

IN THE MATTER OF IZOMOR HERBERT ANYIAM, solicitor

- and -

EMMANUEL OLUEMI SODOLA, solicitor's clerk

- and -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Miss N Lucking
Mr S Howe

Date of Hearing: 22nd September 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by Stephen John Battersby solicitor and partner in the firm Jameson & Hill of 72-74 Fore Street, Hertford, Herts SG14 1BY on 15th October 2008 that Izomor Herbert Anyiam of 24 Barclay Road, Croydon, Surrey CR0 1JN, solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

An application was duly made on behalf of the Solicitors Regulation Authority by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts SG14 1BY on 15th October 2008 that an Order might be made by the Tribunal directing that as from a date to be specified in such Order no solicitor shall, accept in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Emmanuel Oluemi Sodola of 177 Franklin Way, Croydon, Surrey CR0 4UX a person who is or was a clerk to a solicitor, or that such Order may be made as the Tribunal should think right.

The allegation against the First Respondent, Izomor Herbert Anyiam is that contrary to Rule 32 of the Solicitors' Accounts Rules 1998 he failed to keep his accounts properly written up. There was no dishonesty alleged against him.

The allegation against the Second Respondent, Emmanuel Oluemi Sodola was that recklessly, he allowed mortgage applications in his name and signed by him to be submitted to prospective lenders when they were false and misleading in material particulars.

The application at heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 22nd September 2009 when Stephen Battersby appeared as the Applicant, the First Respondent appeared but was not represented and the Second Respondent appeared and was represented by Mr AK Ollennu, Counsel, of Redemption Chambers 121 The Vale, Golders Green, London NW11 ATL.

The evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 and 8 statements of the Applicant dated 15th October 2008 with accompanying bundle, the affidavit of the First Respondent dated 21st September 2009 with accompanying exhibits including character references, the statement of the Second Respondent dated 2nd January 2009 and the sworn oral evidence of the Second Respondent. The Second Respondent also provided several character references.

At the conclusion of the hearing the Tribunals made the following Orders:

The Tribunal Orders that the Respondent, Izomor Herbert Anyiam of Hiace Solicitors, 24 Barclay Road, Croydon, Surrey, CR0 1JN, solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,250.

The Tribunal Orders that the allegation made against Emmanuel Oluemi Sodola of 81 Muggeridge Close, South Croydon, Surrey CR2 7LB, a person who is or was a clerk to a solicitor, be dismissed but that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £750.

The facts are set out in paragraphs 1-10 hereunder:

1. The First Respondent was born in January 1962 and admitted as a solicitor in August 1998. At all material times he was a partner in the firm of Hiace Solicitors ("the firm") of 24 Barclay Road, Croydon. His partner had no involvement with the matters complained of and was on maternity leave for much of the relevant time.
2. The Second Respondent was with the firm from early 2002, initially a freelance outdoor and billing clerk until 8th October 2002 when he became a full time employee. He remained with the firm until 17th August 2007 when the matter the subject of the allegation against him came to the attention of the firm who suspended him prior to his leaving employment in November 2007.
3. On 9th October 2006, a Senior Investigation Officer ('SIO') of the SRA commenced an inspection of the books of account and other documents of Hiace Solicitors at their offices at the above address.

4. The transaction in question was the purchase of a residential property in Franklin Way, Croydon for £125,000 in which the firm acted for the purchaser, the Second Respondent. The Vendor was represented by another firm of solicitors. The file was opened in late 2003 and the Second Respondent made an application for a mortgage at that time to prospective lender P which made a mortgage offer on 19th December 2003.
5. Contracts were exchanged on 18th February 2004 with a view to completion taking place on 26th February. However, on 24th February P wrote to Hiace Solicitors saying

‘We are unable to proceed with this completion as the Applicant has no permanent rights to reside in the UK. Also, the solicitor has stated that the Applicant is married, however, the application form states that he is single’.

Completion did not therefore take place on 26th February.

