

IN THE MATTER OF ISIN VAHIB, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr N Pearson (in the chair)  
Mr W M Hartley  
Mrs C Pickering

Date of Hearing: 17th November 2009

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by David Elwyn Barton, solicitor of 17 Lower Stone Street, Maidstone, Kent, ME15 6JX on 17<sup>th</sup> December 2008 that Isin Vahib of Alco House, 435 Green Lanes, London, N4 1HA 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 were as follows:

- (a) contrary to Rule 22 of the Solicitors Accounts Rules 1998 she withdrew money from client account in circumstances other than permitted by the said Rule;
- (b) contrary to Rule 32(1) of the said Rules she failed to keep accounting records properly written up to show her dealings with client money received, held or paid;
- (c) she acted in circumstances where there existed a conflict of interests between hers and those of her client, contrary to Principle 15.04 of the Guide to the Professional Conduct of Solicitors 1999, 8<sup>th</sup> Edition;
- (d) contrary to Rule 1 of the Solicitors' Practice Rules 1990 she had compromised her independence or integrity, or was likely so to do. The particulars are that her firm's client account was used as a repository for money from a client to be disbursed thereafter at the discretion of her practice manager.

In a supplementary statement dated 2<sup>nd</sup> July 2009 the following further allegations were made against the Respondent:

- (e) that contrary to Rule 1.06 of the Solicitors Code of Conduct 2007 she had:
  - (i) failed to act with integrity;
  - (ii) behaved in a way that is likely to diminish the trust the public placed in her or the profession.
- (f) failed to communicate with the SRA in an open, prompt and cooperative manner contrary to Rule 20.03 of the said Code.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 17<sup>th</sup> November 2009 when David Elwyn Barton appeared as the Applicant and the Respondent was represented by Ian Stern of Queen's Counsel.

#### The evidence before the Tribunal

The evidence before the Tribunal included the admissions of the Respondent. The Respondent admitted allegations (a) - (d). The Respondent denied allegation (e) but admitted allegation (f). With regard to allegation (e) the Respondent denied that she had failed to act with integrity.

A bundle of testimonials in support of the Respondent was handed up at the hearing.

#### **At the conclusion of the hearing the Tribunal made the following Order:**

The Tribunal Order that the Respondent, Isin Vahib of Alco House, 435 Green Lanes, London, N4 1HA, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.

#### **The facts are set out in paragraphs 1-15 hereunder:**

1. The Respondent, born in 1965, was admitted as a solicitor in 1993. Her name remained on the Roll of Solicitors.
2. At the material times the Respondent practised as a sole practitioner under the style of Vahib & Co from Alco House, 435 Green Lanes, London, N4. The firm had legal aid franchises for family and crime and the firm also undertook commercial and residential conveyancing, civil litigation and privately funded immigration work. The Respondent was assisted by two solicitors, an in-house barrister, two unadmitted case-workers, a trainee solicitor, eight support staff, and a practice manager, Mr Vahib, the Respondent's husband.
3. On 2<sup>nd</sup> July 2007 an Investigation Officer of the SRA ("the IO") began an inspection of the books of account of Vahib & Co. The IO produced a Report dated 21<sup>st</sup> April 2008 which was before the Tribunal.

4. A list of liabilities to clients as at 20<sup>th</sup> June 2007 was produced for inspection which after adjustment totalled £402,060.04. The items on the list were in agreement with the balances shown in the client ledgers. The IO ascertained that a cash shortage had arisen which at 30<sup>th</sup> September 2007 was £22,501.59. Office to client account transfers which rectified the cash shortage were made on 3<sup>rd</sup> and 12<sup>th</sup> October 2007.
5. The cash shortage had arisen owing to improper payments of £18,189.14 and eight debit balances on client ledgers totalling £4,312.45.

Allegation (a)

6. At a meeting on 23<sup>rd</sup> October 2007 the Respondent agreed with the IO that two improper payments charged to a client ledger for "Troy Lake UK (Cyprus) Ltd" represented a cash shortage and that the two payments made on 18<sup>th</sup> and 19<sup>th</sup> September 2007 totalling £18,189.14 should have come from the firm's office bank account. The two payments had been made to Abbey Design and Display (£4,347.50) and Home Buyers Event (£14,212.80).

