

IN THE MATTER OF CHRISTINE SUI FUNG, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr E Richards (in the chair)
Miss N Lucking
Mr M G Taylor CBE DL

Date of Hearing: 17th November 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 (“SRA”) by James Moreton, solicitor and partner in the firm of Bankside Law Solicitors, Thames House, 58 Southwark Bridge Road, London SE1 0AS on 10th March 2009 that Christine Sui Fung, solicitor, of 25 Osborne Road, Willesden, London NW2 5DR 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.

The allegations against the Respondent, Christine Sui Fung, were that:-

1. She made improper withdrawals from client account in breach of Rule 22 of the Solicitors Accounts Rules 1998 (the 1998 Rules).
2. She improperly withheld client money from client account in breach of Rule 15 of the 1998 Rules.
3. She failed to deal properly with money received on account of costs contrary to Rule 19 of the 1998 Rules.

4. She improperly utilised client's funds for her own purposes.
5. By her actions, she compromised or impaired or acted in a way which was likely to compromise or impair:-
 - (a) her integrity;
 - (b) her good repute and that of the solicitors' profession;

contrary to Rule 1 of the Solicitors' Practice Rules 1990 and/or Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 17th November 2009 when James Moreton appeared as the Applicant. The Respondent appeared and was represented by Nigel West of Radcliffes LeBrasseur, 5 Great College Street, Westminster, London SW1P 3SJ.

The evidence before the Tribunal included the Rule 5 Statement of the Applicant together with accompanying bundle which consisted of the Forensic Investigation Report dated 28th May 2008 and its accompanying exhibits, the partial admissions of the Respondent, the submissions made on behalf of the Respondent and a bundle of documents presented to the Tribunal including references, medical records and a medical report of Professor Chris Thompson dated 2nd October 2009. The Tribunal also heard the sworn oral evidence of the Respondent.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Orders that the Respondent, Christine Sui Fung of 25 Osborne Road, Willesden, London, NW2 5DR, solicitor, be Struck Off the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

The facts are set out in paragraphs 1 - 29 hereunder:-

1. The Respondent, who was born in April 1971, was admitted as a solicitor in December 1998 and her name remains on the Roll of Solicitors.
2. At all times material to the allegations the Respondent was employed as an associate solicitor by Hancock Quins of 22-24 Station Road, Watford, Hertfordshire WD17 1ER. The Respondent was summarily dismissed by Hancock Quins on 6th September 2007.
3. On 6th September 2007, following information provided by Hancock Quins ("the firm") concerning the Respondent's behaviour, an Investigation Officer of the SRA attended the firm and conducted an examination of the firm's books of accounts and files dealt with by the Respondent.
4. The Investigation Officer ("IO") produced a Report dated 28th May 2008 exemplifying six matters.

Allegations 1 and 4

5. The IO found that cash withdrawals had been made from client account that had not been authorised by the clients.
6. The Respondent acted for Mr and Mrs T in connection with two conveyancing matters. As at 21st December 2006, £500 remained to the credit of the clients' ledger account. The IO found that on 14th May 2007, the sum of £500 was withdrawn in cash from client bank account and debited to Mr and Mrs T's client ledger account.
7. The IO was informed that on 17th August 2007, following a meeting with the firm's partners, the Respondent gave the firm's bookkeeper an envelope containing £500 in cash, together with a note indicating that the money was for the client account of Mr and Mrs T "money return as client did not collect money".
8. The IO was informed that a further amount of £500 had been found near the Respondent's computer in an envelope marked "T cash payment collections."
9. In interview the Respondent informed the IO that she had borrowed the money for her own use, without consent. The Respondent said that she had not realised she had in effect paid the firm back twice the amount due to Mr and Mrs T.

