

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF REBECCA MUNACHI AJIBO, (The Respondent)

Upon the application of David Barton
on behalf of the Solicitors Regulation Authority

Mr A G Gibson (in the chair)
Mr R Nicholas
Mr P Wyatt

Date of Hearing: 25th June 2010

FINDINGS & DECISION

Appearances

David Elwyn Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Applicant.

The Respondent appeared in person.

The application was dated 4th January 2010.

Allegations

The allegations against the Respondent were:-

1. In breach of Rule 10.05 of the Solicitors Code of Conduct 2007 she failed to fulfil the following undertakings given to Gepp and Sons Solicitors on 1st October 2008.
 - (i) to hold £23,000 to their order;
 - (ii) to send it to Gepp and Sons when called upon to do so;

- (iii) to send to Gepp and Sons the purchaser's part of the contract of sale in accordance with the requirements of Law Society Formula B for exchange of contracts by telephone.
- 2. In breach of Rule 20.05 of the said Code she failed to deal with the Authority in an open, prompt and cooperative way. The particulars are that she failed to comply with a direction made by the Authority under Section 44B of the Solicitors Act 1974 (as amended), and failed to reply to correspondence from the Authority;
- 3. In breach of Rule 1(a) of the Solicitors Code of Conduct 2007 she failed to act with integrity, having continued to hold herself out as practising as a solicitor after 30th September 2008 when her practice closed.

Allegation 1 was admitted by the Respondent: allegations 2 and 3 were denied.

Factual Background

- 1. The Respondent, born in 1966, was admitted as a Solicitor on 15th December 2003. Her name remained on the Roll of Solicitors although she was not currently practising.
- 2. At all material times the Respondent carried on practice under the style of Linbrook Solicitors of 59A High Street Wanstead, London E11 2AE.

Allegation 1

- 3. In September and October 2008 the Respondent acted for a client, JUO, in connection with the purchase of a property. Gepp and Sons Solicitors acted for the seller.
- 4. On 1st October 2008 the Respondent exchanged contracts with Gepp and Sons with completion fixed for 2nd October. The Respondent undertook that the deposit of £23,000 should be held by her to the order of Gepp & Sons to be paid on completion with the balance of the purchase monies.
- 5. Exchange took place in accordance with the Law Society's Formula B for exchange of contracts by telephone. By that formula the Respondent undertook that she would that day send by first class post or document exchange her signed part of the contract together with a banker's draft or client account cheque for the deposit. The undertaking in respect of the deposit was effectively varied by the provision of an undertaking to hold it to order.
- 6. On 1st October 2008 (after exchange of contracts) the Respondent telephoned Gepp and Sons to inform them that as a consequence of her firm's removal from the lender panel of Birmingham Midshires, she could not receive the purchaser's mortgage advance. The client had been advised to instruct another firm of solicitors.
- 7. Gepp and Sons called upon the Respondent to send them the said deposit, together also with the purchaser's part of the contract. She failed to do so and a complaint was made as a consequence.

8. Civil proceedings were instituted by the seller. In her statement dated 21st November 2008 the Respondent confirmed that she sent the deposit money to her client's new solicitor, and after its return, to her client.

Allegation 2

9. By letter dated 15th December 2008 the Respondent was asked for a copy of her client ledger together with the telephone attendance notes and correspondence referred to on the first page of the letter. Notwithstanding further correspondence, the Respondent failed to provide these documents.

Allegation 3

10. The Respondent notified the Authority that her firm was closed with effect from 30th September 2008. Notwithstanding the closure of the firm, she continued to act in connection with the said civil proceedings.

The Tribunal reviewed all the documents submitted by the Applicant which included:-

- Rule 5 Statement together with all exhibits.

The Tribunal reviewed all the documents submitted by the Respondent which included:-

- Witness Statement of Rebecca Ajibo dated 25th June 2010.

Witnesses

No witnesses gave oral evidence.

Findings as to fact and law

11. The Tribunal had listened carefully to the submissions of both parties and had considered all the documents in detail.
12. Dealing firstly with allegation 1, the Tribunal found this allegation was substantiated, indeed it was admitted by the Respondent.
13. In relation to allegation 2, the Respondent had submitted she did reply to the Authority on 25th February 2008 enclosing the file as requested and the Authority had acknowledged receipt of her letter on 27th March 2009. The Authority had requested further information and the Respondent had tried to deal with these in her letter of 7th April 2009. The Respondent had accepted she did not send the file to the SRA immediately as she needed to copy the file but could not afford to do so. There had been a number of telephone conversations with the SRA regarding documents they were trying to locate on the file and the Respondent had tried to assist where possible.
14. The Tribunal noted that the initial request from the Authority had been sent on 15th December 2008 and the Respondent had not replied until 25th February 2008. Accordingly, the Tribunal was satisfied that she had not replied promptly and therefore found allegation 2 was substantiated.