Allegations (b) and (c)

7. The IO noted that the client ledger account of Troy Lake UK (Cyprus) Ltd showed on 7<sup>th</sup> March 2006 under the narrative "refund to client", a payment of £20,000 from client account. The client and office account bank statements recorded that £20,000 had been transferred into the firm's office bank account. The firm settled a Customs and Excise VAT bill for £19,210.94 on the same date. Mr Vahib had informed the IO that Troy Lake UK (Cyprus) Ltd had lent £20,000 to the firm to pay the VAT bill.
8. The IO also established that a further amount of £20,000 had been lodged on the client side of the Troy Lake UK (Cyprus) Ltd ledger on 6<sup>th</sup> June 2006 with the narrative "on account". The firm's client account bank statement recorded that that receipt of £20,000 had been received from Troy Lake UK (Cyprus) Ltd. Under the narrative "returned to Troy Lake", the ledger indicated that £20,000 had been returned to Troy Lake UK (Cyprus) Ltd on the same date. The office bank account statements showed that £20,000 had been transferred from client to office bank account on 6<sup>th</sup> June 2006.

Allegation (c)

9. In answer to a question from the IO Mr Vahib replied:

"Alkran Ibrahim [a former fee earner] told both of us [Mr Vahib and Mr Sabanci] to take independent legal advice. We didn't, it was a decision we both decided on".

No documentary evidence of this had been produced.

Allegation (d)

10. At a meeting with Mr Vahib the IO established that Troy Lake UK (Cyprus) Ltd was a company dealing with the purchase of properties in Cyprus. Mr Vahib and Mr Ali Sabanci were directors of the company.

11. There had been a lodgement on 3<sup>rd</sup> March 2006 of £150,000 recorded within the client column of the Troy Lake UK (Cyprus) Ltd client ledger with the narrative "on account". The firm's client account bank statements showed that £150,000 had been received from Troy Lake UK (Cyprus) Ltd. When Mr Vahib met with the IO he informed her that the £150,000 related to a property he was purchasing, adding that Kagan and Co Solicitors were instructed to act in the purchase. On 8<sup>th</sup> March 2006 a payment of £130,020 had been sent to Kagan and Co Solicitors. The Respondent had supplied to the SRA a board minute of Troy Lake UK (Cyprus) Ltd which recorded that the amount of £150,000 should be disbursed "at the direction and completion (sic) discretion of Hassan Vahib"

Allegations (e) and (f)

12. On 6<sup>th</sup> November 2008 Crowhorne Legal (Defence Police Station Service) obtained a default judgment against Vahib and Co for £4,764.47 which the Respondent had not discharged.
13. The SRA wrote to the Respondent on 19<sup>th</sup> December 2008 to obtain her explanation and again on 27<sup>th</sup> January 2009. The Respondent replied on 27<sup>th</sup> January, explaining the difficult circumstances in which she found herself.
14. The SRA was notified by the Respondent's professional indemnity insurance broker, Heritage Insurance Services, that she had failed to pay her insurance premium of £42,000 for the year 2008/2009. The SRA wrote to the Respondent on 14<sup>th</sup> April 2009. She did not reply.
15. Pursuant to conditions imposed on the Respondent's practising certificate on 21<sup>st</sup> January 2009 the Respondent was obliged to deliver a half yearly Accountant's Report for the six month period ended 31<sup>st</sup> January 2009 by 31<sup>st</sup> March. She did not do so. She did not respond to the SRA's letter of 12<sup>th</sup> May 2009 about this.

**The submissions of the Applicant**

16. The Respondent had acknowledged that two payments totalling £18,189.14 should have come from her office account.
17. The IO had noted that two debits to the client ledger relating to Troy Lake UK (Cyprus) Ltd had been given the narrative "refund to client" and "returned to Troy Lake". The bank statements had recorded the true nature of the payment. In each case the money had been paid to the firm and the narratives were inaccurate.
18. Where money was paid to the firm by Mr Vahib/Troy Lake UK (Cyprus) Ltd by way of a loan that amounted to a breach of the principles of conduct as the Respondent had thereby received an advance from the client in order to discharge an office liability. In such circumstances a conflict of interest existed.
19. The payment of £150,000 to the Respondent's client account with a direction that it be disbursed upon instruction was not a correct use of a solicitor's client account. There was no underlying transaction supporting the receipt of this large sum of money. This

was, in the SRA's submission, the most serious of the allegations against the Respondent.

20. In the submission of the Applicant the Respondent's failure to pay an agency instructed by her notwithstanding a County Court judgment against her had been obtained meant that she had not acted with the integrity expected of a solicitor and her behaviour was likely to diminish the trust that the public placed in the solicitor's profession and in the Respondent herself.
21. It was clear that the Respondent had not communicated with the SRA, her professional regulator, as she should have done.