Allegation 2 and 4

10. The Respondent acted for Mr N in connection with the sale of four properties. The Respondent quoted profit costs of £595 for each of the four transactions. On 25th September 2007 the firm rendered bills accordingly.
11. In subsequent email correspondence Mr N advised the firm that the Respondent had charged a reduced fee of £500 for each transaction, making a total of £2,000. Mr N confirmed that he had paid the Respondent the sum of £2,000 in cash. The IO could find no evidence of the money being entered in the firm's books of account.
12. When interviewed by the IO on 19th December 2007, the Respondent informed him that Mr N was a friend and that he helped her out personally. The Respondent said that she had arranged to borrow £2,000 from Mr N and that she would raise bills at a later date which she would then pay herself.
13. The Respondent acted for Mrs G in connection with conveyancing transactions. The firm discovered that on 13th August 2007, the Respondent requested payment of £120 in cash from Mrs G. The IO could find no evidence or explanation on the client file in relation to this money. The amount was not paid into the client bank account, nor was there any record on the client ledger.
14. During interview the Respondent accepted that she had requested the money from her client which she explained was for a Deed of Covenant. The Respondent also confirmed that she telephoned Mrs G at 11pm on 17th August 2007 and arranged to meet her client in a car park the following day and at which time she had returned the sum of £120.00.

15. The Respondent acted for Mr and Ms F in connection with the sale of property situated in Sherston, Malmsbury, Wiltshire and the purchase of property situated in Sidmouth, Devon.
16. On 25th June 2007 Mr F wrote to the Respondent, inter alia, enclosing “cash value £250 as a replacement for the missing cheque!” The Respondent provided her client with a signed receipt dated 25th June 2007. The IO could find no evidence that the amount was paid into the client bank account, nor was there any record on the client ledger.
17. On 20th August 2007, Mr F’s personal bank account received a cash credit in the sum of £250.00.

Allegation 3 and 4

18. The IO observed that the sale of the Sherston property was aborted and that a bill dated 25th June 2007 in the sum of £747.47 was sent to Mr and Mrs F in respect of the abortive sale.
19. The IO noted an attendance note dated 30th August 2007 of a conversation with Mr F. Mr F refers to a conversation with the Respondent in which she had informed Mr F that he should not pay, that £600 in cash would do. Mr F paid the sum of £600 to the Respondent who gave him a signed receipt dated 16th July 2007. No evidence could be found of the transaction on the client file neither was there any record on the client’s ledger account.
20. The Respondent informed the IO that in her mind she needed the money, that it was her intention to give it back and that she had repaid the money. The Respondent said that at that point she did not think about the firm, she did not think technically to whom the money belonged.
21. On 31st August 2007 Mr F’s personal bank account received a cash credit in the sum of £600. The Respondent informed the IO that she had asked Mr F for his bank details and refunded the sum of £600 to him.
22. The Respondent acted for Mr CS in connection with the sale of a property, completion of which took place on 31st July 2007. The firm’s records show that on 12th July 2007 a cheque for £1,762.70 was credited to the client ledger account for Mr CS. The IO found that on the same day £1,762.70 was withdrawn in cash from the client bank account. The file did not contain any explanation as to the receipt or withdrawal of this amount.
23. On 5th December 2007 Mr CS wrote to Hancock Quins with information concerning his dealings with the Respondent and provided a receipt dated 12th July 2007 which he said that he had requested from the Respondent as proof of payment of £1,200. Mr CS noted that he had written “£562.70 cash residue” on the document.
24. During interview the Respondent informed the IO that she had made a deduction for profit costs from the payment of £1,762.70. The Respondent said that she took about

£1,100 and that “he got about £700.” The Respondent admitted that she had taken the money with her when she left the firm.

