

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF RACHEL CONNOR,

A person (not being a solicitor) employed or remunerated by a solicitor

Upon the application of Bradley Albuery on behalf
of the Solicitors Regulation Authority

Mr A N Spooner (in the chair)
Mrs K Thompson
Mr D E Marlow

Date of Hearing: 29th April 2010

FINDINGS & DECISION

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

Appearances

Mr Bradley Albuery of Blake Lathorne Solicitors, New Kings Court, Tollgate, Chandlers Ford, Eastley, Hampshire SO53 3LG.

The Respondent did not appear and was not represented.

Application Date 5th October 2009

The Applicant applied for an Order under Section 43 of the Solicitors Act 1974 (as amended) as the Respondent had been involved in conduct of such a nature that in the opinion of the SRA, it would be undesirable for her to be employed in any capacity set out in his application. The allegation against the Respondent was that between 17th January 2007 and 21st August 2008 she obtained £10,141.63 from client funds and petty cash whilst working as a secretary in the conveyancing department at K Solicitors.

On eighteen occasions between those dates, the Respondent raised or requisitioned cheques

and/or petty cash claiming that such sums were payable to clients or to third parties on behalf of clients whereas the Respondent arranged for the monies to be paid into bank accounts held in her name and in three cases payments were made to a third party to whom the Respondent owed money.

Preliminary Matter

The Respondent had indicated in an email of 28th April 2010 to the Applicant that she was happy for the hearing to be heard in her absence. The Applicant was mindful that the Respondent had not been given the requisite 42 days of notice required under Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2007. He had therefore requested that the Respondent agree to the lesser period of 40 days. However in her email of 28th April 2010 she had said that she did not think it fair that the hearing should go ahead bearing in mind that the 42 days had not expired. It would actually be a further 2 days until the time period did expire. The Applicant requested that the Tribunal use their powers under the Rules to hear the matter today.

The Tribunal having taken note and having read the Respondent's email dated 28th April 2010 and taking all points into account decided that the matter could indeed proceed.

Factual Background

1. During the relevant period the Respondent was employed as a secretary by K Solicitors. She commenced employment on 15th October 2003 and was dismissed from that employment on 6th November 2008.
2. The Respondent worked for the conveyancing partner, Amanda Glover who had provided a statement. In that statement she confirms that on 22nd September 2008, during a telephone conversation with a property development client, she had cause to look at the accounts for that client which showed that on 3rd and 4th July 2008 (when she was on holiday), two payments were made from the client account which she did not understand. One was for a cheque to a firm called Rundle and Co for £553.42 and the other was for cash for £344.47 which she did not understand and the client had no knowledge.
3. The Respondent stated that, although there appeared to be no file note or covering letter on the file, the payments were made to or on behalf of the clients as instructed by them. Ms Glover spoke direct to the client and it became clear, as she explains in her statement, that the Respondent was not accurately reporting to Ms Glover the content of her telephone conversations with the client. At some stage, she did produce attendance notes dated 3rd and 7th July and a letter to the clients dated 7th July which purported to be confirmation of the arrangements the clients had requested be put in place. It was suspected that these notes and this letter were created after the event by the Respondent to mask the true position.
4. At one point, Ms Glover asked the Respondent if the cheque had cleared. She stated that the cheque had not cleared and that a "stop" had been placed on it. She assured Ms Glover that the cheque was in a white envelope with the cash and that it had been left by her for collection by the client.

