

IN THE MATTER OF VINAY AMAR NATH VENEIK, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. R. B. Bamford (in the chair)
Mr. R. Nicholas
Mr. D. E. Marlow

Date of Hearing: 26th 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 by David Elwyn Barton, solicitor, of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX on 27th May 2009 that Vinay Amar Nath Veneik of 4 Woodview Close, Kingston Vale, London SW15 3RL 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 that:

1. In breach of Rule 1 of the Solicitors' Practice Rules 1990 that he compromised or impaired each and all of the following:
 - (a) his independence or his integrity;
 - (b) his duty to act in the best interests of his clients;
 - (c) his good repute and that of the solicitors' profession;

(d) his proper standard of work.

and in breach of 1 (a) of the Solicitors Code of Conduct 2007 he has failed to act with integrity. As a consequence of firstly his failure to promptly pay stamp duty and Land Registry fees, and secondly his use of client money for purposes other than those for which the money had been paid.

In relation to his misuse of client money the Respondent was also dishonest, or in the alternative grossly reckless.

2. Contrary to Rule 20.03 of the Solicitors Code of Conduct 2007 he has failed to deal with the Authority in an open, prompt and cooperative way.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street EC4M 7NS on 26th November 2009 when David Barton appeared as the Applicant and Mr Derek Banbury of Browne Jacobson LLP, 77 Gracechurch Street, London EC3V 0AS appeared for the Respondent who was also present.

The evidence before the Tribunal included the Rule 5 statement of the Applicant together with an accompanying bundle which included a Forensic Investigation Report dated 30th July 2008, the witness statement of the Respondent dated 19th November 2009 and the sworn oral evidence of the Respondent. The Tribunal also had before it the Respondent's skeleton argument dated 25th November 2009 and a chronology prepared by the Applicant.

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

The Tribunal Orders that the respondent, Vinay Amar Nath Veneik of 4 Woodview Close, Kingston Vale, London, SW15 3RL, solicitor, be Struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,134.70.

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

1. The Respondent was born in February 1963 and was admitted as a solicitor in October 1988. His name remains on the Roll of Solicitors.
2. At all material times the Respondent was carrying on practice as a partner in Berwin Leighton Paisner LLP solicitors of Adelaide House, London Bridge, London EC4R 9AJ. He joined the firm as a partner in May 2000 and resigned on 14th January 2008.
3. By his report dated 30th July 2008, Mr Davies a Senior Investigation Officer employed by the Solicitors Regulation Authority, reported on the conduct of the Respondent who was by then a former partner of the solicitors firm Berwin Leighton Paisner LLP.
4. The Respondent acted for the client L, an institutional purchaser of investment property. He failed to deal expeditiously with the payment of stamp duty and Land Registry fees in connection with eight transactions. Investigations carried out by Berwin Leighton Paisner revealed that stamp duty and Land Registry fees remained

unpaid until November 2007 in one case and January 2008 in seven cases, which was just under four years following completion of the transactions.

5. The review of the individual client ledgers revealed that funds had been lodged in client account in seven of the transactions to enable stamp duty and Land Registry fees to be paid. The money had been lodged by the client for these specific purposes in relation to individual properties.
6. A review of the ledgers for “ES” and “MK” properties revealed that the client money received to discharge stamp duty and Land Registry fees in respect of these properties had been used to pay stamp duty and penalties for other properties of the same clients. Similarly in respect of client monies held to discharge liabilities in respect of properties “O” and “N”, these monies had also been used in order to pay stamp duty and penalties on other properties of the same client.
7. In summary the improper withdrawals and misuse of client monies were:
 - (a) £23,000 on 14th January 2000;
 - (b) £51,000 on 14th January 2000;
 - (c) £29,000 on 14th January 2000;
 - (d) £175,430 on 7th April 2005;
 - (e) £168,024 on 27th March 2007;
 - (f) £111,780 on 28th August 2007.
8. The irregularities were reported to the Solicitors Regulation Authority by Berwin Leighton Paisner LLP. Berwin Leighton Paisner were unaware, at the relevant times, that the Respondent had used the monies in this manner.
9. By letter dated 18th August 2008, the Respondent was asked to provide an explanation to enable the Solicitors Regulation Authority to discharge its regulatory function in relation to the Forensic Investigation Report. No such explanation was provided notwithstanding repeated indication from his solicitors that one would be provided.

