

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF GRAHAM JOHN LEATHER, solicitor (Respondent)

Upon the application of David Elwyn Barton
on behalf of the Solicitors Regulation Authority

Mr A H Isaacs (in the chair)
Mr E Nally
Mr M G Taylor CBE DL

Date of Hearing: 30th March 2010

FINDINGS & DECISION

Appearances

David Elwyn Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Applicant.

The Respondent did not appear and was not represented.

The application to the Tribunal on behalf of the Solicitors Regulation Authority ("SRA") was made on 4th February 2009.

Allegations against the Respondent contained in the Rule 5 Statement dated 4th February 2009:-

1. Contrary to the provisions of Rules 1(a) and (d) of the Solicitors' Practice Rules 1990 he had:
 - (i) Compromised or impaired his independence or integrity;
 - (ii) Compromised or impaired the good repute of both himself and the solicitors' profession,

as a consequence of having acted in or otherwise facilitated conveyancing transactions during the course of which he either failed to be alert or deliberately closed his eyes to the suspicious characteristics of those transactions.

It was further alleged that he was dishonest. Alternatively he was grossly reckless.

2. Contrary to the provisions of Rule 1(c) of the Solicitors' Practice Rules 1990 he had compromised or impaired his duty to act in the best interests of his lender clients in the following respects:

- (i) He failed to advise them of material facts, or to otherwise ensure such clients were so advised;
- (ii) He submitted misleading Certificates on Title to his lender clients.

The Respondent was also dishonest, or alternatively was grossly reckless.

3. Contrary to Rule 1 of the Solicitors Code of Conduct 2007 he had:

- (i) Failed to act with integrity;
- (ii) Allowed his independence to be compromised;
- (iii) Behaved in a way that was likely to diminish the trust the public placed in him and the solicitors' profession,

having permitted money to pass through his client account when there was no underlying legal transaction.

The Respondent was also dishonest or alternatively grossly reckless.

4. Contrary to Rule 1 of the Solicitors Code of Conduct 2007 he had:

- (i) Failed to act with integrity;
- (ii) Allowed his independence to be compromised;
- (iii) Behaved in a way that was likely to diminish the trust the public placed in him and the solicitors' profession,

having supplied a quantity of his firm's headed notepaper to a third party, namely one Mr Rana.

The Respondent was also dishonest, or alternatively he was grossly reckless.

Allegation contained in the Supplementary Statement dated 17th March 2009

5. The Respondent practised as a solicitor in breach of conditions on his practising certificate.

Allegation contained in the Supplementary Statement dated 9th October 2009

6. By virtue of his conviction of conspiracy to defraud at Southwark Crown Court on 22nd July 2009 he had breached Rule 1 of the Solicitors Code of Conduct 2007.

Factual Background

- 1. In the absence of the Respondent the Tribunal was satisfied that the Respondent had been properly served and given notice of the hearing.
- 2. The Respondent was admitted as a solicitor in 1975 and at all times material to

allegations 1 - 4 and allegation 6 practised in partnership under the name of Ferguson Bricknell Solicitors. He was responsible for the supervision of the office situated at Kingsway House, London Road, Headington, Oxford, OX3 9AA. At all times material to allegation 5 the Respondent was carrying on practice under the style of Marston Legal Services.

3. A Senior Investigation Officer (SIO) of the SRA commenced an inspection of the books of account and other documents of Ferguson Bricknell Solicitors on 9th April 2008. She made a report dated 6th August 2008 which was available to the Tribunal.
4. The SIO examined a number of matter files relating to property transactions and summarised seventeen such transactions. The Respondent acted for the buyer and lender in each one. The Respondent stated to the SIO that the nature of the first eleven transactions specified in the report was essentially the same, involving his client Mr R and/or L Investments said by the Respondent to be an investment club controlled by Mr R. He stated that in each such matter he had been informed that there had been direct payments made between the parties to the transactions.
5. The remaining six property transactions were, according to the Respondent, conducted in the same manner and each involved the purchase of a newly built property.
6. Five of the transactions were described in detail in the report one of which is summarised below by way of example.
7. The Respondent acted on the purchase and mortgage of two properties in S Road, Oxford. He acted for Mr A in connection with the purchase of both properties and for Halifax PLC and Alliance and Leicester PLC who made the mortgage advances.
8. In each case the mortgage advances completely funded the purchases, meaning that the lenders advanced 100% mortgages. The SIO was not able to establish from the matter files that the full purchase price had been paid by the buyer but she was able to see from the relevant ledger that the total sum of £82,000 was sent to L Investments. The two payments making up this sum were thus payments to a third party.
9. In relation to the first property, the Certificate of Title signed by the Respondent stated a transfer price of £230,000. The price actually paid was £180,000. The Certificate of Title in relation to the second property stated a transfer price of £225,000 but the price actually paid was £170,000.
10. The lenders were not informed of the differences. The report noted that the Respondent was asked to explain the discrepancies and he accepted that he should have reported the differences to the lenders.
11. The Respondent stated to the SO that he did not know how much his purchaser client had contributed towards the purchase of each flat. He stated that “from about this time last year or earlier...” he stated to his clients he was not going to undertake any more work for L Investments or their members because he did not feel that the firm had sufficient control over the transactions and he was very uncomfortable with this. He admitted a lack of knowledge of what was happening with the money, and where the funds were going to.

