

SOLICITORS' DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF GREGORY JOHN HINE, solicitor (Respondent)

Upon the application of James Moreton
on behalf of the Solicitors Regulation Authority

Mr L N Gilford (in the chair)
Mr C Murray
Mr J Jackson

Date of Hearing: 4th March 2010

FINDINGS & DECISION

Appearances

James Moreton, solicitor and partner in the firm of Bankside Law Solicitors, Thames House, 58, Southwark Bridge Road, London SE1 0AS appeared as the Applicant on behalf of the Solicitors Regulation Authority (SRA) and the Respondent appeared in person.

An application to the Tribunal on behalf of the Solicitors Regulation Authority ("SRA") was made on 3rd September 2009.

Allegations

The allegations were that the Respondent had:-

1. Failed to deliver an Accountant's Report for the year ending 30th November 2005 as required by Section 34 of the Solicitors Act 1974 and the rules made thereunder.
2. Failed to keep books of account properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 ("the 1998 Rules").

Factual Background

1. The Respondent, born in 1951, was admitted as a solicitor in 1985. Although the Respondent was not presently practising as a solicitor, his name remains on the Roll of Solicitors.

2. At all material times, the Respondent had carried on practice, on his own account, under the style of Gregory Hine Solicitor of Southgate Chambers, 37 Southgate Street, Winchester SO23 9EH. His practice had ceased to trade on 11th April 2006 and had been intervened in by the SRA on 6th March 2009.
3. On 11th April 2006, the Respondent had become subject to a bankruptcy order.
4. On 19th April 2006, the SRA had written to the Respondent advising him that his practising certificate had been terminated.
5. The Respondent had replied by letter, dated 20th April 2006, enclosing a copy of his crossing letter of the previous day advising, inter alia, of the bankruptcy order.
6. On 7th June 2006, the SRA had informed the Respondent that he had failed to supply an Accountant's Report for the period ending 30th November 2005, such report having been required by 31st May 2006.
7. By email dated 7th July 2006, the Respondent had informed the SRA that he continued to hold client monies, totalling £6,477, in the matter of McK. He had advised that the said amount was unaudited and unreconciled but that arrangements were in hand for it to be dealt with by the practice accountant.
8. On 13th July 2006, the SRA had written to the Respondent reminding him that he was unable to authorise withdrawals from the client account. The Respondent had been asked to confirm his intention to appoint an alternative solicitor signatory and to confirm the steps he had taken to release client files relating to two clients.
9. On 21st July 2006, the SRA had written to the Respondent requesting an explanation for his failure to provide the outstanding Accountant's Report for the year ending 30th November 2005. The Respondent had failed to reply to that request or to a further letter on the topic dated 11th August 2006.
10. The Respondent had not replied to the SRA's letter of 13th July 2006 or to an email reminder of 3rd August 2006 and further had failed to reply to a letter from the SRA dated 18th August 2006 or to a further email of 5th September 2006.
11. On three occasions, between 13th September and 18th September 2006, the SRA caseworker had attempted to contact the Respondent by telephone but had failed to speak to him.
12. On 19th September 2006, the caseworker had succeeded in speaking to the Respondent. It had been agreed that the Respondent would reply to the caseworker's queries by the end of the week. The Respondent had failed to do so. The caseworker had made further attempts to contact the Respondent by telephone, but without success.
13. In light of the difficulties encountered in obtaining information from the Respondent, the SRA had instructed agents, Blake Laphorn Linnell, to attend, by prior arrangement, at the Respondent's home address, on 10th November 2006. Richard Portlock, a partner of the firm, had produced a Report dated 13th November 2006.