5. However, on 4th November, Ms Glover checked the computer records and discovered that the cheque had not been “stopped”. She was informed by her Accounts Department that the cheque had, in fact, cleared on 7th July, which would have been known to the Respondent in October when she had told Ms Glover that it had stopped.
6. On 6th November 2008, the Senior Partner, Ms Glover and the Office Manager met with the Respondent and told her that the meeting had been called to suspend her on full pay whilst an investigation was conducted into the matters which Ms Glover had raised with her. During the course of that meeting, the Respondent admitted that she had taken the money, claiming that she had “a huge debt problem and was having counselling...” She said that she would repay the money. At this stage, the firm was aware only of the two cheques which totalled £897.89.
7. An investigation was carried out internally to ascertain the extent of the Respondent’s misconduct. A schedule of funds provided by K Solicitors gives a breakdown of the 18 transactions which totalled £10,141.63.
8. On 9th January 2009, K Solicitors wrote to the Respondent informing her that the total amount owed to them, having deducted wages due to her, was £9,923.16.
9. On 4th February 2009, the firm wrote to the Respondent’s mother acknowledging receipt of a cheque in the sum of £9,923.16 misappropriated by the Respondent.
10. The SRA wrote to the Respondent on 15th January 2009 and 5th February 2009 asking for her representations in respect of the allegations which have been made against her. The Respondent had not replied to either letter.
11. The Tribunal reviewed all of the documents submitted by the Applicant including a Rule 8 statement dated 5th October 2009 and accompanying bundle which included the statement of Amanda Glover dated 10th November 2008 regarding the behaviour of the Respondent and various cheque requests and corresponding letters and notes.
12. The Tribunal reviewed an email from the Respondent to the Applicant dated 28th April 2010.

Findings as to Facts and Law

13. The allegation and Order sought related to the Respondent obtaining £10,141.63 from client funds and petty cash whilst she was working as a secretary in a solicitors’ office. The Applicant took the Tribunal to pages of the bundle which accompanied his Rule 8 statement which consisted of telephone attendance notes and letters which the Applicant said had been constructed by the Respondent at a later date in order to give the appearance that these were real telephone conversations and letters that had been sent. The Applicant’s position was that they were not. The Applicant also told the Tribunal that it was clear from an attendance note of 8th November 2008 that the Respondent had admitted on that date that she had taken the monies. A summary illustrated the 18 transactions carried out by the Respondent where she had taken money or paid it into her own bank account or paid third party creditors. The references to bank accounts on this page could be cross-referenced with a fax from the Respondent’s father which showed that these bank accounts belonged to her.

14. In the Applicants' submission this was misconduct over a sustained period of time and was a serious breach of trust. It involved acts of dishonesty and a Section 43 Order would be proportionate in this case. In assessing dishonesty the Tribunal was referred to the case of Twinsectra – v Yardley [2002] UKHL 12.
15. It was unclear from the Respondents email dated 28th April 2010 whether she admitted or denied this allegation, however, the Tribunal found it to have been substantiated on the facts.

Mitigation

16. In her email dated 28th April 2010 to the Applicant the Respondent had said that she had been suffering from severe clinical depression whilst she was working at K Solicitors and due to this she was not aware of her actions with regard to the client funds. She also wished to make it clear that the monies had all been returned to K Solicitors and that she had no intention of working for solicitors again regardless of whether an Order was granted or not.

Costs Application

17. The Applicant applied for costs in the sum of £3,306.67 plus VAT. These costs included the costs of employing enquiry agents as the Respondent had failed to reply to letters and documentation sent to her indeed there had been no reply from her until her email of 28th April. This had necessitated personal service of the papers upon her.

Previous Disciplinary Sanctions before the Tribunal

18. None

Sanctions and Reasons

19. The Tribunal would make the Order sought. It had found as a matter of fact that the Respondent had been involved in conduct which made her unsuitable to be employed within the profession. In these circumstances an Order under Section 43 was proportionate.

Decision as to Costs

20. On the question of costs the Tribunal felt it appropriate to reduce the amount claimed. The matter was a straight forward one and the Respondent had admitted her misconduct to the partners of the firm at the outset. A costs Order would be made in the sum of £2,644 including VAT.

Order of the Tribunal

21. The Tribunal Orders that as from 29th day of April 2010 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Rachel Connor of 24 Durlock, Minster, Ramsgate, Kent, CT12 4HE;

- (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Rachel Connor;
- (iii) no recognised body shall employ or remunerate the said Rachel Connor;
- (iv) no manager or employee of a recognised body shall employ or remunerate the said Rachel Connor in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit the said Rachel Connor to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said Rachel Connor to have an interest in the body;

And the Tribunal further Orders that the said Rachel Connor do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,644.

Dated this 3rd day of June 2010
on behalf of the Tribunal

A N Spooner
Chairman