12. The schedule appended to the report showed that the Respondent conducted transactions after this date. It was recorded in the report that the Respondent asserted that while he was not being asked by his client not to report the position to his lender clients, he “was just basically being told to get the mortgage monies. If it happened on just a few occasions then I would have accepted responsibility for it. But it was becoming frequent and I decided to put a stop to it.”
13. On 17th December 2007 the Respondent received the sum of £1,582,000.00 into his client account. The money was paid out again in full on 20th December 2007 and was thus in client account for only three days. Its movement was not accompanied by any legal transaction. The narrative on the bank statement stated the funds to have been received from Mr C.
14. The receipt was preceded by a telephone call on or about 11th or 12th December from Mr R, the same individual who had been involved in a number of the property transactions referred to in the report. The Respondent said that Mr R had told him that his cousin Mr H was selling four properties to Mr C.
15. The Respondent stated that he conducted a 5 minute money laundering meeting with Mr C, that he neither discussed the transaction nor made any inquiries as to who Mr C’s solicitors were or who would be acting for whom. He stated “I thought this all sounds as if nothing would come of this”.
16. The Respondent told the SIO that the firm’s cashier had expressed concern that the money did not relate to an underlying legal transaction. The Respondent stated to the SIO that as a consequence he was going to speak with Mr H but before he could do so he was informed that the transaction was not going to proceed.
17. A printout of the payment details showed the beneficiary of the payment out on 20th December 2007 to be Mr C.
18. The Respondent stated to the SIO that he had given his client, Mr R, 10 blank letter headings. He had given these to Mr R for the purpose of chasing mortgage applications. The report noted that the letterhead was used in connection with the Mr C transaction.
19. On 30th June 2008 the SRA issued the Respondent with a practising certificate for the year 2007/2008 subject to the following conditions:-
 - “1. He may act as a solicitor only:
 - 1.1 In employment or partnership, or;
 - 1.2 As a member, office holder or shareholder of an incorporated solicitor’s practice;
 - 1.3 The arrangements for which have first been approved by the Solicitors Regulation Authority;
 2. Mr Leather shall immediately inform any actual or prospective employer, partner, co-member/office holder/shareholder of these conditions and the reason for their imposition”.

20. On 21st January 2009 the SRA wrote to the Respondent. The Respondent was asked about practising as Marston Legal Services. He replied on 2nd February confirming that he was operating a legal advice service known as Marston Legal Services. The SRA's letter of 12th February informed the Respondent that he was acting in breach of his practising certificate conditions.
21. On 22nd July 2009 the Respondent was convicted of conspiracy to defraud and sentenced to 54 months imprisonment.
22. **The Tribunal reviewed the following documents submitted by the Applicant:-**
- Statement Pursuant to Rule 5 (2) and exhibits
First and Second Supplementary Statements and exhibits
23. **The Tribunal reviewed the following documents from the Respondent:-**
- Letter to the Tribunal office dated 10th March 2010

Findings as to fact and law

Allegations 1 - 5

24. The Applicant made submissions to the Tribunal in support of his allegation that the Respondent had behaved dishonestly or alternatively grossly recklessly in relation to allegations 1 - 4. The Respondent in his letter of 10th March 2010 denied dishonesty. However, given the serious nature of allegation 6 the Tribunal considered it right that allegations 1 - 5 be left to lie on file and the Tribunal made no findings with regard to those allegations.

Allegation 6

25. The Tribunal had available to it a copy of the certificate of conviction and the Judge's pre-sentencing remarks. The Respondent stated in his letter of 10th March 2010 that his appeal against conviction and sentence had failed. The conviction therefore stood and the Tribunal was satisfied that allegation 6 was substantiated.

Mitigation

26. The Respondent in his letter of 10th March 2010 hoped that there would be a further opportunity for him to appeal following a re-trial in respect of three other defendants in the criminal proceedings. He said that he had received no personal benefit from the crime which had taken place, as shown by the fact that the Court had not made a Confiscation Order against him.

Costs

27. The Applicant had served a schedule of costs on the Respondent a copy of which was handed to the Tribunal. The Applicant was aware that the Tribunal would wish to take into account the Respondent's current circumstances and requested a fixed costs order in the full amount claimed such order not be enforced without the leave of the Tribunal.

Previous disciplinary proceedings before the Tribunal

28. On 7th January 2002 the following allegations were substantiated against the Respondent namely that he had been guilty of conduct unbefitting a solicitor in each of the following particulars:-

- (i) That contrary to Rule 1 of the Solicitors Practice Rules 1990 and Principle 15.04 he accepted instructions to act in circumstances where there was a significant risk of conflict of interest between his own interests and that of a client and/or continued to act as a solicitor when a conflict of interest had arisen between his client and himself.
- (ii) That contrary to Rule 1 of the Solicitors Practice Rules 1990 and Principle 12.09 he took unfair advantage of his client by misusing his position as a solicitor, in a situation of conflict of interest.

The Tribunal on that occasion imposed a fine of £5,000 upon the Respondent and ordered him to pay costs.

Sanction and Reasons

- 29. The Respondent had been convicted of an offence of dishonesty and sentenced to a term of imprisonment. It was right that he be struck off the Roll of Solicitors.
- 30. The Tribunal noted the reference in the Respondent's letter of 10th March 2010 to his impecunious circumstances. There was however insufficient information before the Tribunal for the Tribunal to be able to assess those circumstances. The Tribunal were satisfied that the costs leading to allegations 1 – 5 had been properly incurred and should be borne by the Respondent. The Tribunal would therefore order costs in the amount claimed but would invite the SRA to enforce those costs having first taken into consideration any information provided to it regarding the Respondent's financial situation.
- 31. The Tribunal Ordered that the Respondent, GRAHAM JOHN LEATHER of HMP Stanford Hill (No.AV2601), Church Road, East Church, Sheerness, Kent, ME12 4AA, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £22,749.59.

Dated this 18th day of May 2010
On behalf of the Tribunal

A H Isaacs
Chairman