

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF BRYAN ROBERT HARDMAN (First Respondent)
and SEBASTIAN SGOLUPPI, (Second Respondent)

Upon the application of Mr Robin Havard
on behalf of the Solicitors Regulation Authority

Mrs K Todner (in the chair)
Mr P Housego
Lady Bonham Carter

Date of Hearing: 7th and 8th June 2010

FINDINGS & DECISION

Appearances

Mr Michael Robin Havard, Solicitor & Partner in the firm of Morgan Cole, Solicitors, of Bradley Court, Park Place, Cardiff CF10 3DP, the Applicant, on behalf of the Solicitors' Regulation Authority (SRA).

The Respondents, who were present, were represented by Paul Parker of Counsel instructed by James Dunn of Devonshires, Solicitors.

The application to the Tribunal on behalf of the SRA was made on 30th September 2009

Allegations

The allegations against the Respondents were that they had:-

1. Failed adequately to supervise and/or manage the activities and work of members of staff within the firm contrary to Rule 13 of the Solicitors' Practice Rules 1990 (SPR).
2. Conducted themselves in a manner which had been likely to compromise or impair their duty to act in the best interests of their clients contrary to Rule 1 (c) of the SPR.

3. Acted in property transactions for the buyer and lender where there existed a conflict of interest or the potential for a conflict of interest.
4. Failed to disclose all relevant information to a client, namely the lender, in certain conveyancing transactions, that had been material to the lender's business.
5. Failed to adhere to the provisions and instructions contained within Parts 1 and 2 of the Council of Mortgage Lenders' Handbook.
6. Acted in the same property transaction for the seller, buyer and lender without the written consent of the parties, contrary to Rule 6 of the SPR.
7. Acted for both borrower and lender without first informing the lender in writing of their intention to act for seller, buyer and lender in the same transaction contrary to Rule 6(3) of the SPR.

Preliminary Matter

Counsel for the Respondents explained that although both Respondents admitted the facts relating to allegation 1, they denied any breach of Rule 13 of the SPA. Allegation 1 was referred to within the proceedings as "lack of supervision and management". However, both Respondents admitted allegations 2 to 7 referred to as "the conveyancing matters".

The Applicant confirmed that in relation to allegation 4, it was accepted that material information had been disclosed to the lender in three of the 13 purchases relating to Mr S. Moreover, it was also accepted that the lender, GMAC, had been informed of all relevant matters in a series of 14 purchases for Mr D in December 2005. The Applicant sought the Tribunal's leave to withdraw those issues. The Tribunal granted leave as requested.

Factual Background

1. The First Respondent, born in 1952, was admitted to the Roll of Solicitors in 1980. The Second Respondent, born in 1970, was admitted in 2000. At all material times, the Respondents had been partners in the firm of Hardmans, Solicitors, of St. Edmunds House, Northampton NN1 5DY (the firm).
2. An investigation of Hardmans had taken place following the notification to the Law Society by the Respondents of concerns that a former clerk, Sean Hogan, had misused clients' funds. On 3rd October 2006, Mr James Carruthers, a Senior Investigation Officer at the SRA, commenced that investigation resulting in a Forensic Investigation Report (FIR) dated 3rd August 2007.

Lack of adequate supervision and/or management

3. The total sum misappropriated by Sean Hogan amounted to £25,687.00. His actions had taken place between 10th August 2005 and 3rd March 2006 and had involved nine improper payments not connected with the affairs of the relevant clients. All but three of those payments had been made by cheque; the three had been by way of telegraphic transfer. There had been two improper allocations of clients' money to other unconnected clients' ledger accounts and three improper transfers of clients' money between unconnected clients' ledger accounts.