Preliminary Matter

10. The Applicant indicated that as one sum of money of £111,780 had been paid out on 22nd August 2007 the Solicitors Code of Conduct 2007 would apply to this payment. The Applicant therefore asked that allegation 1 be amended to show that the Code had been in force at this time. The Tribunal agreed that this amendment could be made.

The Submissions of the Applicant

11. The Applicant indicated that the facts of the payments in allegation 1 were not an issue. In that respect the allegation was admitted although the dishonesty element was

denied. The Applicant therefore put the allegations on the basis that they could be proved with or without dishonesty. In respect of allegation 2 this was denied.

12. The Applicant submitted that at the heart of the case was the sanctity of client money. In these circumstances monies taken from a client were held in trust by a solicitor until such time as they were used for the purposes for which they had been held. In this case money that had been paid for one purpose had been used for another purpose. A part of that other purpose was the payment of a penalty to the Inland Revenue for late payment and that penalty had to be paid as a consequence of the Respondent's mistake. Notwithstanding that this penalty should not have come from the client but should have come from the office account, there should have been frank openness with the client in a case where there had been negligence but in fact the client had not been told what had occurred and the matter had been covered up.
13. The other issue in the case was the Respondent's state of mind when the payments were made. The Applicant told the Tribunal that there were a number of comments made in the Respondent's statement which showed that he knew when the payments were made that matters would have to be rectified; but he had failed to do so over a long period of time.
14. In the case of Twinsectra Limited – v – Yardley & Others [2002] 2 AC 164, it was said by Lord Hutton that "...before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest." The Applicant referred to paragraph 36 of the judgement of the Court of Appeal in David John Bultitude – v – The Law Society [2004] EWCA Civ 1853 in which it was said that Mr Bultitude signed a cheque for £50,000 transferring his client funds to his office account without any supporting documentation and thus, it must be inferred, without knowing or caring whether his firm was entitled to be paid those funds. In the judgement of Lord Justice Kennedy "that, to my mind, satisfies both legs of the Twinsectra test, and the position is compounded by what happened thereafter. At some stage, as the Tribunal found, Mr Bultitude did become aware of the debit notes and once he saw those bogus documents, it must have been clear to him what had been done to clear the credit balances but he did nothing to backtrack." In the Applicant's submission it was the case here that the Respondent had become aware when payments had been made from the client account, according to his own evidence, that it was his intention that monies would be paid back and that this was a short term fix. However as time went by it had become a long term expediency. In the Applicant's submission this was indicative of knowledge that what he had done was wrong and that the payments were dishonest. This satisfied the objective test in Twinsectra and in the Applicant's submission the Tribunal were entitled to infer that he had knowledge to satisfy the second limb of that test.

The sworn oral evidence of the Respondent

15. The Respondent described his extremely pressured life at Berwin Leighton Paisner LLP. Everything that he had done had been to meet one and only one purpose and that was to serve the client's best interests and to get the transactions done. In hindsight he now understood his actions as being extraordinarily foolish. He had lost

everything through his actions and bitterly regretted what he had done. Whilst the Applicant had referred to the case of *Bultitude*, in that case the lawyer had been found to be uncaring as to the consequences of his actions. If there was one thing that could describe the Respondent it was as somebody who had cared first and foremost for his clients.