Allegation 5

25. The Respondent acted for Mr MS in relation to commercial conveyancing transactions. The IO found that on 8th May 2007 the sum of £4,273.25 had been withdrawn in cash from the client bank account and recorded as a debit on the client ledger account of Mr MS.
26. A handwritten receipt found on the file, signed by Mr MS and dated 8th May 2007 indicated that he had received a cash sum of £4,073.25. It is unclear how much was paid to Mr MS. However, in an email dated 26th August 2007 from Mr MS to Hancock Quins, Mr MS confirmed that he had signed the receipt on 8th May 2007 but for an amount of £1,073.25. Mr MS further advised that the money he received was returned to the Respondent to cover the closing costs on completion of the sale of a property.
27. When interviewed by the IO on 19th December 2007 the Respondent informed the IO that she had paid Mr MS the sum of £3,073.25 and retained the balance of £1,200 for herself. The Respondent said that she altered the document signed by Mr MS to look as though he had been paid £4,073.25.
28. The Respondent was interviewed by the IO on 19th December 2007 and made admissions in relation to her conduct.
29. The matters subject of the report were considered by an authorised officer of the SRA on 12th September 2008 when a decision was made to refer the Respondent’s conduct to the Tribunal.

The Submissions of the Applicant

30. The Applicant told the Tribunal that the Respondent admitted all of the allegations but did not admit that she had been dishonest.
31. The Applicant submitted that the allegations were of a serious nature and included an allegation of dishonesty. He asked the Tribunal in particular to note the modus operandi of the Respondent and her attempts to repay monies which had happened immediately upon her suspension from the firm. It was also drawn to the Tribunal’s attention that, whilst medical evidence had been presented by the Respondent concerning her state of mind at the relevant time, such evidence was really only available after her suspension. The Respondent had only attended at her GP’s for stress related illness after her dismissal. The Tribunal was asked to note that there would be no expert evidence given in person at today’s hearing and that the Consultant Psychiatrist, Dr Thompson, had only spent 90 minutes with the Respondent and based his report upon that interview where the background information had all been given to him entirely by the Respondent.
32. It was submitted by the Applicant that the Respondent had deliberately and improperly withdrawn monies from client account which were then used for her own

benefit and that she had behaved dishonestly in respect of allegations 1 - 4 or that she was grossly reckless with regard to her responsibilities and duties under the 1998 Rules.

33. The Respondent therefore submitted that the dual tests in Twinsectra Limited – v – Yardley and Others [2002] UKHL 12 were satisfied in this case that the defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest. The Tribunal could therefore make a finding of dishonesty against the Respondent.

The sworn oral evidence of the Respondent

34. In her evidence the Respondent told the Tribunal that she accepted that she had taken monies between March 2007 and August 2007 but that she had suffered from a breakdown which she believed started at Christmas time in 2006. She described to the Tribunal her state of mind at that time and her accompanying health problems and very unhappy family background. She said that she had not realised at the time she had taken the monies exactly what she had been doing but she did feel that she had done something wrong. She had told her friend Mr C of her reservations concerning what she had done whilst she was still in employment although she could not be sure of the exact date that she had spoken to him.
35. When questioned by the Applicant as to whether she had used the word “dishonest” in her conversation with Professor Thompson she replied that she had been crying all the time during the interview although the Professor had tried very hard to discuss her problems with her.
36. She had taken another job after she had been dismissed from Hancock Quins and had told her new employers of the circumstances and had practiced with them until October 2008.

The Submissions of the Respondent

37. The Respondent admitted all the allegations against her but she did not admit dishonesty. In submissions made on behalf of the Respondent by Mr West he said there was a different explanation for her behaviour and that was that she had been mentally ill at the time.
38. The Respondent had had a troubled upbringing and relationship. At the time of the offences she had been working at weekends and was described as a “workaholic” and had had further serious family difficulties. The pressures upon her had led to her having a breakdown which had directly led to the difficulties identified in the Forensic Investigation Report. Whilst she could not remember all the details of what had happened it was clear to her that she had withdrawn monies from client account and kept cash collected from clients for herself. The monies had now all been repaid in full.
39. It was submitted on behalf of the Respondent that she was mentally ill at the time and that therefore the second limb of Twinsectra could not be satisfied. In that situation

the Respondent could not be said to have been dishonest. In support of that the Tribunal was directed to page 12 of Professor Thompson's report:-

“It is my opinion that Ms Fung had a severe mental illness at the time of the mistakes which she has confessed to and which she now understands are wrong...she continues to be depressed...it was only with some difficulty I was able to bring her back to the point on several occasions.”

