

IN THE MATTER OF MICHELLE BATE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. A. N. Spooner (in the chair)  
Mr L. N. Gilford  
Mr. D. Gilbertson

Date of Hearing: 18th February 2010

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Solicitors Regulation Authority by Patrick Matthew Bosworth of Russell-Cooke LLP, 8 Bedford Row, London WC1R 4BX on 29<sup>th</sup> January 2009 that Michelle Bate of Michelle Bate & Co, Suite 7, Unit 24, The Coda Centre, Munster Road, London SW6 6AW, solicitor, might be required to answer the allegation contained in the statement which accompanied and such Order as the Tribunal might think right.

The allegations against the Respondent were that:

1. As at 31<sup>st</sup> March 2008 there existed unreconciled items of £8,290,216.34 in breach of Rule 32 (1) Solicitors Accounts Rules 1998.
2. Failure to maintain accurate client ledgers, in breach of Rule 32 (1) Solicitors Accounts Rules 1998.
3. Failure to maintain client account reconciliations on at least a five weekly basis, in breach or Rule 32(7) Solicitors Accounts Rules 1998.
4. Failure to include the word "client" in the firm's two client accounts, in breach of Rule 14 (3) Solicitors Accounts Rules 1998.

5. Crediting interest paid by the Bank to client bank account, in breach of Rule 15 Solicitors Accounts Rules 1998.
6. Failing to remedy breaches promptly upon discovery in breach of Rule 7 Solicitors Accounts Rules 1998.
7. [Withdrawn]
8. [Withdrawn]
9. [Withdrawn]

By a supplementary statement dated 7<sup>th</sup> October 2009, the additional allegations against the Respondent were that:

10. [Withdrawn]
11. Failed to comply with The Law Society Money Laundering Guidance for Solicitors 2004.
12. Became involved in conveyancing transactions which appear to bear the hallmarks of property fraud and/or money laundering in breach of Rule 1.02 Solicitors Code of Conduct 2007 between March and July 2008.
13. Provided misleading information to client lenders in breach of Council of Mortgage Lender Handbook regulations 6.3 in breach of Rule 1.04 Solicitors Code of Conduct 2007.
14. Failed to issue a client care letter in matters undertaken in breach of Rule 2.02 Solicitors Code of Conduct 2007.

The application was heard at The Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 18<sup>th</sup> February 2010 when Patrick Matthew Bosworth appeared as the Applicant, and the Respondent appeared and was represented by Marian Smith of Counsel.

At the commencement of the hearing the Applicant sought the Tribunal's leave to withdraw allegations 7, 8, 9 and 10. He also sought the Tribunal's leave to slightly amend allegation 11 and 13 as a result of discussions that had taken place between the parties. The Tribunal granted leave for allegations 7, 8, 9 and 10 to be withdrawn and allegations 11 and 13 to be amended as requested.

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

**At the conclusion of the hearing the Tribunal made the following Order:**

The Tribunal Orders that the Respondent, Michelle Elizabeth Anne Bate of 209 Sheen Lane, East Sheen, London SW14 8LE, solicitor, be suspended from practice as a solicitor for the period of 6 months to commence on 18<sup>th</sup> February 2010 and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,631.30.

