

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF STEPHEN LEWIS MELZACK and FRANKLIN LEIGHTER,
solicitors (Respondents)

Upon the application of Mr George Marriott
on behalf of the Solicitors Regulation Authority

Miss N Lucking (in the chair)
Mr J P Davies
Mr S Howe

Date of Hearing: 4th March 2010

FINDINGS AND DECISION

Appearances

Mr George Marriott a partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL for the Applicant and Mr Tony Guise of Guise Solicitors, 1 Alie Street, London E1 8DE for the First and the Second Respondents. The First and Second Respondents both appeared before the Tribunal.

Application Date

15th July 2009

Allegations

The allegations against the First and Second Respondents were that they:

1. Wrongly raised bills and transferred costs without delivery of bills or written notification of costs, contrary to Rule 19(2) of the Solicitors Accounts Rules 1998 ("SAR");
2. Wrongly raised a bill and transferred costs in respect of a client where the monies were held as stakeholder, contrary to Rule 22 SAR;

3. Failed to deliver bills within a reasonable time, contrary to Rule 14.06 of the 8th edition of the Guide to the Professional Conduct of Solicitors [amended with the consent of the Tribunal].
4. [Withdrawn]

Factual Background

1. The First Respondent was admitted as a solicitor in November 1976. The Second Respondent was admitted as a solicitor in November 1976. At all material times they were both equity partners in Parker Thomas of Queens House, 55-56 Lincoln's Inn Fields, London WC2A 3LN. The third partner of the firm was HS who resigned from the partnership with effect from 30th July 2006. The Respondents and HS had practised in partnership since 1986. The Respondents merged with a larger firm, DW, on 1st December 2006. On 1st July 2008 the Respondents demerged the firm from DW.
2. A Forensic Investigation Officer ("FIO") of the SRA commenced an inspection at the firm's offices on 10th May 2007. As a result of that inspection the Respondents were informed of concerns over a number of transfers made from client account to office account before the merger. The Respondents then advised the SRA that they had come across further instances where they had made transfers from the firm's client account to office account, without bills or written notification having been sent to clients.
3. In total the SRA received details of 86 matters where transfers of costs had been made from client account to office account and where no bill or written notification of costs had been sent to the client prior to the transfer. All of these transfers occurred between 3rd March 2006 and 30th November 2006. Of the 86 transfers:
 - (i) 81 transfers were made where the Respondents stated they were justified by the work done;
 - (ii) five transfers were made where there was no justification;
 - (iii) 85 transfers had the effect of reducing the client ledger balance to zero;
 - (iv) one transfer concerned monies held by the Respondents as stakeholder.

In total £21,025.75 had been wrongly transferred by the Respondents. The amounts of the transfers ranged from £2.98 to £9,987.50. 33 of the transfers were made the week before the merger with DW.

4. The Respondents eventually sent copies of bills to clients between 15th May 2007 and 6th March 2008. This was at least five months after the transfers had been made. In the majority of cases clients were informed that the Respondents had "a small invoice which they had omitted to render ..." but the Respondents went on to "... stress that no monies are due from you as this was taken into account from the balance in hand at the time."

5. Of the eighty-six cases there were three cases where the Respondents admitted that the sums transferred to office account were not connected to any outstanding work, and were therefore unjustified transfers. In a later letter to the SRA the Respondents informed the SRA that this had occurred in two more matters. In total £1,297.02 was transferred from client account to office account in circumstances where the client owed no monies to the solicitor.

6. Of the 86 transfers, the one transfer that failed to reduce the client ledger balance to zero was in relation to the Respondent's client CHPT Limited. The sum of £9,987.50 was transferred from client account to office account in relation to this matter on 30th November 2006, the day before the merger. The transfer in question related to continuing obligations of the Respondents from a transaction which the firm had handled in 1985. The Respondents held the sum of £15,000 plus interest as stakeholder for the vendor of a property that had been purchased by CHPT Limited, in relation to outstanding road and infrastructure works. The security deposit of £15,000 had been placed into a designated client account in the vendor's name in accordance with the terms of the agreement and had accrued interest over the period of years.. On 22nd November 2006 the designated account containing the deposited funds was closed and seven days later the funds were placed into the firm's general client account. On 29th November 2006, 2 days before the merger, the balance of the account, £59,342.53 was transferred from the ledger relating to the vendor onto a ledger in the name of CHPT Limited. On the same day funds totalling £49,339.77 were transferred to a designated client account in the name of CHPT Limited. Of the remaining £10,002.76 in general client account, the Respondents transferred £9,987.50 in respect of alleged legal costs owed by CHPT Limited, to the Respondents' office account. At that stage the bill in relation to the transfer which was dated 29th November 2006 had not been delivered to CHPT Limited. It was sent on 3rd August 2007, with a letter informing CHPT Limited that before the merger with DW, they had reviewed the file and discovered a "not insignificant amount of unbilled work".

