

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF SURAMYA KRISHNAKUMARAN (The Respondent)

Upon the application of Geoffrey Robert Francois Hudson  
on behalf of the Solicitors Regulation Authority

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Mr L Gilford (Chairman)  
Mr C Murray  
Mr J Jackson

Date of Hearing: 4<sup>th</sup> March 2010

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**FINDINGS & DECISION**

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**Appearances**

Geoffrey Robert Francois Hudson of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London, EC2V 8AR, the Applicant, on behalf of the Solicitors' Regulation Authority (SRA).

The Respondent, who was present, was represented by David Morgan of RadcliffesLeBrasseur, 5, Great College Street, London SW1P 3SJ.

The application to the Tribunal on behalf of the Solicitors Regulations Authority ("SRA") was made on 28<sup>th</sup> September 2009.

**Allegations**

1. She had allowed her client account to be used to provide banking facilities to prospective investors/shareholders of a client, Broadgate Metals PLC (Broadgate) in breach of Rule 1.01 of the Solicitors Code of Conduct (SCC) and/or Rule 1.02 of the SCC and/or Rule 1.06 of the SCC and/or Rule 15 of the Solicitors' Accounts Rules (SAR).
2. She had failed to provide for compliance with the money laundering regulations in respect of monies received from investors/shareholders of a client, Broadgate, in breach of Rule 5.01(1) (b) of the SCC.
3. She had failed to exercise appropriate supervision over all staff and to ensure proper supervision and direction of clients' matters by allowing Counsel's fees to be incurred

by members of her staff without her knowledge and/or for such fees to remain unpaid, without the necessary agreement having been obtained from Counsel's Clerks, in breach of Rule 5.01 (1) (a) of the SCC.

4. She had failed to register her firm for VAT with HM Revenue and Customs in breach of Rule 1.01 of the SCC and/or Rule 5.01(1) of the SCC.

### **Factual Background**

1. The Respondent, born in 1965, was admitted to the Roll of Solicitors in 2001. Her name remains on the Roll of Solicitors. On 3<sup>rd</sup> April 2006, the Respondent had set up in practice, on her own account, under the style of SK Solicitors. On 26<sup>th</sup> February 2007, the Respondent had merged SK Solicitors with Justicia Solicitors and from that date had practised, on her own account, under the style of SK Justicia Solicitors at 6 Union Street, London, SE1 1SZ.
2. On 15<sup>th</sup> July 2008, an inspection of the books of account and other records of SK Justicia Solicitors (the firm) had been commenced by a Forensic Investigation Officer of the SRA. A report, together with appendices, had been produced dated 28<sup>th</sup> August 2008 (a copy of which was before the Tribunal).
3. The report had identified three main areas of concern; client account transactions relating to a client; Broadgate, non-payment of counsel's fees and the fact that SK Justicia Solicitors' bills of costs had not included any charges for VAT.

### **Broadgate**

4. In early 2007, Broadgate had sought to raise approximately £1.8 Million by way of a share placing with a minimum subscription of £100,000. The Placing Memorandum, issued on 6<sup>th</sup> February 2007, had explained that the funds raised were intended to provide for Broadgate's current and anticipated working capital for the following 18 months.
5. As at the date of the issue of the Placing Memorandum, there had been two directors of the Company; the Respondent (non-Executive) and her husband, VK (Managing Director). The Respondent and her husband had held shares in the Company jointly. In the Placing Memorandum, SK Solicitors had been stated to be "Solicitors to the Company and receiving agents".
6. On 12<sup>th</sup> January 2007, VK had instructed SK Solicitors. On 15<sup>th</sup> January 2007 SK Solicitors had sent Broadgate a client care letter which had, inter alia, set out the scope of work as follows:-

"We will act as receiving agent for Broadgate Metals PLC. You, as the Managing Director of Broadgate Metals PLC have instructed us to receive funds from the Shareholders and disburse the funds according to your instructions on a timely basis....."