### **The submissions of the Respondent**

22. The Respondent set up Vahib & Co Solicitors in 1999. Her then husband, Mr Hassan Vahib, became the practice manager as he had much relevant experience and had attended appropriate courses.
23. The Respondent had employed a bookkeeper and an external accountant. She never cut corners insofar as preparation and the running of the firm's accounts were concerned.
24. The Respondent accepted that it was her responsibility to scrutinise the accounts and regularly check what was happening, in particular with the client account. She had believed that everything was in order. She undertook the monthly reconciliations and signed them as being in order. She was very busy dealing with her own large caseload, supervising staff in client matters and maintaining cashflow by ensuring that the billing was processed as expeditiously as possible.
25. The breaches of the Solicitors Accounts Rules concerned the Respondent's former husband. He was the managing director of his own private company, Troy Lake UK (Cyprus) Ltd. Mr Vahib had instructed Vahib & Co to represent his company in various conveyancing and other business matters. The Respondent had no involvement in Troy Lake UK (Cyprus) Ltd. The Respondent had believed that Mr Vahib knew what he was doing and was fully conversant with the Solicitors Accounts Rules. She foolishly trusted him and her staff, including her bookkeeper, to ensure compliance with the Solicitors Accounts Rules. Mr Vahib had the HSBC on-line accounts facility on his lap top system so that it was very easy for him to deal with transfers on accounts without notifying either the Respondent or the bookkeeper.
26. There was no dishonesty involved in these matters. The Respondent believed that at that time Mr Vahib genuinely made an error which was unintentional and which could easily have been avoided if he had instructed Vahib & Co to withdraw the monies from the client account pertaining to Troy Lake (UK) Ltd and then to transfer the same to the Troy Lake personal account and thereafter to deal with the money whichever way he and/or his partner, Mr Sabanci, saw fit. If this had been done the firm would not have been in breach of the Solicitors Accounts Rules.
27. There had been no loss to the clients who were Mr Vahib and Mr Sabanci, the directors of Troy Lake UK (Cyprus) Ltd. Both of them had permitted the money to be used to benefit the Respondent's firm.

28. The Respondent invited the Tribunal to give due weight to the mitigating circumstances surrounding this matter. She was going through a very difficult stage in her personal life whilst at the same time suffering the pressures of work.
29. The Respondent had been devastated at finding herself facing professional disciplinary proceedings. Her integrity and reputation had always been extremely important to her on a personal as well as a professional basis. She felt ashamed to be before the Tribunal in connection with these matters, especially as she had always prided herself in being a good example to the profession. As the principal of the firm she had to take responsibility for these breaches.
30. From 9<sup>th</sup> July 2009 the firm of Vahib & Co Solicitors ceased to exist. The SRA had not received the Respondent's application for a practising certificate and as a result her practising certificate had been terminated on that day. Given the fact that she was the sole principal of the firm, the firm had to close immediately. Another solicitor had agreed to be responsible for the Vahib & Co client account and the Respondent was working to bring all matters to an orderly conclusion.
31. From 21<sup>st</sup> August 2009 the Respondent's practising certificate was reinstated but subject to stringent conditions. The Respondent had complied with the conditions and had, with the consent of the SRA, been employed by a firm as a consultant criminal solicitor. She was busy. She was remunerated on a commission basis.
32. The Respondent regretted that she had not responded to the SRA as she should have done. At that time she had many personal difficulties as well as trying to keep her business together. The firm's bank made an immediate withdrawal of the its overdraft facility of £50,000. Simultaneously the Legal Services Commission made clawbacks in relation to civil and criminal contracts, resulting in many unpaid invoices, County Court judgments and an exponential increase in creditors. Were it not for the work in progress and a continual flow of new clients, the firm would not have been financially viable. The Respondent did everything she could to keep the firm afloat and at the same time to act in the best way possible for the clients. The Respondent had not been able to foresee the spiralling downturn in her financial situation.
33. The Respondent had come to realise that her mental health had also been in question and she had come very close to a nervous breakdown.
34. A chronology of events had been prepared and the Tribunal was invited duly to note its detail.
35. The Respondent had already substantially reduced the liability to Crowhorne but as a result of her financial situation and her personal difficulties, she had not been able to settle the remaining amount despite the fact that it was always her intention to do so at the earliest opportunity.
36. Arrangements had been made by Mr Vahib for indemnity premiums to be paid on a monthly basis but this could not be acted upon owing to the lack of finances available. Mr Vahib had assured the Respondent up until April 2009 that he would provide the capital to the firm in order to pay the outstanding debts and in reliance on this the Respondent continued to run her practice. In May 2009 Mr Vahib confirmed that

further injections of money into the firm would not now be available. It was then that the Respondent concluded that she had to close down the firm.

