

Costs

34. Ms Featherstone applied for fixed costs in the full amount claimed of £5,605.88. The Respondent made no representations concerning costs or his general financial circumstances.

Previous disciplinary proceedings before the Tribunal

35. None.

Sanction and Reasons

36. The Tribunal had before it a number of allegations. When the Respondent had set up his practice in April 2006 he had not been aware of the requirements of the Accounts

Rules. No solicitor should be allowed to practise without fully realising his duties under the Accounts Rules. There had also been a serious delay in the production of accounts with the first report two years late, the second over one year late and the third, five months late. However the Respondent had told the Tribunal of the steps that he had taken to rectify the situation and of his new understanding of the Rules. It was not for the Tribunal to comment on the Adjudicator's decision as to conditions on the Respondent's practising certificate or the Respondent's appeal of that decision. However the Tribunal did wish to suggest that having two offices at such a distance made matters very difficult where there was only one partner in charge of the total business. The Respondent might therefore like to consider whether it would be sensible to embrace partnership rather than trying to manage matters on his own.

37. In this case there had been serious breaches of the Solicitors Accounts Rules in addition to the late delivery of the Accountant's Reports and a fine in the sum of £4,000 would be the appropriate penalty.

Decision as to costs

38. The Tribunal heard that the Applicant and the Respondent had now agreed costs in the sum of £4,800 and would therefore so Order..
39. The Tribunal Ordered that the Respondent, Charles Ayodemiji Ewan of Ewan & Co Solicitors, 33 York Road, Ilford, Essex, IG1 5AE, solicitor, do pay a fine of £4,000.00, 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 £4,800.00.

Dated this 30th day of June 2010

On behalf of the Tribunal

I R Woolfe
Chairman