

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF DAVID PORTER, solicitor (Respondent)

Upon the application of Jonathan Richard Goodwin
on behalf of the Solicitors Regulation Authority

Mr A H B Holmes (in the chair)
Mr R B Bamford
Mr S Hill

Date of Hearing: 27th May 2010

FINDINGS & DECISION

Appearances

Jonathan Richard Goodwin of Jonathan Goodwin, Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT, appeared on behalf of the Applicant and the Respondent was represented by Max Gold, Solicitor of Max Gold Criminal Law Partnership, Suffolk House, 21 Silver Street, Hull, HU1 1PA.

The Applicant's application to the Tribunal on behalf of the Solicitors Regulation Authority ("SRA") was made on 22nd October 2008 and he made a supplementary statement dated 29th January 2010.

Allegations

The allegations against the Respondent David Porter were that:-

- (a) Contrary to Rule 6 of the Solicitors Accounts Rules 1998 (hereinafter referred to as the "1998 Rules"), he failed to ensure compliance with the Rules.
- (b) Contrary to Rule 7 of the 1998 Rules he failed to remedy breaches promptly upon discovery.
- (c) He withdrew money from client account in breach of Rule 22 of the 1998 Rules.

- (d) He failed to keep accounts properly written up contrary to Rule 32 of the 1998 Rules.
- (e) He failed to produce records and documentation to the Investigation Officer contrary to Rule 34 of the 1998 Rules.
- (f) He signed proposal forms for Professional Indemnity Insurance for the years 2005/06 and/or 2006/07 which contained misleading and/or inaccurate information.
- (g) Contrary to Rule 6 of the 1998 Rules, he failed to ensure compliance with Rules.
- (h) Contrary to Rule 7 of the 1998 Rules, he failed to remedy breaches promptly upon discovery.
- (i) He withdrew money from client account, contrary to Rule 22 of the 1998 Rules.
- (j) Contrary to Rule 32 (1)(a) of the 1998 Rules, failed to keep accounts properly written up.
- (k) He failed to carry out the required reconciliations, contrary to Rule 32 (7) of the 1998 Rules.
- (l) Contrary to Rule 13 (and note (xii)) and/or Rule 15 of the 1998 Rules, monies belonging to the Respondent were paid into client bank account.

Preliminary Matter

1. The Tribunal was told that the Respondent was nearly 70 years of age and desperately wanted to appear before the Tribunal. He was suffering severe breathing difficulties and was not able to walk any distance. He was suffering from a number of health problems for which he had been treated. The future prognosis was not good but the Respondent remained optimistic. He had reached the end of his professional career in health terms. The Respondent took the disciplinary proceedings seriously and wished to attend, but had sought an adjournment of the hearing so that he could do so.
2. The SRA was neutral with regard to the adjournment application. Mr Goodwin set out a chronology of events pointing out that the Rule 5 Statement had been issued on 22nd October 2008. The Tribunal had listed it in a pre-listing day on 9th January 2009. The substantive hearing had been scheduled for 21st May 2009 and that had been adjourned. The matter had been mentioned on 14th July 2009 when the Tribunal directed that the matter be listed on the first available date in December 2009. The matter had been listed for a substantive hearing on 8th December 2009. The Tribunal had been notified that the Respondent was to have an operation on 10th December and an adjournment was agreed. The matter had been listed on 27th April 2010 for a substantive hearing and had been adjourned in advance of the hearing following correspondence with Mr Gold and the supply of medical evidence. The Chairman on that occasion indicated that the matter had been adjourned somewhat reluctantly. The matter had then been listed for the substantive hearing on 27th May 2010. It was acknowledged that the Respondent's illness was a sad matter but it was pointed out that he admitted all of the allegations. Mr Gold was in a position to put forward the Respondent's case.

The Tribunal's Decision

3. The Tribunal noted that the Respondent admitted all of the allegations. He was represented at the hearing and his representative would be in a position to put forward the Respondent's mitigation. The Tribunal gave the Respondent credit for the fact that he wished to behave properly by attending the disciplinary hearing. The Tribunal was mindful of its duty to protect the public and maintain the good reputation of the solicitors' profession. The Tribunal concluded that in all the circumstances it would be both proportionate and appropriate to hear the matter in the absence of the Respondent and ordered that the matter proceed to the substantive hearing.

The Factual Background

4. The Respondent admitted the facts and the allegations.
5. The Tribunal noted that the Applicant did not assert that the Respondent had been dishonest with regard to any of the allegations.
6. The Respondent, born in 1940, was admitted as a solicitor in 1971. His name remained on the Roll of Solicitors.
7. Initially the Respondent carried on in practice on his own account under the style of David Porter & Co from offices at Bishop Lane, Hull, but later he practised with a partner.

Allegations (a) - (e)

8. The Forensic Investigation Unit (FIU) of The Law Society carried out an inspection of the Respondent's firm. The FIU Report dated 29th February 2008 was before the Tribunal. An earlier Report dated 1st November 2005 had raised similar issues upon which the Respondent had taken no steps. The FIU Officer had returned to the Respondent's firm on a number of occasions when adjustments had been made to reconciliations, but unreconciled items remained.
9. The FIU Report recorded that the Respondent's books of account were not in compliance with the Solicitors Accounts Rules. Due to the inadequacy of the books, the FIU Officer was unable to ascertain that sufficient funds were held in client bank account to meet liabilities to clients at the inspection date, 31st May 2007. He identified a minimum cash shortage of £2,200 on client account where client money had been paid into office account.
10. It was also ascertained that there was a shortage of £10,483.14 prior to the inspection date.
11. One example of a breach occurred where costs had been transferred from client to office account where the client had no money available. The Respondent and his accountants did not supply the requested documentation to the FIU Officer in this and other matters. Another example arose where counsel's fees were paid when funds were not held for the client.