**The facts are set out in paragraphs 1 – hereunder:**

1. The Respondent, born in 1950 was admitted to the Roll on 1<sup>st</sup> July 1981 and her name remained on the Roll of Solicitors.
2. At all material times the Respondent practised as a sole practitioner under the style of Michelle Bate & Co, Suite 7, Unit 24, The Coda Centre, Munster Road, London SW6 6AW.
3. The Respondent was made the subject of an inspection by the Solicitors Regulation Authority Forensic Inspection Unit on 29<sup>th</sup> January 2007 and a copy of their report dated 30<sup>th</sup> April 2007 was before the Tribunal. The report raised issues in respect of unreconciled items, client account interest, client account shortage and unauthorised payments from client account.
4. The Respondent wrote to the Solicitors Regulation Authority (“SRA”) on 31<sup>st</sup> May 2007 and stated some matters which had been held out to be unreconciled had in fact been reconciled. There was no schedule as to which matters the Respondent was referring to. The Respondent apologised for the debit of £10,000 from the client account which had been paid from office account and stated that this had now been corrected.
5. The Respondent went on to state that she was continuing to reconcile items and had to date cleared up all unreconciled items up to 2006 and that she would endeavour to spend more time dealing with the matters raised. She said she would let the SRA have documentary evidence in relation to client interest amounts, and that no client had ever suffered a shortage.
6. From 14<sup>th</sup> June 2007 to 4<sup>th</sup> July 2007 correspondence passed between the SRA and the Respondent in relation to the provision of further information by the Respondent.
7. On 4<sup>th</sup> July 2007 the SRA wrote to the Respondent to advise the Respondent that the matter was being referred to formal adjudication and she could make any written representations by 19<sup>th</sup> July 2007.
8. By facsimile letter dated 1<sup>st</sup> August 2007 and sent at 5:03pm the Respondent wrote to the SRA enclosing a copy of reconciliation for May 2007, a draft reconciliation for June 2007 and representations.
9. Between 2<sup>nd</sup> August and 17<sup>th</sup> December 2007 further correspondence passed between the SRA and the Respondent where additional documentation was requested by the SRA.
10. On 17<sup>th</sup> December 2007 the SRA wrote to the Respondent informing her that the matter was now being referred for a formal adjudication and a further report was disclosed to her. The Respondent was asked to make any representations in writing by 3<sup>rd</sup> January 2008.
11. On 20<sup>th</sup> December 2007 the Respondent wrote to the SRA with a detailed response which included documentation in relation to HSBC inter-account transfer details and

correspondence attached in relation to a purchase she had dealt with and further reconciliations.

12. On 19<sup>th</sup> February 2008 a pre-intervention visit took place at the Respondent's office and a short report was prepared by the officer, dated 20<sup>th</sup> February 2008. The Respondent was requested to provide further information. On 29<sup>th</sup> February 2008 the Respondent wrote to the SRA and said she was "endeavouring to do everything I possibly can to ensure that all unreconciled items are dealt with soonest and to ensure that the Solicitors Accounts Rules are complied with."
13. On 14<sup>th</sup> July 2008 the SRA Forensic Investigation Department prepared a further report dated 23<sup>rd</sup> July 2008, a copy of which was before the Tribunal. Areas of concern were:
  - (i) The word "client" was omitted from the name of the HSBC Bank Plc client accounts.
  - (ii) As at 31<sup>st</sup> March 2008 the books of account were not in compliance with the Solicitors Accounts Rules 1998 and that the substantial number of unreconciled items on previous client bank account reconciliations had been brought forward onto successive reconciliations as unreconciled adjustments and these adjustments totalled over £8,000,000.
  - (iii) The report noted several other ongoing breaches of Solicitors Accounts Rules 1998.
  - (iv) Breaches of the Council of Mortgage Lenders Handbook, discrepancies upon TR1 and certificates of title documentation and potential money laundering offences that were not disclosed to the client mortgage lender in 19 separate matters.
14. Further correspondence took place between the SRA and the Respondent from 7<sup>th</sup> August 2008 to 1<sup>st</sup> October 2008.
15. The Respondent's practice was intervened on 24<sup>th</sup> October 2008. The Tribunal were provided with a statement dated 2<sup>nd</sup> October 2008 from Rachel Stewart, the intervention solicitor which confirmed that:
  - (a) The Respondent had not provided client care letters in respect of any transaction identified within the statement.
  - (b) No fee estimates were provided by the Respondent.
  - (c) No evidence of money laundering compliance was found on the files identified within the statement.
  - (d) No evidence of OS1 of bankruptcy search results were identified within the files.
  - (e) There was evidence that the files identified bore the hallmarks of property

fraud and/or money laundering.