14. Mr Portlock had found that the books of accounts had not been in compliance with the Solicitors Accounts Rules 1998, discovering, inter alia as follows:-
 - (i) The Respondent had been unable to provide any up-to-date accounting information to confirm the amounts held in client account for individual clients.
 - (ii) The only information made available, whether by bank statements or ledgers, appeared to be old information.
 - (iii) In one matter the Respondent had provided a ledger card that had indicated a client account balance of £5,336.21 as at 18th May 2005.
 - (iv) In another matter the Respondent had been unable to produce any financial records.
15. On 23rd January 2007, a SRA adjudicator, having found that the Respondent had failed to supply an Accountant's Report for the year ending 30th November 2005, had directed the Respondent to provide an up-to-date statement of the position regarding the disposal of his practice and of client money, supported by bank statements, within 28 days.
16. On 9th March 2007, an Adjudication Panel had decided to stand over consideration of intervention and issues of professional conduct until after 31st May 2007 so as to provide the Respondent with the opportunity to file a final Accountant's Report and to bring his books of account up-to-date.
17. On 31st May 2007, the Respondent had advised the SRA that it had not been possible to prepare a final Accountant's Report due to his bank having closed the client account and transferred the balances. This had happened despite the bank having been made aware that the client monies had been held on trust by the Respondent. The Respondent had provided copies of client ledgers and a summary of balances.
18. On 31st July 2007, an Adjudication Panel had resolved again to stand over consideration of intervention and issues of professional misconduct until after 31st August 2007 to give the Respondent a further opportunity to file a final Accountant's Report and to bring his books of account up-to-date.
19. On 1st August 2007, the SRA had written to the Respondent providing confirmation of the Panel's decision and requesting contact details of his Trustee in Bankruptcy.
20. On 2nd October 2007, the Respondent's solicitor, Neil Stewart, had written to the SRA providing details of his contact with the trustee and advising of his intention to write to the Respondent's bank in an attempt to establish the position concerning the client account monies.
21. On 21st January 2008, Mr Stewart had written to the SRA advising:
 - (i) That the bank had agreed to reinstate the client account and that the balance would be £1,296.75 plus accrued interest.
 - (ii) That the Trustee's accountant had identified bookkeeping errors and some incomplete bookkeeping and that there would be a shortfall.

- (iii) That the Respondent believed that the shortfall would be between £6,200 and £7,200.
22. The SRA had written to Mr Stewart, by email dated 10th April 2008, requesting a progress report. Mr Stewart had replied on 15th April 2008 advising, inter alia, that the bank had reinstated the client account with a balance of £1,329.07 and that the Respondent's bankruptcy had been discharged on 11th April 2008.
23. On 5th June 2008, an Adjudication Panel had directed the Respondent, within two months of the letter advising him of the decision, to deliver a final cease to hold Accountant's Report for the practice Gregory Hines Solicitors. During that time the Panel had expected the Respondent to apply for a practising certificate. In the event, the Respondent had been unable to meet the time limit imposed. He had been directed to make an application for an extension of time.
24. The Respondent had been notified of that decision by letter dated 5th June 2008.
25. By email dated 14th August 2008, the Respondent had written to the SRA providing a progress report regarding preparation of the Accountant's Report. Further information had been given by letter dated 16th September 2008.
26. On 30th September 2008, the SRA had written to the Respondent asking for an update of his meeting with the accountant and for an indication as to when the Accountant's Report would be delivered. The letter had been followed up by an email on 9th October 2008.
27. On 13th October 2008, the Respondent had advised that his meeting with the accountant had been rescheduled for 14th and 15th October 2008. The Respondent had indicated that he would report shortly thereafter.
28. By email dated 16th October 2008, the SRA had requested the Respondent to provide a detailed report of the outcome of his meeting with the accountant by 28th October 2008.
29. Nothing had been heard from the Respondent until the receipt of an email dated 17th December 2008. The Respondent had advised the SRA that the proposed meeting with the accountant had been cancelled and not had been rearranged. The Respondent had attached a schedule, described by the Respondent as a provisional account.
30. The matter had been considered by an Adjudication Panel on 18th December 2008 when a resolution had been made giving notice of intervention and directing that the Respondent be given 28 days from the date of the decision to respond to the Panel's notice after which the matter was to be referred to the next available Panel for consideration.
31. The Respondent had been advised of that decision by letter dated 22nd December 2008.
32. By further letter, dated 22nd December 2008, the SRA had written to the Respondent seeking, inter alia, an explanation for his failure to deliver Accountant's Reports for the years ending 30th November 2005, 30th November 2006 and 30th November 2007. The Respondent had not replied to either letter.

