

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF SONIA HUNJAN (First Respondent) solicitor
and KHALID RASHID (Second Respondent) solicitor

Upon the application of Jayne Willetts
On behalf of the Solicitors Regulation Authority

Mr R Nicholas (in the chairman)
Mrs E Stanley
Ms L Barnett

Date of Hearing: 30th March 2010

FINDINGS AND DECISION

Appearances

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

The Respondents appeared in person.

The application to the Tribunal on behalf of the SRA was made on 3rd December 2009.

Allegations

The allegations against the Respondents were that:-

1. Monies had been withdrawn from client account in excess of the amount held for the client on whose behalf the withdrawal had been made in breach of Rule 22(5) of the Solicitors' Accounts Rules 1998 (SAR).
2. Sums in respect of private loans from one client to another had been paid from funds held for the lender clients without the prior written authority of both clients, in breach of Rule 30(2) SAR.

3. The Respondents had failed to remedy breaches of the SAR promptly on discovery, in breach of Rule 7 SAR.
4. Accounting records had not been kept properly written up, in breach of Rule 32 SAR.
5. The Respondents had arranged private loans with their clients without advising those clients to obtain independent legal advice and that in so doing the Respondents had behaved in such a way likely to diminish the trust the public places in the profession, contrary to Rule 1.06 Solicitors Code of Conduct 2007 (the Code).

Factual Background

1. The First Respondent, born in 1963, was admitted as a solicitor in 2001. The Second Respondent, born in 1966, was admitted in 2002. At all material times and until the firm ceased on 30th September 2009, the Respondents practised in partnership as Miles Solicitors, 173, Plashet Grove, East Ham, London E6 1BX.

Allegation 1

2. On 27th July 2007, the First Respondent completed a sale transaction on behalf of a client, Mr P, in the sum of £600,000. As at 16nd October 2007 there had been a nil balance on Mr P's client ledger. However, on 22nd October 2007, in error, a payment of £50,000 was sent to Mr P by way of telegraphic transfer. There had been no funds to the credit of Mr P to cover the payment and therefore a shortage on client account had arisen. **Rule 22(5)**

Allegation 2

3. On 23rd October 2007 the First Respondent had effected the transfer of £50,000 from the client ledgers of five separate clients to the ledger of Mr P. Those transfers had been made in order to rectify the shortfall. No written authorities had been obtained from any of the five clients before the transfers were made. **Rule 30(2)**
4. The Respondents had stated when contacted by telephone, that their clients had consented to lending the money and that undated written consents had subsequently been obtained. Mr P had not been consulted about the loans and therefore the necessary consent had not been obtained from him. **Rule 30(2)**
5. In addition to the inter-ledger transfers from the five clients to Mr P's account, the Respondents had facilitated further inter-ledger loans. Those further loans had been from the ledgers of other unconnected clients to the ledgers of the clients from whom money had originally been borrowed to rectify the initial shortfall on client account. Those inter-ledger loans are described below.
6. The First Respondent was instructed by Mr S to act in relation to his purchase of a property. On 9th October 2007 the sum of £15,200 had been credited to Mr S's ledger in respect of the deposit for the intended purchase. On 10th October 2007 a ledger transfer had been made in the sum of £14,000 from the account of Mr S to the account of Mr P. On 10th March 2008, an internal transfer was made in the sum of £14,000 from the

ledger of another unconnected client, Mrs M, to the credit of the account of Mr S. There was no evidence that any written authority had been obtained from either client in relation to that inter-ledger transfer.

7. In around September 2007, the firm was instructed to act for a Mr H in relation to the remortgage of his property. On 19th October 2007, the sum of £169,965 (being the mortgage advance) was credited to the account of Mr H. On the same day the sum of £111,029.45 was paid out of the account by way of telegraphic transfer in order to redeem the original mortgage and the sum of £23,000 was transferred to the account of Mr P. On 4th April 2008, a transfer of £23,000 had been made from the personal client account of the Respondents to the account of Mr H. A written authority for the loan had been obtained from Mr H after the transfer of the money to Mr P's account. **Rule 30(2)**