37. The firm's liabilities, including the Crowhorne debt, were incorporated into an Individual Voluntary Arrangement agreed on 17<sup>th</sup> April 2009 under which the Respondent agreed to pay £5,000 per month to her creditors.
38. The Respondent was trying to finalise the accounts of Vahib & Co Solicitors and regretted that she had not yet complied with the condition on her practising certificate to provide six monthly Accountant's Reports. To do this the Respondent had to pay for a bookkeeper and external auditors and the accounts had to be processed through the "Millennium Accounts" systems, the firm's computer accounts package in connection with which a licence fee had to be paid. A move from the firm's former premises had created computer difficulties. The Respondent hoped to be in a position to conclude all accounting matters before the New Year.
39. The Respondent and Mr Vahib had divorced. Mr Vahib's business had collapsed. The Respondent had difficulty meeting her IVA commitment and believed that she would face bankruptcy.
40. The Respondent lived with her three young children. Her former husband paid the rent for their accommodation but made no further contribution.
41. The Tribunal was invited to give due weight to the testimonials written in support of the Respondent all of which spoke highly of her integrity and competence. Her current employers who were fully aware of her circumstances, confirmed her integrity and spoke of her hard work, diligence and devotion to clients.
42. The effect of disqualification as a solicitor would have a devastating effect not only on the Respondent but also on the day to day lives of her children. She had divorced and had the responsibility of taking care of all three children. Whilst Mr Vahib did try to assist financially, he was unable to do so on a regular basis as he currently had no source of income due to the collapse of his business. If prevented from working as a solicitor the Respondent would have to fall back on the State for benefits.
43. In all of the very unfortunate and difficult circumstances it was hoped that the Tribunal would adopt a lenient stand.

### **The Findings of the Tribunal**

44. The Tribunal found all of the allegations to have been substantiated. In allegation (e) the Tribunal found that she acted in a way that was likely to diminish the trust the public placed in her or the solicitors' profession, but the Tribunal does not find that she failed to act with integrity.
45. The Tribunal expressed some sympathy for the position in which the Respondent found herself. The Tribunal accepted that the Respondent, having faced particularly difficult financial circumstances, had, in her dealings with her creditors, sought to act in an entirely professional way in 2009.

46. The Respondent was a sole practitioner and she had placed reliance on others for compliance with the Solicitors Accounts Rules. She herself accepted that she had absolute liability for such matters but the Tribunal accepted that there was no suggestion that she personally was getting things wrong. The Tribunal accepted that when mistakes or errors came to the Respondent's attention she did put them right, indeed she had put one matter right before the IO's investigation.
47. The Tribunal formed the view that the Respondent's real problem had been that she had relied to an unwise degree upon her husband. It was the Tribunal's view that because Mr Vahib was the Respondent's husband and she trusted him, she had allowed her judgement to become clouded.
48. The Tribunal would always urge the utmost caution in the situation where a firm is run by a "husband and wife team". There was always the danger that personal and professional responsibilities and judgements might become confused leading to the type of difficulties encountered by the Respondent.
49. The Tribunal agreed with the SRA that the facts supporting allegation (d) represented a serious state of affairs. There was always a risk that the handling of client's money in this way could facilitate fraud. In so saying the Tribunal recognised that the Respondent was, in fact, well aware of the source of the money but, as previously stated, where there is a husband and wife relationship, judgement can become clouded.
50. The Tribunal noted the difficult financial circumstances in which the Respondent found herself and in particular that she had not yet started to receive commission payments from work undertaken on behalf of her employers. That was, however, a situation which should improve over time.
51. The Tribunal concluded that it would be both appropriate and proportionate to mark the Respondent's conduct with the imposition of a financial sanction and that the level of her culpability was met by a fine of £5,000.
52. The Applicant had sought the costs of and incidental to the application and enquiry and the Tribunal was informed that the Respondent had agreed to pay the Applicant's costs in the sum of £7,000. The Tribunal agreed that the Respondent should bear responsibility for the Applicant's costs and ordered her to pay them in the fixed sum agreed.

Dated this 15<sup>th</sup> day of February 2010  
On behalf of the Tribunal

N Pearson  
Chairman