33. The matter had been considered by an Adjudication Panel of the SRA on 4th March 2009 when a resolution had been made, inter alia, to intervene into the Respondent's practice and to refer the Respondent's conduct to the Solicitors Disciplinary Tribunal.
34. Subsequent investigations by the intervention agent and the SRA had identified a minimum cash shortage of £7,200.

Documentary Evidence before the Tribunal

35. The Tribunal reviewed the Rule 5 Statement of the Applicant together with the accompanying bundle and the Respondent's undated Statement.

Findings as to fact and law

36. There was no dispute on the material facts and the Tribunal found the two allegations both admitted and proved.

Mitigation

37. The Respondent referred the Tribunal to his statement and explained that he accepted personal responsibility for his present situation. He told the Tribunal that the bankruptcy petition had related to historically assessed liability to tax. He gave the Tribunal details of his ill health and explained that his trustee in bankruptcy had received not only £75,000, being his share of the home owned jointly with his wife, but also £100,000 derived from the proceeds of his critical illness policy.
37. The Respondent explained that while he had been aware that his trustee in bankruptcy had not wished to become involved in proceedings against HSBC, the Respondent's bank, he had in fact not yet received an account from his trustee in bankruptcy and did not know how the funds of £175,000 had been applied.
38. Although the Respondent had informed HSBC about his bankruptcy, he had also specifically explained to the bank that his client account was a trust account and therefore should not be affected by his bankruptcy. However, the Respondent explained that the bank had closed the client account and appropriated the funds. Without access to up-to-date statements from his client account, his accountant had been unable to prepare the reconciliations for the final Accountant's Report for his firm.
39. The Respondent told the Tribunal that eventually his wife had paid legal costs of some £3,720 plus VAT in order to get the bank to restore the client account. Initially the Respondent's accountant had been instructed by the trustee in bankruptcy to assist in balancing the ledgers. However, in view of delays, caused in part by the bank's actions, the trustee in bankruptcy had withdrawn his instructions from the firm's accountant. Unfortunately, the Respondent had not had any funds with which to pay for his accountant's services.
40. The Respondent told the Tribunal that the shortcomings in his records, inadequacies in his day-to-day bookkeeping and disorder in his accounts had been attributable to his serious illness as from November 2005, prior to his bankruptcy in April 2006. The Respondent explained that he had thought that all matters would be sorted out under his bankruptcy but that had not happened. The Respondent stressed that he had tried to

deal promptly with client enquiries and delivery of files after his bankruptcy. For example, on one occasion his wife had paid £1,200 so that a client's files could be released from the costs draftsman.

41. The Respondent apologised to the Tribunal for his failings and provided details of his current financial circumstances. He explained that he had no ambition to return to practice as, following his illness, he did not believe that he had the mental aptitude or application for the job that he had once so enjoyed.

Costs Application

42. The Applicant requested fixed costs in the sum of £3,683.53.

Sanctions and Reasons

43. The Tribunal had found the two allegations against the Respondent both admitted and proved on the evidence presented to it. The Tribunal accepted the Respondent's explanations as to the unfortunate chain of events, starting with his illness and culminating in his bankruptcy. The Tribunal took the view that because of the circumstances of the bankruptcy and the difficulties with his bank relating to his client account, the Respondent had largely been unable to deal with the shortcomings in his accounts. The Tribunal noted the shortfall but accepted that but for the unfortunate chain of events, the inadequacies in his day-to-day bookkeeping over a period from November 2005 could have been resolved. The Tribunal considered that the circumstances of the matter were exceptional and that in those particular circumstances the Respondent had done as much as he could to try to resolve matters. Therefore, the Tribunal concluded that the appropriate penalty was a Reprimand.

Decision as to costs

44. Having noted the policy of the SRA to pursue costs only if such were recoverable and to negotiate payment by instalments if appropriate, the Tribunal considered that a costs order should be made in favour of the Applicant in the fixed sum of £1,850.00.

The Order of the Tribunal

45. The Tribunal Ordered that the Respondent Gregory John Hine of Belmont Church Lane, Awbridge, Romsey, SO51 0HN, solicitor, be reprimanded and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,850.00.

Signed this 4th day of June 2010
For and on behalf of the Tribunal

L N Gilford
Chairman