7. The Tribunal reviewed all of the documents submitted by the Applicant, which included a Rule 5 Statement dated 15th July 2009, together with accompanying bundle which included a forensic investigation report dated 19th December 2007.

8. The Tribunal reviewed all of the documents submitted by the Respondents, which included:
 - 8.1 first witness statement of the First Respondent dated 18th February 2010, together with accompanying exhibit;
 - 8.2 second witness statement of the First Respondent dated 3rd March 2010;
 - 8.3 first witness statement of the Second Respondent dated 18th February 2010;
 - 8.4 second witness statement of the Second Respondent dated 23rd February 2010, together with accompanying exhibit;
 - 8.5 copy page 280 from the Guide to the Professional Conduct of Solicitors (8th edition);

- 8.6 copy of the Adjudicator's decision of 2nd March 2010;
- 8.7 documents relating to certain clients;
- 8.8 a profit and loss summary for the Respondent's firm for the financial period 2009-2010; and
- 8.9 character witness evidence.

9. **Witnesses**

The following persons gave oral evidence:

The First Respondent, the Second Respondent, Dr Gillian Schiller as a character witness for the First Respondent and Mr David Reissner as a character witness for the Second Respondent.

Findings as to Fact and Law

Allegation 1. That the Respondents wrongly raised bills and transferred costs without delivery of bills or written notification of costs, contrary to Rule 19(2) of the Solicitors Accounts Rules 1998

- 10. This allegation related to 86 matters where transfers of costs had been made from client account to office account and where no bill or written notification of costs had been sent to the client prior to the transfer. The Applicant argued that of the 86 transfers, 83 were made as a "sweeping up" exercise in order to remove residual balances from dormant client ledgers in preparation for the firm's merger with DW; 33 of the transfers were made in the week before the merger. The Applicant submitted that the Respondents knew that the bills had not been sent to the clients but transferred the funds regardless. In all but one of the matters the transfer had reduced the client ledger balance to nil effectively closing the ledger. In five cases transfers had been made where there was no justification and the Respondents had breached Rule 19(2) by transferring monies from client account to office account without notifying the client.
- 11. The Respondents admitted breach of Rule 19(2) but, save for the five cases, did not admit that the bills had been "wrongly raised". It was the Respondents' position that there had been no "sweeping up exercise" and they rejected the implication that the bills were part of an exercise intended to take monies properly due to clients. Each of the 81 bills had been prepared in connection with work in progress that had been properly incurred in carrying out clients' instructions. The mistake that had been made with the 81 bills was not to send them out in accordance with Rule 19(2) of the SAR. Where mistakes had been made in the case of the other five bills those mistakes were promptly put right in accordance with Rule 7 of the SAR. Similarly where client funds had been transferred improperly because bills had not been sent those funds were put back in clients' accounts promptly upon discovery of the error in accordance with the Rule 7.

12. The Respondents admitted the allegation save that they denied that 81 of the 86 bills had been wrongly raised. The Tribunal found this allegation to have been substantiated on the facts. The Respondents had admitted wrongly raising 5 bills and also admitted transferring costs on 86 matters without delivery of bills. The Tribunal found there was no evidence that bills had been wrongly raised on the other 81 matters.

Allegation 2. Wrongly raised a bill and transferred costs in respect of a client where the monies were held as stakeholder, contrary to Rule 22 SAR