15. In relation to allegation 3, the Applicant's case was that the Respondent had sent two letters, both dated 21st November 2008, to Gepp and Sons Solicitors on Linbrook Solicitors letterhead. Both letters stated "this firm is no longer trading" but effectively placed Linbrook Solicitors on the record at a time when that firm had closed down. Furthermore, the Applicant submitted the Respondent had signed court documents in the litigation relating to JUO as a partner of Linbrook Solicitors. The defence documents sent to the Court contained the address of Linbrook Solicitors and that defence had been dated 21st November 2008.
16. The Respondent submitted she had been tidying things up and was desperately trying to finalise the transaction relating to the client JUO. This was the only matter she had dealt with. She had hoped to complete it by the end of September but the mortgage situation kept changing. Gepp and Sons Solicitors had continued telephoning the Respondent's office even though she had asked them not to and eventually the Respondent had had to disconnect the telephone at the office to prevent them calling. She did not have any other clients and had already transferred client matters elsewhere because she knew the office was due to close.
17. The Tribunal was mindful that the Respondent had continued to have a practising certificate after 30th September 2008 and even though her practice had closed, she was entitled to hold herself out as practising as a solicitor. The Tribunal did not find the Respondent had failed to act with integrity and accordingly did not find allegation 3 substantiated.

Mitigation

18. The Respondent explained the background to the case which had caused her to appear before the Tribunal. She had acted for JUO and on the day contracts were exchanged she had received funds from the lender which were in her client account. As soon as the funds came into client account she telephoned the seller's solicitors confirming completion could take place, however, the seller was not ready so they agreed to exchange contracts and complete the following day. A few minutes after exchanging contracts, the Respondent received a telephone call from the lender advising her she could not use the funds and the funds had to be returned to the lender immediately due to a problem with the client. Whilst the Respondent had been informed that her firm was removed from the lender's panel, the two incidents were completely separate and the lender had confirmed they had not been related.
19. The funds from the client for the deposit had been paid into the Respondent's client account on the morning of exchange less than 24 hours before completion. The client had been told by her broker that the mortgage monies were withdrawn by the lender because the client had not provided original tax reference documents. The client tried to sort the problem out and the Respondent had explained to the client that she would lose her deposit if completion did not take place on 2nd October 2008.
20. The Respondent had telephoned the seller's solicitors to inform them immediately of the situation and they required the deposit to be paid to them straightaway. The Respondent was under pressure from the solicitors on the other side and from her own client, all demanding the deposit monies. The client informed the Respondent that if

the client instructed another firm of solicitors, the lender may authorise completion and she asked the Respondent to send all the papers and funds to her new solicitors. The Respondent had been under intense pressure with the client screaming at her, the new solicitors requesting the deposit and the seller's solicitors screaming at her for the deposit. The client refused to authorise the release of the money unless completion was confirmed by the lender. The Respondent sent the file and the deposit to the client's new solicitors.

21. The Respondent telephoned the new solicitors daily to check if completion had taken place but eventually was informed that the lender had withdrawn the mortgage offer due to the client's circumstances. As the offer was withdrawn, the client's new solicitors would not return the deposit to her. The Respondent had the seller's solicitors screaming at her for sending the deposit to the new solicitors and she did not know what to do. The client was demanding her money back from the new solicitors and refused to leave their office without the money. She refused to authorise the money being sent to the seller's solicitors. The new solicitors informed the Respondent that they had not given the undertaking to the seller's solicitors and therefore would return the money to the Respondent as the Respondent had given the undertaking. They returned the papers and the funds to the Respondent whereupon the client came to the Respondent's office and absolutely refused to leave without her money.
22. The Respondent telephoned the seller's solicitors to inform them of the position and asked them what would be the worst thing that could happen if the deposit was not paid to them. They informed the Respondent that they would take action for breach of undertaking. The Respondent telephoned the solicitors' advice help line at the Law Society who informed her that as she had given the undertaking she needed to comply.
23. The Respondent was under immense pressure from the client and eventually returned the money to the client.
24. The Respondent provided the Tribunal with details of her personal background and her earnings. She was currently working as a care assistant although she wished to return to the law. Conditions had been placed on her practising certificate and as a result of this she was finding it difficult to find employment within the law.

Costs application

25. The Applicant requested an order for his costs which had been agreed with the Respondent in the sum of £1,457.00.

Previous Disciplinary Sanctions before the Tribunal

26. The Respondent had appeared before the Tribunal previously on 12th February 2009.

Sanction and Reasons

27. The Tribunal had listened carefully to the submissions of both parties and had considered all the documents. Two allegations had been proved against the

Respondent and whilst the Tribunal had every sympathy for the position she had found herself in, the Tribunal was also concerned to note that this was the Respondent's second appearance before the Tribunal. The Respondent had appeared before the Tribunal in February 2009 and on that occasion there had also been a failure to comply with an undertaking.

28. The Tribunal stressed that previous appearances before the Tribunal would always make a Respondent's position more difficult and whilst the Tribunal accepted the Respondent had done her best, and had every sympathy for her position, it could not ignore her previous appearance and in any event had no power to remove the conditions on her practising certificate.
29. There had been breaches of the Solicitors Code of Conduct. It was fundamental that solicitors should be able to rely on an undertaking given by another solicitor. The Respondent's failure to honour that undertaking had damaged the reputation of the profession and accordingly the Tribunal, taking into account the previous appearance and all the circumstances of the case, ordered the Respondent be fined £3,000.00.

Decision as to costs

30. The Tribunal ordered the Respondent do pay the Applicant's costs as agreed in the sum of £1,457.00.

Order

31. The Tribunal Ordered that the Respondent, REBECCA MUNACHI AJIBO of 193 Great Northern Road, Aberdeen, AB24 2AB, solicitor, do pay a fine of £3,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,457.00.

Dated this 7th day of October 2010
On behalf of the Tribunal

A G Gibson
Chairman