

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF SUBRAMANIAN EZHUMAVIL, solicitor (First Respondent)  
and SAJJAD HUSSAIN KAYANI, solicitor (Second Respondent)

Upon the application of Peter Harland Cadman, solicitor  
on behalf of the Solicitors Regulation Authority

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Miss J Devonish (in the chair)  
Mr M Fanning  
Mr D Gilbertson

Date of Hearing: 2<sup>nd</sup> March 2010

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**FINDINGS & DECISION**

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**Appearances**

Peter Harland Cadman solicitor and partner in the firm of Russell Cooke LLP, 8 Bedford Row, London WC1R 4BX.

Jack Friend, solicitor of Jack Friend & Co, 11 Sudbury Hill Close, Wembley, Middlesex HA0 2QR for Mr Kayani, the Second Respondent.

Mr Ezhumavil, the First Respondent, did not appear.

**Allegations**

The allegations against the Respondents were set out in the statement accompanying Mr Cadman's application dated 14<sup>th</sup> July 2009.

- (a) the firm's client account was described on bank records as an "office account" in breach of Rule 14(3) of the Solicitors Accounts Rules 1998.
- (b) [Withdrawn with the consent of the Tribunal.]
- (c) The firm prepared incomplete bank reconciliations in breach of Rule 32(7) of the Solicitors Accounts Rules 1998.

- (d) The firm failed to maintain client ledgers correctly and/or in accordance with Rule 32 Solicitors Accounts Rules 1998.
- (e) [Withdrawn with the consent of the Tribunal].

### **Factual Background**

1. In the absence of the First Respondent the Tribunal was satisfied that he had been properly served and given notice of the hearing.
2. The First Respondent was admitted as a solicitor in 2005 and the Second Respondent was admitted as a solicitor in 2006. At the material time the Respondents practised in partnership under the name of Theva Solicitors of 128 Ilford Lane, Ilford, Essex IG1 2LA.
3. A Forensic Investigation Officer of the SRA commenced an inspection of the books of accounts and other documents of the Respondents upon notice on 23<sup>rd</sup> June 2008. He made a report dated 30<sup>th</sup> June 2008 which was available to the Tribunal.
4. The firm's client account was maintained at the National Westminster Bank under account number 8540664. This account was however entitled "Theva Solicitors Office Account" .
5. At the time of the inspection the last client account bank reconciliation produced to the firm was at 31<sup>st</sup> May 2008. At that stage there were 8 outstanding payments totalling £527.70 and an outstanding receipt in the sum of £300. No cheque numbers or narrative descriptions were given for any of these items.
6. During interview on 23<sup>rd</sup> June 2008 the Second Respondent confirmed that he did not produce client balance lists at the end of each month. However, on 24<sup>th</sup> June 2008 the Second Respondent confirmed that he had in fact produced a list of client balances on a monthly basis up to the end of February 2008 but that the details had been lost from his computer. The last list of client balances that could be produced was at 31<sup>st</sup> July 2007.
7. The client account ledgers were incomplete. The Second Respondent explained to the Forensic Investigation Officer that ledgers were kept in two forms. One set was handwritten and the Second Respondent described those ledger cards as "up-to-date and accurate" but said that the firm's bills had not been posted to them. He maintained a second set of client ledger accounts on a spreadsheet but said they had not been maintained up-to-date.
8. The Forensic Investigation Officer gave the Second Respondent until the following day to produce complete client ledger accounts and a list of client balances. The following day the Second Respondent said that he had duly completed the writing up of the books of account on his computer but that when he returned to the office in the morning the data had been lost. He maintained that the client side of each handwritten ledger card was accurate but subsequently informed the Forensic Investigation Officer that most of the dates on the handwritten ledger cards were inaccurate.

9. The Forensic Investigation Officer attempted to review the state of the handwritten ledger cards but found them difficult to understand. The report exemplified the matter of one client where the ledger card was inaccurate and the Second Respondent confirmed that the balances on 3 ledger cards belonging to 3 further clients were also inaccurate. The Second Respondent said that as he had spent the night updating the computerised ledger accounts, from which the data had been lost, he had not updated the handwritten ones.
10. The Tribunal reviewed all documents submitted by the Applicant which included:
  - (i) Rule 5 statement dated 14<sup>th</sup> July 2009 and annexures thereto;
  - (ii) bundle of correspondence between Mr Cadman and Mr Friend, acting on behalf of the Second Respondent;
  - (iii) bundle of correspondence from the First Respondent to Mr Cadman.
11. The Tribunal reviewed all documents submitted by the Second Respondent which included:
  - (i) bundle of references.

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

12. The Applicant submitted that it was the responsibility of solicitors to have books of account which could be relied on. The allegations in various formats demonstrated the absence of that.
13. No dishonesty was alleged and there had been no loss to clients but at an inspection on notice it was a matter of concern that it was totally impossible for the Forensic Investigation Officer to ascertain the exact liabilities to clients and the amount owed or held on behalf of individual clients. Certainty was required at all stages. The reporting accountants for the firm had confirmed however to the Forensic Investigation Officer that at the date the accountant's reports were prepared the accounts information had been up-to-date and reliable.
14. **Allegation A - the firm's client account was described on bank records as an "office account" in breach of Rule 14(3) of the Solicitors Accounts Rules 1998**
  - 14.1 On behalf of the Respondent it was asserted, as had been stated to the Forensic Investigation Officer at the time of the inspection, that the error in the naming of the account was a result of an error by the bank. The Second Respondent had previously brought the issue to the bank's attention but the bank had failed to rectify the matter. The error related to bank statements only, the client account cheque book was correctly designated. The bank's letter of 31<sup>st</sup> July 2008 referring to the error called into account the bank's competence. The Second Respondent accepted however that having spotted the error, and having asked the bank to correct it, he failed to ensure the correction was carried out. The continuing error should have been apparent to the

Second Respondent, for which he apologised unreservedly. The error had immediately been rectified after the inspection.