16. The Respondent said in evidence that he accepted he had a duty to tell the client what had occurred but that it had not been a conscious decision not to bring it to the client's attention. In each case the need to get the transaction done was his primary concern. He admitted in cross-examination that he should have made the payments from the office account but that it had been his state of mind to get the transaction completed and the penalty reduced.
17. The Respondent had always intended to deal with his outstanding problems on the property files. However as time passed then the very passage of time had become an obstacle to his telling the client what had occurred. He had known that his actions had been wrong and that a claim upon the firm's insurers would eventually need to be made; it was because of the pressures of work generally that he had not done so.
18. The year 2007 had been a particularly difficult one for him both personally and in a professional capacity and he remembered that he was not coping with the work at all well. He was aware that the firm's liability to the client was getting larger but he had not thought out in precise detail what he could do about it.
19. In re-examination the Respondent said that where the client had been late in paying stamp duty etc then any penalty would have come from the client account. In questioning from the Chair the Respondent agreed that he would have told his secretary which account the monies were to be taken from so that she could complete the documentation.

The submissions of the Respondent

20. The Respondent submitted that in considering the matter of dishonesty the test laid down in the case of *Twinsectra – v – Yardley* [2002] UKHL12 had to be applied. The allegation was put on two bases, firstly that of *Twinsectra* and/or that the Respondent had been grossly reckless. The Respondent's submitted that it was not immediately apparent how it could be reckless to use client monies and invited the Tribunal to treat the allegation of gross recklessness as a subset of that of dishonesty.
21. The transactions possessed six features that any analysis which concludes that the mere fact of a conscious breach of trust necessarily entails dishonesty would ignore:-
 - (a) the Respondent's overriding aim was expeditiously to conclude long outstanding matters;
 - (b) the transactions to which the Respondent redirected L's funds were other transactions for the same client;

- (c) the primary purpose to which the client's funds were put was to discharge a liability which the client would always have had to discharge. To that extent the client's money was used to meet the client's objectives;
 - (d) whilst the client's funds in part discharged penalties and interest which would have been borne by the firm or their insurers, the Respondent's consistent and prevailing intention was to effect reimbursement without loss to the client;
 - (e) the Respondent had no intention of causing his client financial disadvantage, it was at all times his intention that his firm and not his client should bear the cost of any penalties and interest payable. In the event his client is better off than they would otherwise be;
 - (f) the Respondent derived no personal gain from his actions.
22. The Tribunal may well think that what was at the heart of this matter would be a failure to alert colleagues and the client that stamp duty had not been paid on one of the properties and the matter had then snowballed. He should have disclosed the problem at that stage. However, this was not the basis on which the Applicant had put his case. He could have said "that he dishonestly failed to disclose" or that he "dishonestly committed specific breaches of the Accounts Rules" but the Rule 5 statement had been put on the basis that the Respondent had been using client monies other than as authorised and had therefore been dishonest. The timeline started when the Respondent or others neglected to pay the stamp duty on the first case. At that point the behaviour was merely negligent. At the point that the Respondent made the payments the practical effect was that the client's exposure to further penalties had ceased and it had enabled the transaction to proceed. The Respondent was not suggesting that this was correct but that it was grossly negligent and not dishonest. It was strongly arguable that this method of resolving matters had been in pursuance of the client's interests.
23. The Tribunal were urged to take great care in looking at paragraph 36 of the Bultitude case to which they had been referred by the Applicant. Any enquiries into dishonesty or dishonest actions were very fact sensitive and there was a contrast between what had happened in Bultitude and this case. In that case Mr Bultitude had not been entitled to the monies and was taking them for his own benefit which was certainly not the case here.
24. The Applicant's cross-examination of the Respondent had stressed that monies for the payment of penalties in this case should never have been taken from client account. However this was in the Respondent's submission too simplistic. If the solicitor fails to make a payment and the client incurs a liability, then in the normal course of events the client would pay the loss, formulate a claim against the firm and the firm would ultimately pay that claim through its insurers. To say that the penalty should have come from office account and came from client account instead did not allow the Applicant to draw the conclusion that the Respondent's conduct was dishonest.
25. In so far as allegation 2 was concerned the Respondent would only have been able to give a full account of what had happened following a forensic analysis of the files. During the arbitration proceedings access to the files had only been permitted within

certain timescales in those proceedings and there came a point where it was difficult for any work to be done on the files. It was submitted on behalf of the Respondent that whether he had been prompt was entirely a matter of fact and openness and non-cooperation required an element of intent. It was submitted that the Respondent had been rational, modest and reasonable in his explanation to the SRA.