### **The submissions of the Applicant**

16. The Applicant confirmed the Respondent had admitted those allegations that were pursued. There was no allegation of dishonesty, however, the Applicant submitted the Respondent had been completely reckless beyond negligence in the manner in which she had managed her accounts and in her failure to carry out reconciliations.
17. The Applicant referred the Tribunal to the case of Bolton – v – The Law Society [1994] CA and submitted the Respondent had fallen far short of discharging her professional duties with anything less than complete integrity, probity and trustworthiness and as such she must expect severe sanctions to be imposed upon her by the Tribunal. She had diminished the trust of the public in the profession and there had been a complete breakdown in the systems in place in her office. The Applicant submitted the Respondent had behaved recklessly and the reports before the Tribunal confirmed that there was widespread conduct by the Respondent and a number of ongoing breaches.
18. The Applicant requested an Order for his costs which had been agreed with the Respondent at £11,631.30. The Applicant confirmed these costs did not include any of the costs of the intervention.

### **The submissions of the Respondent**

19. Ms Smith on behalf of the Respondent confirmed she had admitted the allegations pursued and apologised for the breaches. She accepted responsibility and reminded the Tribunal that no dishonesty had been alleged which was a critical point with regard to sanction. It had not been suggested the Respondent knew or suspected any of the transactions were suspicious, she had not been subject to criminal proceedings and nor had any of the borrowers she had acted for. This was a case about potential money laundering, not actual money laundering.
20. The Respondent had initially carried out due diligence and foolishly believed she could grapple with the problems on her own. She overestimated the problem and as a result had made slow progress. In March 2008 she appointed a bookkeeper to assist her and thought the reconciliations and incorrect payments from client account had been identified and rectified. However the SRA intervened and her practice was closed down. The Respondent had cooperated with the SRA throughout, responding to their letters and the intervention had been draconian and devastating for her. She was an honest and decent person who did not shirk her responsibilities but she did not intend to practise as a sole practitioner again. She now wished to concentrate on private client work, trusts and probate in a sheltered environment and had not worked since the intervention. She had lost her practice, her income, her clients and her life. In reality she had also lost her pension as she could not sell the good will of the practice. She now had to rely upon her husband and now had an income of approximately £9,000 per annum. She did own some share of her home but did not agree the costs of the intervention and indeed, could not pay them. She had agreed the Applicant's costs in the sum of £11,631.30 in respect of these proceedings.

21. The Respondent had not appeared before the Tribunal previously and the Tribunal was referred to the references provided concerning her character. Clients had no doubt about the Respondent's probity and honesty and that she had a good reputation. It was submitted that removing her right to practise at sixty years of age would have a real impediment upon her.

### **The Tribunals findings**

22. The Tribunal had listened carefully to both parties and had considered all the documents before it. The Tribunal found that those allegations that had been pursued were substantiated, indeed they had been admitted by the Respondent.
23. These were serious breaches concerning the Solicitors Accounts Rules and the Tribunal took into account the gross recklessness alleged by the SRA, even though dishonesty had been not been alleged.
24. The Tribunal were particularly concerned that the Respondent had become involved in conveyancing transactions which bore the hallmarks of property fraud and/or money laundering which could potentially have caused clients to suffer a great deal. Furthermore, there had been many conveyancing transactions where there were significant shortcomings in terms of client care and a failure to comply with money laundering guidance.
25. The Tribunal had taken into account the references submitted on behalf of the Respondent and her previous good character. However, there had been serious breaches which had caused damage to the reputation of the profession and had put clients at risk. In the circumstances, the Tribunal considered the appropriate sanction was to suspend the Respondent for a period of six months.
26. In relation to the question of costs, the Tribunal noted the Respondent had not been working since the intervention in 2008 and was of limited means at the moment. The Tribunal took into account the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin) on the question of means. However, the Respondent had acted recklessly and the Tribunal considered it was appropriate to make an Order that she should pay the Applicant's costs as agreed in the sum of £11,631.30.
27. The Tribunal Ordered that the Respondent, Michelle Elizabeth Anne Bate of 209 Sheen Lane, East Sheen, London SW14 8LE, solicitor, be suspended from practice as a solicitor for the period of 6 months to commence on 18<sup>th</sup> February 2010 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,631.30.

Dated the 7th day of May 2010  
on behalf of the Tribunal

Mr. A. N. Spooner  
Chairman