Allegation 3

8. The First Respondent completed the remortgage of a property on behalf of Mr HS on 22nd August 2007. The client ledger of Mr HS showed that on 17th August 2007 the sum of £327,919 had been received from a Building Society. On redemption of the existing mortgage there had remained a balance of £21,989.42. On 22nd August 2007 the sum of £16,103.29 had been sent to Mr HS leaving a balance of £5,886.13. On 23rd October 2007 an inter-client ledger transfer of £5,000 to the ledger of Mr P had been made from the ledger of Mr HS. Mr HS had not consented to the transfer.
9. In March and April 2008, the Respondents transferred the total sum of £45,000 from office to client account. That transfer had been made in order to reimburse clients who had loaned money to rectify the £50,000 shortfall. The sum of £5,000 remained due to be transferred to the ledger of Mr HS. The Investigation Officer (IO) raised the issue with the First Respondent at their meeting on 15th January 2009. The First Respondent had written a cheque dated 16th January 2009 in the sum of £5,000 in order to reimburse client account. A shortfall of £5,000 had therefore remained on client account for some nine months. The Respondents said that the monies transferred from Mr HS's ledger had been due to be paid to a broker and therefore had not been client monies. **(Rule 7)**

Allegation 4

10. The loans between clients had been inaccurately posted onto the individual client ledgers. Mr P's ledger had shown that the shortfall on client account had occurred on 22nd October 2007. Mr P's ledger had shown credit postings from the ledgers of Messrs P, HS, R, S & H. All the postings had been dated 23rd October 2007. However, the debit postings on the individual ledgers of the clients, from whom the money had been transferred, had not been made contemporaneously. For example, on 10th October 2007, a posting on the ledger of Mr S had shown the transfer from that ledger to the ledger of Mr P of the sum of £14,000. That had been 13 days before the corresponding posting had been made on Mr P's ledger and 12 days before the shortfall had apparently occurred. Accordingly, it had not been possible to ascertain readily the correct current balance on each client ledger as a result of the inaccurate postings. **(Rule 32(5))**

Allegation 5

11. Despite the clear potential conflict of interest between the Respondents and their clients from arranging the loans, there was no evidence that those clients had been advised to take independent legal advice.

Documentary Evidence before the Tribunal

12. The Tribunal reviewed the Rule 5 Statement together with the accompanying bundle and the Second Respondent's letter to the Tribunal of 24th March 2010.

Findings as to fact and law

13. There was no dispute on the facts and the Tribunal found all the allegations both admitted and proved.

Mitigation

14. The First Respondent admitted all of the allegations and explained that a genuine mistake had been made in transferring the sum of £50,000 and that all the letters of authority had been on the files when inspected by the Investigation Officer. She told the Tribunal that when they set up their practice in 2001 they found the SAR difficult to understand and had not received any help from the Law Society nor had any books with examples of how to manage solicitors' accounts. The First Respondent also told the Tribunal that she was not currently working.
15. The Second Respondent explained that the First Respondent had had the sole responsibility for dealing with the accounts. He stressed that none of the clients involved had complained but that both he and the First Respondent regretted their actions. He also provided some details of his financial position in that he was hoping to gain experience of, and work in, the field of Housing Law rather than continuing to work in the field of Conveyancing. The Second Respondent also referred the Tribunal to the financial information in his letter of 24th March 2010 stressing that at the cessation of their practice they had both had to pay £18,000 to arrange indemnity insurance run off cover.

Costs Application

16. The Applicant requested fixed costs in the sum of £15,878.62 reduced by one hour in respect of the length of the hearing.

Sanction and Reasons

17. On the basis of the evidence presented to it, the Tribunal had found all of the five allegations proved. Moreover, all of the allegations had been admitted by both Respondents. Although there had been no dishonesty or any loss to clients, the allegations were serious, particularly given the heavy duty on solicitors to comply with the Solicitors Accounts Rules.

18. The Tribunal considered that the Respondents' conduct, involving as it had; accounts rules breaches and the abuse of the solicitor client relationship; taking loans without the prior permission of, or the giving of any independent advice, had fallen below the required standards. The Tribunal concluded that a financial penalty of £5,000 for each Respondent was appropriate in all the circumstances.

Decision as to costs

19. The Tribunal was of the view that the SRA's costs should be fixed in the sum of £10,000 and that the Respondents should be jointly and severally liable for those costs. However, the Tribunal noted the policy of the SRA to pursue costs only when such were recoverable and to negotiate payments by instalments where appropriate.

The Orders of the Tribunal

20. The Tribunal Ordered that the Respondent, SONIA HUNJAN of 5 Newlyn Avenue , Hornchurch, Essex, RM11 2PY, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this enquiry fixed in the sum of £10,000, such costs to be joint and several between the Respondents.
21. The Tribunal Ordered that the Respondent, KHALID RASHID of 57 Poplars Road, Walthamstow, London, E17 9AT, solicitor, do pay a fine of £5,000.00, 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 enquiry fixed in the sum of £10,000, such costs to be joint and several between the Respondents.

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

R Nicholas
Chairman