It was submitted on behalf of the Respondent that the use of the words “now understands” illustrated the point that she did not understand that her actions were wrong at the relevant time.

40. It could also be seen from the GP's report at page 81 of the Applicant's bundle that her GP referred to her psychological problems since February 2007. However it was correct to say that she didn't go to visit her GP during the period of her illness. Both her GP and Professor Thompson had had access to all of her medical records and both had reported that she had been ill throughout the relevant period. It was open to the SRA to get its own expert to challenge any facet of the expert evidence of Professor Thompson although it was conceded that it had only been served on the Applicant a week before the hearing. There was also a letter dated 9th October 2009 from a friend Mr C saying that he had spoken to the Respondent at the relevant time. It was submitted that what he had had to say in that letter supported the Respondent's contention that she did not know what she was doing was wrong at the relevant time.
41. Character evidence submitted on the Respondent's behalf also tended to show that these were isolated occurrences that had taken place during a short period of time when the Respondent had not been well.
42. It was further submitted in the case of Paul Nicholas Smith before the Tribunal on 24th September 2007 No. 9652/2007 that the Respondent in that case had been suspended for an indefinite period although the amounts of money involved were larger and the defalcations took place over a longer period of time. In that case there had remained monies going, whereas the Respondent had repaid all monies.
43. The Respondent had often expressed regret and remorse over what had happened. The fact that she had not visited her GP during the relevant period of illness did not mean that she was only first ill in August 2007, the very fact that she was ill had clouded her judgment. Both her GP and Professor Thompson were of the opinion that she had been ill at the relevant time. The monies in question had not been used for a deliberate purpose but had been left sitting on the files. It was submitted that in these circumstances there could be no dishonesty and it was not appropriate to strike off the Respondent.

The Tribunal's Findings and its reasons

44. The Tribunal found all of the allegations against the Respondent to have been proved, indeed they had not been contested. However allegations 1 - 4 had been put on the basis that the Respondent had behaved dishonestly in respect of them or that she was grossly reckless with regard to her responsibilities under the 1998 Rules. The Tribunal found that in dealing with the monies the subject of allegations 1 - 4 in the

way that she had done the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having considered the matter very carefully and having taken into account all of the evidence presented to it the Tribunal was satisfied so that it was sure the Respondent did not have an honest belief that she was able to deal with the monies in such a way and that she therefore knew that what she was doing was dishonest by those same standards. In particular in reading the conclusion the Tribunal had taken into account that the evidence showed that the Respondent had covered her tracks at the time she was committing the offences and there was no reasonable explanation for this other than that she knew it was something that had to be covered up. The Tribunal had seen no contemporaneous medical notes for the time during which the Respondent had said she was ill and the matters the subject of the allegations had happened. In addition, they had not had the benefit of hearing Professor Thompson give evidence.

45. In the Smith case before the Tribunal on 24th September 2007, the Tribunal had found that the Respondent had been seriously mentally unwell at the relevant time and the Applicant had not alleged dishonesty. It could therefore be distinguished from the direct case in relation to penalty.
46. This was not a case that was so exceptional that it would fall within the small residue of cases of dishonesty where striking off would not be appropriate (*Brendan John Salsbury v The Law Society* [2008] EWHC 889 (Admin)). Whilst the Tribunal had found the case to be both sad and very difficult, an order striking off the Respondent would therefore be made.
47. The Tribunal had also considered the Applicant's application for costs in the sum of £20,048.33 and considered these to be too high given the allegations involved. They had also listened to the Respondent's submissions on her current personal circumstances and applying the principles announced by the Administrative Court in the case of *D'Souza v The Law Society* [2009] EWHC 2193 (Admin) had concluded that costs would be fixed in the sum of £10,000.00.
48. The Tribunal Ordered that the Respondent, Christine Sui Fung of 25 Osborne Road, Willesden, London, NW2 5DR, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

Dated this 27th day of February 2010
On behalf of the Tribunal

E Richards
Chairman