26. The Respondent expressed great contrition for his actions and apologised to the Tribunal.

The Tribunals findings and its reasons

27. The Tribunal did not find allegation 2 to have been proven. This allegation was one that the Respondent had been neither prompt nor open nor cooperative. Whilst the Respondent had clearly not been prompt on the facts there had been no intention on his part to not be open or to be uncooperative. The Tribunal had looked at the chain of correspondence between the Respondent or his solicitors and the SRA and found it to have been within reasonable timescales given the circumstances and the arbitration proceedings.
28. In so far as allegation 1 was concerned, this had been accepted by the Respondent save for the allegation of dishonesty. The Tribunal found the allegation of dishonesty to have been proven. The Tribunal found that in using the client's monies given for one purpose for another purpose and in particular using some of those monies to pay penalties incurred by the Respondent's and/or others' negligence, without informing the client or his partners as to the true situation, the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having considered most carefully the documentation before it and having heard and seen the Respondent give evidence and heard his explanation for his actions the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he could use client monies in such a way and therefore that he knew that what he was doing was dishonest by those same standards. In particular, after a certain period of time had elapsed, there would have been disadvantages to him in reporting the facts which had actually occurred to either the client or to his partners, in terms of clients pursued relationships and the possible loss of any potential bonus.

Mitigation of the Respondent

29. The Respondent wished to reiterate his sincere apologies to both the Tribunal and to the Profession as a whole. What had occurred had also had severe personal consequences for the Respondent. He no longer had a practising certificate and had been employed by a former client with full knowledge of his circumstances. The arbitration proceedings taken against him had resulted in the exhaustion of all of his personal funds.
30. Whilst it was appreciated that where dishonesty had been proved a striking off order would have to be actively considered it was submitted on the Respondent's behalf that he remained proud of being a solicitor. A striking off order would be yet another devastating blow to him. Although it was unlikely that he would practise as a solicitor for the foreseeable future he could volunteer certain undertakings not to apply for a practising certificate for five years and not without the prior written

consent of the Solicitors Regulation Authority to be employed as a solicitor for five years.

The Order and observations of the Tribunal

31. The Tribunal had listened very carefully to what the Respondent's representative had said in mitigation. However they had taken into account the lines of authority emanating from the Court of Appeal and in particular the case of Salsbury – v – The Law Society [2009] 2 OER487, in deciding whether this was an appropriate case for striking-off of the Respondent. In that case the leading authority of Bolton – v – The Law Society [1994] 2 ER486 was considered at some length. In the case of Bolton the Master of the Rolls stated the guiding principles as follows;

“it is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness.... any solicitor who has shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal had almost invariably, no matter how strong the mitigation advance for the solicitor, Order that he be struck off the Roll of Solicitors.....

It is important that there should be full understanding of the reasons why the Tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who had fallen below the standards required of his profession in order to punish him for what he has done and to deter any solicitor tempted to behave in the same way. Those are traditional objects of punishment. Often the order is not punitive in intention....in most cases the Order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence.....The second purpose is the most fundamental of all; to maintain the reputation of the Solicitors Profession as one in which every member, of whatever standing may be trusted to the ends of the earth.”

32. The Tribunal would in this case, where dishonesty had been proven, take the ultimate step of striking off the Respondent. However it was important that their observations in so doing were noted. The Tribunal considered that the level of dishonesty in this case was at the lower end of the scale. The Respondent's clients had neither lost money nor were they ever at risk of losing money. It was the profession as a whole that had had its reputation sullied.
33. The Tribunal noted that costs had been agreed in the sum of £8,134.70.

33. The Tribunal Ordered that the respondent, Vinay Amar Nath Veneik of 4 Woodview Close, Kingston Vale, London, SW15 3RL, 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 £8,134.70.

Dated this 3rd day of March 2010

On behalf of the Tribunal

Mr. R. B. Bamford
Chairman