

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF SIMON LAZARUS, solicitor (Respondent)

Upon the application of Stephen John Battersby  
on behalf of the Solicitors Regulation Authority

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Mr W M. Hartley (in the chair)  
Mr R Prigg  
Mr G Fisher

Date of Hearing: 6th May 2010

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**FINDINGS & DECISION**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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**Appearances**

Mr Stephen John Battersby of Jameson & Hill of 72-74 Fore Street, Hertford, Herts SG14 1BY for the Applicant.

Mr Ken Craig of Counsel for the Respondent.

The application was dated 7<sup>th</sup> October 2009.

**Allegations**

The allegations against the Respondent were that:

1. He withdrew monies from client account other than as permitted contrary to Rule 22 Solicitors Accounts Rules 1998 (SAR).
2. He failed to keep his books of accounts properly written up contrary to Rule 32 SAR.
3. He gave costs information to clients, which was inaccurate and misleading, contrary to Rule 2.03 Solicitors Code of Conduct 2007.

4. He failed to account to clients for monies due to them or delayed in so doing contrary to Rules 1 and 2.03 Solicitors Code of Conduct 2007.
5. He failed to deal with the Solicitors Regulation Authority in an open, prompt and co-operative way.

The evidence before the Tribunal included the admissions of the Respondent to all the allegations.

### **Factual Background**

1. The Respondent, born in 1955 was admitted as a solicitor on 1<sup>st</sup> October 1985. At the material time he was in practice on his own account as the sole Principal in the firm of Baskin Ross and Co of 628 Finchley Road, London NW11 7RR.

#### Allegation 1

2. On 31<sup>st</sup> December 2007 there was a shortage of £9,841.02 on client account. This had arisen because office to client account transfers, which had been posted to the books of account to eliminate debit balances on client ledgers, had not actually been made. On 30<sup>th</sup> April 2008 there were again transfers shown on the books of account as having been made from office to client account prior to that date, which had not in fact been made, leading to a shortage of £4,514.98.

#### Allegation 2

3. The books of account incorrectly indicated that payments had been made from office to client account prior to 31<sup>st</sup> December 2007 whereas such payments were not made until after that date, between 10<sup>th</sup> January and 19<sup>th</sup> February 2008. A similar situation existed regarding the firm's records at the 30<sup>th</sup> April 2008 whereby office to client account lodgements totalling £5,078.20 were shown as having been made prior to his date when such payments were made after.
4. Nine amounts totalling £803.31 had cleared both office and client accounts in both 2005 and 2006 yet incorrectly still appeared on the client account reconciliations both for 31<sup>st</sup> December 2007 and 30<sup>th</sup> April 2008. Other examples of accounts not having been properly written up were the Respondent's use of one ledger for two different transactions and the fact that searches, which had not actually been carried out, were shown as having been paid for.

#### Allegation 3

5. On 9 domestic conveyancing transactions the Respondent had been the fee earner and costs information provided to clients had been incomplete, inaccurate and misleading. Examples of the type of breaches revealed were:-
  - (a) A fee (typically £100) for 'completion of land transaction returns' being shown as a disbursement.

- (b) A contribution to Indemnity Insurance being shown as a disbursement.
- (c) The client being quoted and charged a higher fee for a telegraphic transfer than that levied by the Bank to the firm.
- (d) An amount being charged for 'pre-completion searches' or 'official copies' (typically £50) which was more than that charged by HMLR.
- (e) The client having been charged for a disbursement which had not been incurred at the time the charge was made, typically for Environmental and Drainage Searches, which in some cases were undertaken months after completion, thus defeating their object.
- (f) Clients not being informed at all in the client care letter of disbursements which would be charged.

#### Allegation 4

- 6. In connection with transactions where searches had not been carried out, the Respondent had not accounted to the clients for monies still held by him but unexpended, which should clearly have been refunded.

#### Allegation 5

- 7. The Respondent failed to respond to the request for information made by the Investigation Officer (IO) of the Solicitors Regulation Authority and provided misleading information to him attempting to justify his contention that certain charges for work carried out were disbursements. He told the IO that he had sub-contracted this work out, but subsequently conceded that it had been carried out by casual staff actually employed by him. The Respondent also made contradictory statements to the IO regarding charges for disbursements made to clients.
- 8. The Tribunal reviewed all the documents submitted by the Applicant which included:
  - (i) Rule 5 Statement together with all enclosures;
  - (ii) Schedule of costs from the Applicant.
- 9. The Tribunal reviewed all the documents submitted by the Respondent which included:-
  - (i) Email from Mr Lazarus to the Applicant dated 18<sup>th</sup> September 2009;
  - (ii) A number of references in relation to the Respondent's character.