12. The Respondent told the FIU Officer that he had not taken a closer interest in the accounts after the previous Law Society investigation as had he done so he would have had to close the firm. It was his job to see clients and get the money in. He did not believe it was possible to see clients and look after the accounts. He said that he was, “running around like a headless chicken.” He had chosen a professional accountancy firm to conduct the firm’s cashiering and believed that the accounts were in order. The Respondent’s position had been that he had exercised as much control as was reasonably possible. The Respondent had relied on his accountants to keep his books and to train his own bookkeeper.

Allegation (f)

13. The Respondent signed his indemnity insurance proposal form dated 11th September 2006 which contained misleading and inaccurate information. Section 6 of the proposal form asked whether in the last 10 years any fee earner in the practice had ever been granted a conditional Practising Certificate, and whether any fee earner had practised in a firm subject to an investigation or an intervention by The Law Society. Both questions were answered “No”, when the firm had been subject to a Law Society investigation between March and November 2005 and the Respondent’s Practising Certificate for the practice year 2004/2005 had been subject to the condition that he deliver half yearly Accountant’s Reports. The Respondent explained that the form had been completed by a member of his accountants who had been aware of the condition on the Respondent’s Practising Certificate.

Allegations (g) - (l)

14. There was an entry “Opening Bank Balance”, included on the clients' matter list attached to Solicitors Case Management System (“SCMS”) client account reconciliations. That represented a failure to ensure that the books were properly written up to show the solicitor’s dealings with client money received, held, or paid by the solicitor.
15. Over-payments and over-transfers from client bank account had been made and the debit balances created prior to the start of the investigation.
16. The Respondent had failed to carry out the required reconciliations.
17. The FIU Officer had recognised that the Respondent had suffered illness and had not therefore interviewed him. There had been an exchange of correspondence with the Respondent’s partner who had explained the change from one computerised system to another.

Findings as to fact and law

18. The Respondent admitted the facts and the allegations. The Tribunal finds the facts set out above to have been established and finds the allegations to have been substantiated.

Mitigation

19. The Tribunal took into account a letter from the Respondent handed up at the hearing.
20. It was said on behalf of the Respondent that he was nearly 70 years of age and he had not made a fortune from his practice. At the time of the hearing he was subsisting on a state pension. The Respondent lived alone in North Yorkshire. He owned his firm's office subject to a mortgage. He would not be able to get a mortgage on his own home.
21. The Respondent's partner had made a big contribution to the practice, having started there in autumn 2006. She had reorganised the practice and had updated the accounts system. The number of staff had grown. The firm dealt mainly with conveyancing work. During the Respondent's absence from the office the partner had continued to run the practice.
22. The Respondent had sought to recruit a cashier but his accountants had resisted such a step. He had to insist upon such recruitment and the appointment of a cashier had meant that the accounts were at the time of the hearing in good order. All accounts were up to date and there had been no default.
23. No member of the public had suffered any loss as a result of the Respondent's failures.
24. The transfer of the firm's accounts between two different systems had caused a number of discrepancies. An example was the rounding up or down of Value Added Tax on a cumulative basis which led to a difference of some £30.00.
25. The Respondent had not attended the firm for about a year. The Tribunal was aware of the serious health problems suffered by the Respondent and it was hoped that it would feel able to impose a lenient sanction. It was a matter of honour for the Respondent to be allowed to retain a Practising Certificate for as long as he could.
26. The Respondent recognised that he should be responsible for the Applicant's costs and a figure had been agreed between them. The payment of such costs would eradicate all of the money that the Respondent had accumulated after a life of hard work.

Sanction and Reasons

27. Dishonesty had not been alleged against the Respondent but the allegations admitted by the Respondent were serious. The Respondent sought to blame what had happened upon his accountants. Whilst some of the difficulties or discrepancies might lie at the door of those accountants, the Respondent as sole practitioner and as a partner was responsible for full compliance with his professional obligations.
28. The Tribunal could not ignore the fact that his shortcomings had been pointed out to the Respondent and when a further inspection had taken place he had not addressed those shortcomings. The FIU Officer reported that at times the Respondent displayed an alarming failure to recognise his responsibilities particularly when he said he was

too busy with other matters to make sure his firm's accounts were in order. Both the solicitors' profession and the public have a legitimate interest in cases such as this. A solicitor is required to comply punctiliously with the Solicitors' Accounts Rules and to exercise a proper stewardship over client funds. A solicitor cannot be permitted to run a practice unless he does so in a way which is fully compliant with the rules and regulations by which solicitors are bound.

29. In all the particular circumstances of this case the Tribunal concluded that it was both appropriate and proportionate to suspend the Respondent from practice for a period of two years starting from the date of the substantive hearing and it ordered him to pay the Applicant's costs in the agreed figure of £30,000.00.
30. The Tribunal Ordered that the Respondent, David Porter, c/o Max Gold Criminal Law Partnership, Suffolk House, 21 Silver Street, Hull, HU1 1JG, solicitor, be suspended from practice as a solicitor for the period of two years to commence on the 27th day of May 2010 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.

Dated this 5th day of July 2010
On behalf of the Tribunal

A H B Holmes
Chairman