14.2 The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

15. **Allegation C - the firm prepared incomplete bank reconciliations in breach of Rule 32(7) of the Solicitors Accounts Rules 1998**

15.1 It was claimed on behalf of the Second Respondent that this allegation arose from a misunderstanding as to the purpose of reconciliations on the part of the Second Respondent. He had regarded these as an additional bookkeeping record rather than a specific separate exercise to compare existing records to ensure consistency. This was not a case of recklessness or an attempt to hide anything.

The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

16. **Allegation D - the firm failed to maintain client ledgers correctly and/or in accordance with Rule 32 Solicitors Accounts Rules 1998**

16.1 The Applicant argued that by definition the fact that the firm's bills had not been posted to the client ledgers meant that they could not be up-to-date and accurate.

16.2 It was stated on behalf of the Second Respondent that the manual system of client account ledgers had been inherited from the prior owners of the practice and had been continued. Additionally a computerised system had been introduced by the Second Respondent but unfortunately this had crashed at the time of the inspection. There had been a misunderstanding of the need for one comprehensive document to constitute the client ledger. This had been immediately addressed and rectified following the inspection.

16.3 The Respondents admitted this allegation and the Tribunal found that it had been substantiated on the facts.

**Mitigation**

17. The Second Respondent offered his sincere apologies to the Tribunal and to the SRA. He had cooperated fully and from the outset, once matters had been explained to him, he had recognised his shortcomings. His explanations were set out in the documentation before the Tribunal. There had been no prejudice to clients or third parties, no losses and no claims and this was reflected in the SRA's assessment that there was no need for a requirement for six monthly accounts to be placed on the Second Respondent's practising certificate. The only condition imposed had been a requirement to attend certain courses.

18. The Second Respondent did not seek to pass his responsibilities onto his accountants but any remotely competent accountant seeing the documents would have identified the problems. This had not occurred. The Second Respondent had been at that vulnerable stage in a young solicitor's career where the services of a reliable

accountant were important and he had been badly let down. He was however sufficiently professional and realistic to accept that the responsibility lay with him. The accountants had been inherited from the previous owners of the practice. At the time of the events giving rise to the allegations the Respondent had done his own bookkeeping. Happily the last two accountant's reports for the practice had been unconditional and the practice now employed a clerk with specific responsibility for bookkeeping.

19. The partners in the firm are now the Second Respondent and a partner who had previously been a civil judge in Pakistan. The firm dealt largely with immigration matters, with agreed fixed fees so the use and exposure of client account was very much reduced.
20. Details of the Second Respondent's educational, professional and personal history were outlined to the Tribunal.
21. In 2008 the Second Respondent's professional indemnity insurer had declined insurance a week before the deadline and despite strenuous efforts the Second Respondent was forced into the Assigned Risks Pool with a consequent enormous increase in premium. The Tribunal was asked to consider the premium as against the firm's modest profit. The Second Respondent had nevertheless managed to come out of the Assigned Risks Pool although he continued to pay a very high premium to his new insurer.
22. The Second Respondent submitted that his real offence had been inexperience compounded by his accountant. He now ran a compliant practice and there had been no prejudice or loss to clients and no claims. The Tribunal was traditionally sympathetic to young and inexperienced solicitors.
23. The Second Respondent was of limited means and the Tribunal was asked to exercise leniency and consider a nominal rather than a punitive sanction.

### **Costs**

24. The Applicant had agreed costs with the Second Respondent in the sum of £6,000 and sought a joint and several order for that amount against both Respondents.

### **Previous disciplinary sanctions before the Tribunal**

25. None.

### **Sanction and reasons**

26. The First Respondent, the former partner of the Second Respondent, had in his correspondence to the Applicant indicated his agreement to the withdrawal of two allegations on the basis of duplication and his admissions to the remaining allegations. He had admitted all the facts, as had the Second Respondent. The First Respondent had explained the reasons for his inability to attend the Tribunal. He had been content to rely on the representations of Mr Friend on behalf of the Second Respondent.

While the Tribunal's comments related largely to the Second Respondent they also applied to the First Respondent.

27. The Tribunal accepted that the Second Respondent was an eminently decent solicitor who had demonstrated how seriously he had taken the allegations. He had worked hard to put his accounts in order. He had been cooperative and immediately recognised his shortcomings. For the Second Respondent to have come out of the Assigned Risks Pool was commendable. The reality of life a sole practitioner could not be underestimated.
28. The Tribunal ordered that each Respondent be reprimanded.

### **Costs**

29. The Tribunal accepted the Applicant's application for costs in the sum sought but considered that on this occasion it was not appropriate to make a joint and several order and ordered that each Respondent pay costs fixed in the sum of £3,000.

Dated this 17<sup>th</sup> day of May 2010  
On behalf of the Tribunal

Miss J Devonish  
Chairman