4. Mr Hogan had joined the firm in May 2003 when he was 18 and had progressed to become an unqualified conveyancing executive, responsible for his own transactions, reporting to, and supervised by, the Conveyancing Manager, Mr JT, who, although unqualified, had some 24 years of conveyancing experience. In certain matters Mr Hogan had, albeit without authority, completed Certificates of Title and had given Undertakings on behalf of the firm.
5. An example of one of Mr Hogan's misappropriations related to a property transaction in which he had acted for Mr & Mrs H in connection with a purchase. Mr Hogan had requested a cheque for £14,000, shown on the client ledger to be in respect of a deposit, payable to "SP", a company without any connection to the transfer but of which Mr Hogan had been a director.
6. Mr Hogan had covered up the cash shortage by arranging for a transfer of that amount from the client ledger of S on 18th August 2005.
7. In the file of B, Mr Hogan had failed to draw down a second mortgage advance leading to the improper transfer of £26,839.14 from the unconnected client ledger of S, in order to complete.
8. In the file of F, Mr Hogan had failed to send a deposit cheque to the other side until it had been too late before the day of completion, despite reminders, by post, from the other side.
9. In the file of S, Mr Hogan had failed to fully redeem the client's existing mortgage and to obtain a discharge. Although there had been correspondence on the files indicating the existence of the potential problems there had been no evidence that such had been detected by way of supervision.
10. Mr Carruthers noted that following completion on some five of his matters, Mr Hogan had failed to pay or to promptly pay Stamp Duty and had delayed in registering clients' interests and had failed to maintain their continuous priority. Some delays in registration had continued after Mr Hogan's dismissal.
11. Following Mr Hogan's dismissal, some four letters had been written on the file of S by an un-qualified post-completion clerk containing statements that had appeared to be misleading.

The conveyancing matters

12. In some ten matters conducted by the firm for a substantial client of the firm, Mr S, in which the firm had also acted on behalf of the lenders, there had been no evidence that lender clients had been informed that the firm's purchaser client, Mr S, had not been paying to the vendors the purchase price as originally stipulated. The work had been carried out by a conveyancing executive supervised by the Second Respondent.
13. In a conveyancing transaction relating to Plot 135, a conveyancing executive, supervised by the Second Respondent, had:-

- (i) Acted for the seller, buyer and lender without the written consent from all parties;
 - (ii) Acted for the seller, buyer and lender without notifying the lender in writing;
 - (iii) Failed to inform the lender of the full details of the sale and sub-sale including the fact that the vendor had been a relative of the proposed borrower, that the firm had not had control of all the purchase monies and that there had been a substantial uplift in the purchase price;
 - (iv) Failed to register the transfer and mortgage within the original proprietary period afforded by the priority search at HM Land Registry and had not appeared to have maintained continuous priority until the charge had been registered.
14. In a conveyancing transaction relating to the purchase of two flats by a client, Mr D, the Second Respondent had failed to inform his lender clients of relevant information in respect of each purchase including that:-
- (i) There had been a price reduction from £115,000.00 to £85,000.00 and the Certificate of Title had shown the price stated in the transfer as £115,000.00;
 - (ii) The deposits of £16,667.00 had not been paid through the firm's client account;
 - (iii) That the purchaser had paid £73,645.31 only on completion and had received a payment on completion.
15. In a conveyancing transaction relating to the same day purchases and re-sales of two plots by a client, Mr D, the Second Respondent had supervised a conveyancing executive, DW. Another conveyancing executive in the firm, also supervised by the Second Respondent, had acted for the two final purchasers of those plots and for their lenders.
16. There had been no evidence of:-
- (i) The clients' written consent for the firm to act for seller, buyer and lender in both transactions;
 - (ii) Any written notification sent to the lender clients of the firm's intention to act for all parties;
 - (iii) Any information being provided to the lender clients of the details of the original purchase by Mr D and the substantial uplift in the purchase price on the sub-sales.

Documentary Evidence before the Tribunal

17. Inter alia, the Tribunal reviewed the Rule 5 Statement dated 30th September 2009 together with the documents exhibited to that Statement. The Tribunal also reviewed

a file of witness statements and testimonials served by the Respondents together with a Note from Counsel of matters admitted and not admitted.