13. It was the SRA's position that the Respondents held the sum of £15,000 plus interest as stakeholder on behalf of the original vendor until the relevant local authority had adopted the relevant infrastructure. In that event the Respondents had an obligation to return it plus interest, to the original vendor, less any sum paid by CHPT Limited for upkeep, prior to adoption. There was some confusion over ownership but not withstanding that, the funds had been on a designated client account under the name of the original vendor for over 20 years in accordance with an agreement. They had only been removed from that account 9 days before the transfer of costs in favour of CHPT Limited was made. The Respondents received these monies as stakeholder monies and as such they were to be treated as client money belonging to the original vendor and payable to them on the happening of an event. The SRA submitted that at all times the monies held by the Respondents in this matter belonged to the original vendor and that the Respondents knew this as it was evidenced by the title on the ledger account. The SRA further submitted that the transfer of funds out of the designated client account and onto a ledger under the name of CHPT Limited was a device to secure payment of fees not due to them from the original vendor. In addition fees were transferred without the delivery of written notification of costs to CHPT Limited and a letter to CHPT Limited nine months after the transfer was a wrongful attempt to justify the bill and the transfer.
14. The Respondents' position was that they had become muddled about the correct provenance of the funds in question. The Respondents accepted the funds were throughout stakeholder funds. However in their submission the transfer was not a device to secure fees but a step taken to comply with the SAR to ensure that the funds were on a ledger which was correctly designated. The fees were justified and evidenced by the work in progress on the file in question. The letter to CHPT Limited was not a wrongful attempt to justify the bill and it was clear having rechecked the file that the work in progress could be properly billed. The transfer was wrong but was remedied promptly in accordance with Rule 7 of the SAR.
15. Both Respondents admitted this allegation but denied that the bill had been wrongly raised. The Tribunal found on the facts that the Respondents had transferred costs in respect of a client where the monies were held as stakeholder but found the part of the allegation relating to wrongly raising the bill to have not been proved. According to the Respondents there was work in progress to justify the bill, such as safekeeping of deeds and issues in relation to the local authority and the Applicant had not put forward any evidence to show that that was not the case.

Allegation 3. Failed to deliver bills within a reasonable time, contrary to paragraph 14.06 of the Code to the Professional Conduct of Solicitors

16. In the Applicant's submission copies of bills had been sent to clients between 15th May 2007 and 6th March 2008 at least 5 months after the transfers of monies had been made. Whilst admitting this allegation the Respondents said that from late July 2007 there had been an intense, stressful and difficult period due to the forthcoming merger of the firm. In addition the Respondents and their immediate families had suffered ill health at this time.
17. The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

Mitigation

18. The Respondents had remedied their wrongdoing very quickly. These were the first mistakes that they had made in their lengthy careers and were made under pressure. It might be said that the Respondents had been inefficient in terms of their administration of the practice but not in their compliance with the Accounts Rules. These were the only matters that had been found during the FIO's visit and their Accountant's Reports were unqualified. They had now attended courses to refresh their knowledge as to accounts and the Solicitors Code of Conduct and it might be said that they had been inept but no worse than that. They had both admitted the substance of the allegations from the start. In the Respondents' respectful submission a reprimand would be appropriate in this case. No client had been prejudiced or lost money and no dishonesty had been alleged.
19. The Respondents' financial state was not good and conveyancing had been badly affected by the recent downturn. The Respondents had presented their profit and loss account for the current year so that the Tribunal could take into account their difficult financial circumstances.

Costs Application

20. The Applicant asked for costs in the sum of £39,506.24. He conceded that whilst not everything had been found to be proved, the complaint had been properly brought and that the principles in the case of Baxendale-Walker and The Law Society [2007] EWCA Civ 233 should be followed. In the Applicant's submission most of the allegations had been proved and the SRA should not be penalised in costs. In the Respondents' submission any award of costs should be proportionate as part of the allegations had not been proved. In particular the "wrongly raised" parts of the allegations by the Applicant could not be substantiated. It may be that there could be a detailed assessment of costs but with an interim payment within a reasonable period of time.

Previous disciplinary sanctions before the Tribunal

21. None.

Sanction and Reasons

22. To render a bill to a client without any justification was a serious breach of trust and in the view of the Tribunal the Respondents had behaved recklessly in this respect. In addition, taking a client's money without the client's permission was also a serious matter, and on any definition of a "reasonable time", many of the bills had been delivered far too late. The matter was too serious for a reprimand and a fine would be imposed. The Tribunal Ordered the Respondents to pay a fine of £4,500 each to be forfeit to Her Majesty the Queen.

Decision as to Costs

23. On the question of costs the Tribunal felt it appropriate that the costs be assessed if not agreed. However there should be some form of payment within a limited period and so the Tribunal would order that the costs be assessed if not agreed and an interim payment of £15,000 be made within 90 days.

Order

24. The Tribunal Ordered that the Respondent, Stephen Lewis Melzack of Parker Thomas, Queens House, 55-56 Lincoln`s Inn Field, London, WC2A 3LN, solicitor, do pay a fine of £4,500.00, such penalty to be forfeited to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society. An interim payment of £15,000 is to be made within 90 days.
25. The Tribunal Ordered that the Respondent, Franklin Leighter of Parker Thomas, Queens House, 55 - 56 Lincoln`s Inn Field, London, WC2A 3LN, solicitor, do pay a fine of £4,500.00, such penalty to be forfeited to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society. An interim payment of £15,000 is to be made within 90 days.

Dated this 13th day of May 2010

On behalf of the Tribunal

Miss N Lucking
Chairman