#### **Witnesses**

- 10. No witnesses gave oral evidence.

### **Findings as to Fact and Law**

11. The Tribunal found all the allegations to have been substantiated, indeed they were admitted by the Respondent.

### **Mitigation**

12. Counsel for the Respondent pointed out that the Respondent had relied upon his bookkeeper who had been with him for some time. He had not been aware that the bookkeeper was backdating entries and had initially denied any shortage as he had thought this meant he had taken client money when he hadn't. The Respondent accepted that the bookkeeping was not all it should have been and indeed, his bookkeeper was no longer with him. In relation to allegation 2, where the Respondent had used one ledger for two different transactions, both transactions had related to the same client.
13. The Respondent had tried to cooperate and had dealt with the bulk of the matters. He had not been given a great deal of time by the Authority to deal with their queries. In relation to the charge of "mislabelling" the Respondent had not understood the rules and had thought indemnity insurance charges, and telegraphic transfer fees could be shown as disbursements. He also thought he could charge work done by casual staff as a disbursement. He had now attended a Solicitors Accounts Rules course and was due to attend another course. He accepted he had been ignorant of the rules and now had a new bookkeeper who was up to date so the breaches would not be repeated.
14. The Tribunal were referred to a number of references submitted on behalf of the Respondent. Counsel submitted that the allegations individually would not have been brought to the Tribunal and that they were at the lower end of the scale of charges.

### **Costs Application**

15. The Applicant requested an Order for his costs and provided the Tribunal with a schedule indicating the costs amounted to £31,014.52. Of this figure £22,332.37 related to the Forensic costs.
16. Counsel for the Respondent submitted the costs were very high and were not accepted. The IO had been at the Respondent's office for 25 hours and the Forensic costs included a claim for 186 hours of attendance which could not be justified. Many of the letters sent to the Respondent had been repetitive. The IO had been at the Respondent's office for 3.5 days and then had one more visit after that but yet there was a claim for accommodation and meals of £660.50 together with a further claim for mileage and parking and rail fares without any clear breakdown provided.
17. Details of the Respondent's means were provided to the Tribunal. He had entered into an IVA the previous month and provided the Tribunal with details of his assets, his liabilities, his income and his expenditure.
18. The Applicant was unable to explain how the 186 hours claimed for the Forensic costs had been incurred.

### **Previous Disciplinary Sanctions before the Tribunal**

19. None

### **Sanction and Reasons**

20. The allegations had all been admitted by the Respondent. The Tribunal had considered the references provided. This case was an example of a busy solicitor who, unfortunately, was too busy to see to the proper administration of his accounts. Proper and accurate accounts were one of the bedrocks of the profession which gave confidence to the public. The Solicitors Accounts Rules were there to protect both the public and solicitors, and ensure client funds were properly protected. These regulatory requirements were also in place to ensure the Authority could fulfil its regulatory function, which in turn ensured that members of the public were not put in jeopardy. Such breaches were to be regarded as serious and the Tribunal accordingly Ordered the Respondent be fined £5,000.

### **Decision as to Costs**

21. The Tribunal had considered the Applicant's costs schedule and had also taken into account the Respondent's financial position in accordance with the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin). The Forensic costs were extremely high and there had been no breakdown provided at all of the 186 hours of work claimed. The bundle of documents before the Tribunal was repetitive and the costs of accommodation and meals also appeared to be high in the absence of any explanation.
22. The Tribunal were satisfied that Mr Battersby's costs of £5,494.79 were reasonable and should be awarded, and equally were satisfied that the costs of investigation in the sum of £2,187.36 was also reasonable as claimed. However, the Tribunal reduced the Forensic costs of £23,332.37 and fixed these in the sum of £10,000. Accordingly, the total costs awarded and to be paid by the Respondent were £17,682.15.
23. The Tribunal Ordered that the respondent, Simon Lazarus of Baskin Ross & Co, 628 Finchley Road, London, NW11 7RR, 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 application and enquiry fixed in the sum of £17,682.15.

Dated this 22<sup>nd</sup> day of June 2010  
On behalf of the Tribunal

W M Hartley  
Chairman