Witnesses

18. James Carruthers, a Senior Investigation Officer at the SRA, gave evidence of his investigation of the firm and his subsequent report dated 3rd August 2007. Inter alia, he confirmed that client to client transfers within a firm were not a common occurrence. In cross-examination, he agreed that Mr Hogan had stated in his interview that he had not taken any steps to conceal his actions. Mr Carruthers stressed that his role had been to gather the relevant facts and to report the Respondents' explanations relating to those facts but not to form his own opinions about matters.
19. The First Respondent, Bryan Robert Hardman, gave oral evidence. He relied on his statement dated 26th May 2010 covering, inter alia, his professional background, the development of the firm and the issues relating to the allegation of a lack of adequate Supervision and/or Management in the firm.
20. In cross-examination, inter alia, the First Respondent explained that there had been five fee-earners organised into four teams or "pods", dealing, at times, with some 400 instructions each month in total. He stressed that Mr Hogan had circumvented the firm's adequate control systems but that those systems had subsequently been revised. He agreed that the client to client transfer system had broken down in that Mr Hogan had been able to transfer funds on three occasions. He believed that the firm's system of file audit, although not carried out by qualified staff, had been adequate as had his monitoring of work-loads.
21. In response to a question from the Tribunal, the First Respondent explained how conveyancing work had been allocated within the four teams by fee-earners to conveyancing assistants. He confirmed that when supervising by way of checking incoming post, he had been aware of many computer-generated deeds-chasing letters, particularly on new properties.
22. The Second Respondent, Sebastian Sgoluppi, gave oral evidence. He relied on his statement dated 26th May 2010 covering his professional background, the development of the firm and the various conveyancing matters raised in allegations two to seven.
23. In cross-examination, the Second Respondent confirmed that he was fully aware of the provisions of the Green Card and of Regulation 6 of the SPR and that while he accepted that on a number of occasions his staff had been in breach, he stressed that those occasions had represented a minute percentage of the firm's conveyancing work.
24. In response to a question from the Tribunal, the Second Respondent explained that all fee-earners had been fully aware of what they had been supposed to do and that he had believed that they had been doing what they should have been doing.

Findings as to fact and law

Allegation 1: That the Respondents had failed to adequately supervise and/or manage the activities and work of members of staff within the firm contrary to Rule 13 of the Solicitors' Practice Rules 1990 (SPR).

25. The Applicant submitted that the manner in which Mr Hogan had been able to misuse clients' monies, particularly in transferring monies from one client ledger to another without the necessary authority, had meant that the system of supervising his work and the level of control of client money had been either inadequate or ignored. Counsel for the Respondents submitted that the evidence before the Tribunal had been that very little else could have been done by the Respondents to prevent Mr Hogan's actions. He reminded the Tribunal of the systems that had been in place and noted that picking up a problem file depends on luck. Counsel submitted that the firm's systems, far from being inadequate and ineffective, had eventually brought the fraud to light.
26. The Tribunal found the allegation proved beyond reasonable doubt. It accepted that an employee, determined deliberately to misuse clients' money and to conceal his actions would, almost always, succeed in perpetrating such misuse. The Tribunal accepted that, in the particular circumstances, Mr Hogan, requesting a cheque to "S P", would not have caused alarm as such a request had been by a trusted employee not giving any cause for suspicion. Moreover, the Tribunal also accepted that it would have been difficult for the Respondents to have prevented Mr Hogan accepting a cash payment of £1000.00, out of hours, from a client, regardless of a rule of the firm that no more than £500 was to be accepted in cash.
27. However, the Tribunal noted that, at the relevant time, Mr Hogan had been only 20 years old and completely unqualified, yet he had been allowed to run conveyancing files autonomously, from beginning to end. While there had been weekly meetings with staff and an "open door" policy by the partners, the Tribunal considered those not to be so much supervision, as opportunities for Mr Hogan, and other staff, to seek help from the Respondents. The Tribunal noted that there had been file reviews, however, it appeared that Mr Hogan would have known that those reviews had been carried out by physically locating files rather than by reference to a list of files run by particular fee earners. In those circumstances the simple device of hiding files would have removed any risk of detection. The Tribunal was concerned that the file reviews had been undertaken by unqualified, albeit experienced, staff. Moreover, the Tribunal considered that the paperwork shown to it, relating to file reviews, had been unimpressive, consisting only of one pro forma, from 2003, for a remortgage.
28. While not immediately picking up a diversion of client account money to "S P" did not result in the Tribunal's criticism of the Respondents, their failure to prevent Mr Hogan's actions in seeking, shortly afterwards, to replace that money did. The Tribunal noted that Mr Hogan had effected the replacement by transferring money from an unconnected client to the client account from which he had originally taken the money. Such a client to client transfer was not a normal event and the Tribunal would have expected any accounts department to be subject to a procedure whereby they would have challenged such a transfer by a referral to a partner. The Tribunal

noted that the Respondents had accepted that their accounts department had failed to challenge such client to client transfers by Mr Hogan on some three occasions.