6. The Second Respondent made an application to a second proposed lender, P2 on 5th March 2004. In the personal details section of the application form signed by him he is described as single and not living with a partner, but living with a friend. In Section 5 of the application it is stated that he will be living in the property to be purchased with his wife. He is said to have been permanently employed by Hiace Solicitors as a solicitor for two years and his signature appeared on an income declaration immediately below this false information.
7. The transaction was completed on 18th March 2004 before any mortgage offer had been made by P2 and by a letter dated 23rd March 2004 the Second Respondent withdrew his application to them. The SIO was unable to determine from the client ledger how the purchase price had been paid because the only monies shown as having been paid out were the deposit of £12,000 sent to the vendor’s solicitors on 26th February 2004. It was revealed during the investigation that the necessary funding had come from a variety of sources, including loans to the Second Respondent from the First Respondent.
8. Some ten weeks after completion on 1st June 2004 mortgage funds were received from a third lender following an application made by the Second Respondent on 20th April 2004. In the application forms, signed by the Second Respondent, it was noted that he is described as single, Nigerian and with a permanent right to reside in the UK. He is said to be self employed with a 100% share interest in an IT firm called EE Technology which had been established for five years, with an income of £45,000 per annum. It was stated that he would occupy the property alone.
9. The First Respondent, in responses made on his behalf by his solicitors denied knowledge of the false information regarding the Second Respondent contained in the mortgage application. The allegation made against him relates only to his failure to ensure that the client ledger relating to the transaction was clear and transparent as to the source of the funding.
10. On 30th April 2008 an Adjudicator resolved to refer the conduct of both Respondents to the Tribunal.

The evidence of the Second Respondent

11. The Second Respondent confirmed that the contents of his statement dated 2nd January 2009 were true and that he relied upon them.
12. The evidence of the Respondent was that he did not write any of the three mortgage applications but that he had signed all of them. Two mortgage brokers had acted in the completion of the forms and both had been well known to the First Respondent. He trusted the First Respondent absolutely and had no cause to doubt anything that was being told to him by the brokers concerning the mortgage forms. He had not read the conditions incorporated into the forms and had signed them in blank. He had only given the first broker his Nigerian passport and his drivers licence. Nothing further had been required and no questions had been asked of him.
13. At the time that this had happened he was just starting out in the law having been employed as a clerk by the First Respondent with a view to passing his exams and becoming a solicitor. At the time that the mortgage forms had been submitted in this fashion the Second Respondent had believed that this was normal practice but now, with the benefit of hindsight and with his further training in the law he realised that it was not proper to have done so and would not do so again. The house in Franklin Way had been his first and only house purchase.
14. He had never heard of EE Technology, nor had he seen their accounts. He had not given this information to the broker.
15. In response to cross examination and questions from the members of the Tribunal the Second Respondent admitted that whilst he had received £25,000 in surplus monies from his third mortgage application he had not known at the time that that would be the position. No one else had made any financial gain from the transaction.
16. When asked in re-examination by his own Counsel, he said that one of the brokers that he had dealt with had left the country and that the other had been struck off by the FSA.

Submissions of the Applicant

17. The Applicant indicated that the allegation against each of the Respondents was admitted as to the facts. The issue would be as to whether an amended allegation against the Second Respondent would be sufficient in the judgement of the Tribunal to make a section 43 Order against him. The original allegation against the Second Respondent had been made on the basis that he filled in the mortgage application forms. However the Applicant now wished to amend the application to reflect the fact that it was now put on the basis that the Second Respondent had signed the forms without knowing the contents of them and that in doing so he had acted recklessly but not dishonestly.
18. Each of the mortgage application forms had contained a declaration as to the truth of the contents next to the signature of the Respondent. The Applicant submitted that it was reckless to sign the mortgage application forms in blank when the Second Respondent could have had no knowledge of the contents of them and his signature

was accompanied by a declaration as to the truth of the matter stated in the application form.

19. In regard to the First Respondent's liability in this matter the allegation was accepted. There was no allegation of dishonesty against the First Respondent, what was alleged was that he had failed to keep accounts written up in regard to the property purchase of the Second Respondent. It should have been apparent from the ledger where the funds had come from to enable the Second Respondent to purchase the property and the First Respondent accepted his culpability in that respect.
20. The Applicant applied for costs in the sum of £7,891.73.

Submissions of the First Respondent

21. The First Respondent admitted the allegation against him. He noted that the allegation was limited in that it was only in relation to the property transaction the subject of the allegations against the Second Respondent. He admitted the allegation in his capacity as the principal partner of the firm, even though he did not have personal conduct of the matter. He wished to draw the attention of the Tribunal to the FIO's report which said there had been no significant issues with the practice. The failure to keep properly written up accounts emanated from the funds which had been put together by himself and others to assist the Second Respondent to purchase the property in Franklin Way because no ledger had been kept for those monetary advances. He had no part in the mortgage applications, was unaware of the fake representations contained within them and had made no financial gain from the transactions. The First Respondent had attended a course on complying with the Solicitors Code of Conduct in September 2008, had no intention of doing conveyancing work in his career and produced references as to his professional conduct.