7. On 6<sup>th</sup> March 2007, the Respondent had written to Lloyds TSB, Fenchurch Street Branch requesting them to open a "dedicated sub-account" within SK Solicitors' client account for the deposits of investors in Broadgate.

8. Between February 2007 and July 2007, 17 deposits had been received from investors, totalling £118,304.71. Between May 2007 and June 2008, 22 payments, totalling £118,640.18, had been made out of the account.
9. However, although the Respondent had arranged for a “dedicated sub account” to be opened under account no 2209588, the payments in and out, referred to above, had all been carried out within SK Justicia Solicitors’ client account under no 2155763.
10. On 7<sup>th</sup> & 8<sup>th</sup> August 2007, a Practice Standards Advisor, Mr J. Fidler, had visited the offices of SK Justicia. On 11<sup>th</sup> August 2007 the firm had written to Broadgate to confirm that the “decision to bring our business transactions to close” was to be implemented with immediate effect.
11. On 11<sup>th</sup> September 2007, the Respondent had written to Mr Fidler to confirm, inter alia, “we have closed the banking facilities provided to our clients and undertake not to provide such banking facilities to clients or non-clients.”
12. On 3<sup>rd</sup> December 2007, the Accountant’s Report for the firm had been qualified because of the provision of banking facilities.
13. On 20<sup>th</sup> January 2008, the firm had invoiced Broadgate for £6,507.03 (nil VAT) in respect of “various company matters”.
14. On 1<sup>st</sup> August 2008, the Respondent had told Mr Davies, a Senior Investigation Officer, that she had not done any legal work for Broadgate, had not acted for any of the investors in Broadgate and that her firm no longer maintained Broadgate as a client.
15. In her response, dated 13<sup>th</sup> February 2009, to the SRA’s letter enclosing the Forensic Investigation Report, the Respondent had confirmed, inter alia, that at the material time she and her husband had been directors of Broadgate and that the monies received from Broadgate’s investors had been retained in her firm’s client account. Moreover, although she had arranged for a sub-account to be opened for the investors’ monies, she had finished working with Broadgate before she had realised that that account had in fact been opened.
16. The Respondent had further explained that she had believed she could provide the banking service “because it was ancillary to a commercial transaction being carried on by that client”. She had said that the work that she had undertaken for Broadgate had consisted primarily of receipts and transfers of funds to Broadgate and/or to third parties, nominated on the instructions of Broadgate, and dealing with internal and external accountants for Broadgate.

Lack of money laundering checks on Broadgate’s investors

17. Although following the forensic investigation, the firm had obtained details from Broadgate relating to three of the investors, no money laundering checks had been carried out by the firm in respect of any of the investors before their monies had been paid into the firm’s client account with Lloyds TSB.

### Non-payment of Counsel's fees

18. Between about April 2006 and unknown dates in the summer of 2007, the Respondent had employed a Mrs LT (a solicitor) and a Mr M (a registered foreign lawyer).
19. During the course of the Forensic Investigation in July/August 2008, the Respondent had told Mr Davies that her firm owed in the region of £20,000 to various Chambers, the largest outstanding fee note being one for £7,732.50 dated 6<sup>th</sup> September 2007. The Respondent had explained, inter alia, that she had accepted responsibility for all outstanding fees and had been negotiating to clear the outstanding fees by the end of November 2008. Subsequently, she had explained that the liabilities to counsel had arisen due to the unauthorised actions of Mr M and Mrs LT and that she had agreed to discharge the outstanding fees by monthly payments of £750 commencing on 16<sup>th</sup> February 2009.

### Failure to register for VAT

20. During the course of the investigation, it had been noticed that the bills of costs rendered by the firm had not included VAT although the Respondent's Professional Indemnity Insurance declaration form for 2007/08 had shown gross fees of £100,000 both for the last and, as an estimate, for the current accounting periods.
21. On 1<sup>st</sup> August 2008, the Respondent had told Mr Davies that she had not been registered for VAT, despite her accountant having told her that she should register as the registration limit for VAT purposes from 1<sup>st</sup> April 2008 had been £67,000.
22. Subsequently, on 2<sup>nd</sup> February 2009, the Respondent had notified HM Revenue & Customs of her liability for registration and she had been registered for VAT on 4<sup>th</sup> February 2009. On 6<sup>th</sup> February 2009, HMRC had issued a penalty for late notification on the basis that she had been obliged to notify HMRC of her liability no later than 30<sup>th</sup> June 2008.