29. Subsequent to Mr Hogan's dismissal, the Tribunal accepted that it had been permissible, albeit in its view, inadvisable, to delegate the task of resolving the difficulties with Mr Hogan's files to an unqualified post completion clerk. However, having done so, the Tribunal found that there had been little or no supervision of that work and that, consequently, the clerk had been able to write and send letters that had simply been untrue. Further, the Tribunal noted that while no losses had been sustained because of gaps in priority periods in Land Registry searches, there had been no central diary system in place to prevent such lapses, an omission that it found surprising in a firm undertaking such high levels of conveyancing work.

Allegations 2 - 7: "The conveyancing matters"

30. The contested allegations having been withdrawn (with the leave of the Tribunal) the Respondents admitted the remaining allegations, and the Tribunal found them to have been substantiated on the facts.

Mitigation

31. Counsel for the Respondents reminded the Tribunal that the Respondents had self-reported, had co-operated fully with the SRA and that there had been no losses to clients. He said that the matters had taken over four years to reach the Tribunal and that during that time both Respondents had been extremely concerned by the allegations hanging over them. Counsel sought to place the incidents in the context of a busy conveyancing firm, working in the conditions of the mid-2000s, with relaxed lenders keen to lend. Counsel also referred to the testimonials submitted on behalf of both Respondents. Finally, he provided details of the current financial circumstances of both Respondents, who were facing bankruptcy following the closure of their firm.

Costs application

32. The Applicant sought an order for costs to be fixed in the sum of £34,264.76. He submitted that costs had been reasonably incurred but explained that there was no agreement as to costs and that, given the financial circumstances of the Respondents; the Tribunal might consider making an order not to be enforced without leave.

Sanction and reasons

33. The Tribunal had found all of the allegations before it proved and had been particularly concerned at the failures to identify client to client transfers and conflicts of interest and to notify lenders of incentives. However, the Tribunal accepted a number of mitigating factors; at the material time mortgage lenders had been extremely keen to lend both to investors and to purchasers, the Respondents had reported the misuse of clients' funds, they had replaced the money and had cooperated with the SRA's investigation. Moreover, the whole matter had hung over the Respondents for some four years and the Tribunal accepted their evidence of the enormous strain that it had caused them both.

34. The Tribunal noted that the Respondents' firm had closed and that they both faced imminent bankruptcy and that they had no assets, having re-invested their profits into their firm, and had large debts. Although the Respondents were both working, their earnings, at best, only covered their outgoings.
35. The Tribunal considered that the matters before it were serious matters. However, it noted that in essence they related to the Respondents' failure to run a large-scale conveyancing operation effectively and were not matters which had caused the Tribunal to have any doubt as to the personal integrity or professional competence of either of the Respondents. The Tribunal considered it important to stress that the Respondents left the Tribunal with their integrity intact and that there was no question of any issue as to the protection of the public. In the circumstances, the Tribunal considered that a fine was appropriate and ordered that both Respondents pay a fine of £1,500. The Tribunal noted that the fine would have been larger but for the delay in bringing the allegations before the Tribunal.

Decision as to Costs

36. The Tribunal was satisfied that an order should be made for fixed costs in the sum of £30,000 but that, given the financial circumstances of the Respondents such order should not be enforced without the leave of the Tribunal.

The Order of the Tribunal

37. The Tribunal Ordered that the Respondent, BRYAN ROBERT HARDMAN of Hardmans Solicitors, St Edmunds House, St Edmunds Road, Northampton, NN1 5DY, solicitor, do pay a fine of £1,500.00, 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 £30,000.00, such costs to be joint and several and not to be enforced without the consent of the Tribunal.

The Tribunal Ordered that the Respondent, SEBASTIAN SGOLUPPI of Hardman Solicitors, St Edmunds House, St Edmunds Road, Northampton, NN1 5DY, solicitor, do pay a fine of £1,500.00, 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 £30,000.00, such costs to be joint and several and not to be enforced without the consent of the Tribunal.

Dated this 28th day of June 2010
On behalf of the Tribunal

K Todner
Chairman