Submissions of the Second Respondent

22. Counsel for the Second Respondent said that he had never appeared before the Tribunal before and that his unblemished record could be taken into account by the Tribunal in these proceedings. The Second Respondent had had a belief that proper information would be given by the mortgage brokers and he had relied upon them because they had been personal friends and colleagues of the First Respondent. At the time of these events the relationship was close between the First and Second Respondents. He had only been at the firm for a relatively short period of time and at that stage was not legally trained. In the cold light of day it was obvious that signing blank mortgage application forms was wrong. The Tribunal were asked to see the situation from the point of view of the Second Respondent at that particular time. He believed that the proper information would be given and if he had had any doubt about that he would not have produced his Nigerian passport for examination by the first mortgage company when the application form clearly said that he had a British passport.
23. The Second Respondent had not known why the first mortgage application had not gone ahead and so he had asked to see the conveyancing file and realised then what had taken place. It was submitted that his were not the actions of a reckless person

and that he had been badly let down by persons that he had believed in because of their close associations with his employer.

Findings of the Tribunal and reasons

24. The Tribunal had given anxious consideration to the matters before them and had considered all of the evidence put before it most carefully and had had the advantage of seeing the Second Respondent in the witness box.
25. The Tribunal had considered the situation that had appertained when the mortgage application forms had been signed some years previously. The Second Respondent had only been in the country for two years and he was inexperienced and almost completely dependent on the First Respondent and his advice. He had relied almost entirely upon the First Respondent as an experienced solicitor and had been entitled to rely upon his recommendation that he should use an experienced broker. So far as the Tribunal had been aware the Second Respondent had no previous experience of purchasing property.
26. In relation to the first mortgage application the evidence had been that the broker had been strongly recommended by the First Respondent, that the broker had produced the mortgage application forms to sign and told the Second Respondent that he would complete them later. The evidence was that he had been told at that stage that that was the way that things were done and that he had believed the broker as he was so well known to the First Respondent and came with his recommendation.
27. The position on the second mortgage application had been very similar and it had not been until the conveyancing file had been examined that the Second Respondent had seen what had been put onto the forms. Some weeks later the third mortgage application, with a second broker, had gone through more or less the same procedure.
28. In these cases the Tribunal had to apply a high standard of proof and had to decide whether or not the allegation of recklessness had been made out. Taking all matters into account the Tribunal concluded that the Second Respondent had been entitled to rely upon the First Respondent's recommendation of the brokers and their advice in the matter. It accordingly did not find in all of the particular circumstances that recklessness had been proved in this case. The application was therefore dismissed.
29. The allegation against the First Respondent was proved, indeed it had not been contested.

Previous matter against First Respondent

30. Following a hearing on 6th December 2005 the Tribunal found the following allegations to have been substantiated against the First Respondent:-
 - (1) He withdrew money from client account in excess of the sum held for the client concerned contrary to Rule 22 (5) of the Solicitors' Accounts Rules 1998;
 - (2) He held client money otherwise and in a client account contrary to Rule 14 of the SAR;

- (3) He failed to remedy Accounts Rules breaches on discovery contrary to Rule 7 of the SAR.
31. The First Respondent had admitted the allegations on that occasion on the basis of liability of a partner but not on the basis of culpability. He had faced the allegations jointly with his partner.
32. In its written findings dated 27th January 2006 the Tribunal said:
- “93. The Tribunal recognised that Mr Anyiam had very properly admitted the allegations made against him, accepting that he had been held out as a partner in Lords Solicitors. The Tribunal accepted that his level of culpability was low and that he was a competent and trustworthy solicitor. They considered that the low level of his culpability could be met by a reprimand...”
33. The Tribunal noted that the First Respondent’s appearance before the Tribunal on 6th December 2005 post dated the matter before the present Tribunal. The current breach was of a technical nature and an absolute offence. A fine of £1,000 would be appropriate in all the circumstances. Since this breach was based upon the Second Respondent’s conveyancing transaction and the allegation against the Second Respondent which had not been substantiated, the costs awarded against the First Respondent would be reduced.
34. The Tribunal found that the case against the Second Respondent had been properly brought and using the principles in Baxendale-Walker v The Law Society [2007] EWCA Civ 233 it would not be appropriate to order costs against the SRA. Indeed as the case had been properly brought it would be appropriate for some of the costs to be awarded against the Second Respondent.
35. The Tribunal Ordered that the Respondent, Izomor Herbert Anyiam of Hiace Solicitors, 24 Barclay Road, Croydon, Surrey, CR0 1JN, solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,250.
36. The Tribunal Ordered that the allegation made against Emmanuel Oluemi Sodola of 81 Muggeridge Close, South Croydon, Surrey CR2 7LB, a person who is or was a clerk to a solicitor, be dismissed but that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £750.

Dated this 3rd day of February 2010

On behalf of the Tribunal

D J Leverton
Chairman