### **Documentary Evidence before the Tribunal**

23. The Tribunal reviewed the Rule 5 Statement together with the accompanying bundle and a further bundle submitted on the day of the hearing by the Applicant and the Respondent's statements of 25<sup>th</sup> February 2010 and 1<sup>st</sup> March 2010 with appendices.

### **Findings as to fact and law**

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

### **Mitigation**

25. Mr Morgan explained that the Respondent was now working as one of two members of an LLP – London Bridge Lawyers Ltd. He gave the Tribunal details of the Respondent's financial position. He also detailed the conditions on the Respondent's Practising Certificate; not to continue as a sole practitioner, only to practice in approved arrangements and to attend courses on the Solicitors' Accounts Rules, the Solicitors' Code of Conduct and Practice Management.

26. However, Mr Morgan explained that at the material time the Respondent's firm had been dealing mainly with immigration work. Unfortunately, two of the Respondent's fee-earning employees had undertaken unauthorised actions resulting in unpaid Counsel's fees. Moreover, a third employee had also been taking and retaining monies paid by clients for the firm's fees and other expenditure, which had resulted in a loss of income to the firm in excess of £64,000.
27. Although the Respondent had been unable to honour her firm's initial agreement with Chambers to pay the outstanding counsel's fees, she was seeking to agree payments of £500 per month.
28. Mr Morgan explained that HMRC had imposed the minimum penalty of £50 for the Respondent's failure to register, which had in fact been deducted from a refund of VAT to the firm, resulting in a repayment to the firm of £376.24. He submitted that the Respondent had never sought to evade liability but had been mistaken about the regulations governing the application of VAT to work for asylum seekers.
29. Mr Morgan reminded the Tribunal that the Respondent had genuinely, albeit mistakenly, believed that she could receive and pay out monies on behalf of the firm's client Broadgate on the basis that such transactions had been ancillary to a commercial transaction being carried out by Broadgate.
30. As to the Respondent's failure to carry out money laundering checks, Mr Morgan explained that she had incorrectly assumed that the situation had not required such checks and had mistakenly relied on the bank's checks and procedures.

### **Costs Application**

31. The Applicant informed the Tribunal that the parties had agreed that the Respondent would pay the Applicant's costs, fixed in the sum of £8,000.

### **Sanction and Reasons**

32. The Tribunal had found all four allegations proved and indeed they had been admitted. The Tribunal was extremely concerned that the Respondent's failures in supervision had resulted in three of her self-employed fee-earners allegedly issuing false receipts for clients' monies in a practice dealing mainly with immigration work, whose clients would, in many cases, be vulnerable. Moreover, large debts to counsel had been incurred and remained outstanding. The Respondent appeared to have had little idea of what her staff had been doing.
33. The Tribunal was concerned that the Respondent had shown a careless attitude to practice management, a total disregard for money-laundering regulations and a complete misunderstanding of the guidance relating to the provision of banking facilities.
34. However, the Tribunal noted that there had been no allegation of dishonesty or of loss to clients and determined that an appropriate penalty, in all the circumstances, would be a fine of £7,500 and it so ordered.

**Decision as to Costs**

35. In the light of the agreement between the parties, the Tribunal determined to make a fixed order for costs in the sum of £8,000.

**The Order of the Tribunal**

36. The Tribunal Ordered that the Respondent, SURAMYA KRISHNAKUMARAN of SK Justicia Solicitors, 6 Union Street, London, SE1 1SZ, solicitor, do pay a fine of £7,500, such penalty to be forfeit to Her Majesty the Queen, and it furthered Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,000.00.

Dated this 3<sup>rd</sup> day of June 2010

On behalf of the Tribunal

L N Gilford  
Chairman