

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF NADEEM AKHTAR, (The Respondent)

Upon the application of Mohammad Afzal
on behalf of the Solicitors Regulation Authority

Mrs K Todner (in the chair)
Mr K W Duncan
Mr S Howe

Date of Hearing: 13th September 2010

FINDINGS & DECISION

Appearances

Mohammed Afzal, Solicitor, of HMA Law, 5 Tenby Street, Birmingham B1 3EL was the Applicant.

The Respondent, who was present, was represented by Alexandra Felix of Counsel instructed by Shorof Uddin of Richard Nelson Solicitors.

The application to the Tribunal, on behalf of the SRA, was made on 28th January 2010.

Allegations

The allegations against the Respondent were that he had in breach of the Solicitors' Accounts Rules 1998 (SAR) Rule 1 of the Solicitors' Practice Rules 1990 (the Rules) and the Solicitors' Code of Conduct 2007 (the Code) :-

1. Failed to promptly remedy a shortfall in client account, in breach of Rule 7 of SAR.
2. Failed to act with integrity, contrary to Rule 1.02 of the Code, and in the best interests of each client, contrary to Rule 1.04, 1.05 and 1.06 of the Code, by failing to report material facts to his lender client. Or in the alternative, contrary to Rule 1.01 of the Rules (basic principles), he had compromised:

- (a) his independence or integrity;
 - (b) his duty to act in the best interests of his client;
 - (c) the good repute of the solicitor, or of the solicitors profession;
 - (d) the solicitor's proper standard of work.
3. [Allegation withdrawn]
4. Failed to report to the lender that he would not have control over the payment of all the purchase monies, contrary to Rules 1.02, 1.04, 1.05 and 1.06 of the Code. Or in the alternative, contrary to Rule 1.01 of the Rules (basic principles), he had compromised:
- (a) his independence or integrity;
 - (b) his duty to act in the best interests of his client;
 - (c) the good repute of the solicitor, or of the solicitors profession;
 - (d) the solicitor's proper standard of work;
- by failing to disclose that he would not have control of all the purchase monies, to his lender clients.
5. Acted in conveyancing transactions, for both the buyer and the lender, where there had existed a conflict of interest, or the potential for a conflict of interest, pursuant to Rule 3.01 of the Code. Or in the alternative, contrary to Practice Rule 6 (3) of the Rules, where there had been a conflict of interest between the buyer and the lender.
6. [Allegation withdrawn]
7. [Allegation withdrawn]

Preliminary Matter

The Applicant sought the permission of the Tribunal to withdraw allegations six and seven because evidence had been provided by the Respondent to show that identification evidence had been obtained. He also sought to withdraw allegation three as it overlapped with allegations two and four.

The Tribunal allowed the three allegations to be withdrawn.

Factual Background

1. The Respondent, born in 1972, was admitted to the Roll of Solicitors on 15th March 1999. His name remains on the Roll.

2. The Respondent was, at the material time and continues to be, a director of Tavistock Law Limited based at Painters Hall Chambers, 8, Little Trinity Lane, London, EC4V 2AN.

Solicitors' Accounts Rules

3. In the Respondent's client account, there had been a shortfall of £7,042.45, from 12th June 2008, following the Respondent acting on the purchase of a property for a Miss P. This had not been rectified until 14th August 2008, by a transfer from the firm's office account. Under Rule 7 of the SAR, the Respondent had been under a duty to remedy the breach promptly upon its discovery in the middle of July 2008.

S Development

4. The Respondent had acted on the purchase of leasehold properties at the S Development ("S") and also the B Grove Development ("B Grove"). A common feature of both the S and B Grove transactions was that the Respondent had acted for both the buyer and the lender on the purchase of leasehold properties on those new build developments of flats, which were to have been secured by a first legal charge and bought on a buy-to-let basis. Completion was to have taken place in June 2007 on S, and in October 2007, on B Grove. A number of buyers had bought properties in both developments.
5. The lender on all S transactions had been Wave Lending Limited ("Wave") and mortgages, based on the purchase price, had been advanced to the respective purchasers. It was to be noted that the mortgage offers on the S properties had been made on the basis that the mortgage would not exceed 90% of the purchase price or value price, whichever being the lower, of the specific property in question. The mortgage advances on a number of the properties had exceeded 90% of the lowest of the aforementioned prices. The Respondent had been under an obligation to report those matters to the lender, namely Wave, but had failed to do that, in breach of his obligations. There had been a number of different lenders on the B Grove transactions.
6. In the mortgage offers provided by Wave on the S transactions, Wave had stated:

"Builders Deposit. We are aware the builder is providing part of the deposit. Your solicitors must tell us if you are providing less than 5% of the purchase price from your funds."
7. The Respondent had acted for Mrs M and Mrs D on the purchase of Apartment 117 at S, for the price of £229,950. That was the price stated on the office copies and the stamp duty had been paid on that figure. The mortgage advance had been £206,995 and, on completion, the buyers had received a rebate of £22,417.93. There had been a direct deposit paid of £34,492.50, which represented 15% of the purported price. The buyer had also paid the seller's costs of £636.11.
8. The Respondent had acted for Mr J and Mrs DB on the purchase of Apartment 101 at S for the price of £229,500. That was the price stated on the office copies and the stamp duty had been paid on that figure. The mortgage advance had been £206,995

and, on completion, the buyers had received a rebate of £21,716.68. There had been a direct deposit paid of £34,425, which represented 15% of the purported price. The buyer had also paid the seller's costs of £636.11.

9. The Respondent had acted for Mr G on the purchase of Apartment 102 at S for the price of £229,000. That was the price stated on the office copies and the stamp duty had been paid on that figure. The mortgage advance had been £206,100 and, on completion, the buyers had received a cash bonus of £21,722.19. There had been a direct deposit of £34,350, which represented 15% of the purported price. The buyer had also paid the seller's costs of £636.11.
10. The Respondent had acted for Mrs MB and Mrs M on the purchase of Apartment 92 at S for the price of £227,000. That was the price stated on the office copies and the stamp duty had been paid on that figure. The mortgage advance had been £204,300 and, on completion, the buyers had received a rebate of £21,542.33. There had been a direct deposit of £34,050, which represented 15% of the purported price. The buyer had also paid the seller's costs of £636.11.
11. The Respondents had acted for Mr & Mrs A on the purchase of Apartment 91 at S for the price of £227,500. That was the price stated on the office copies and the stamp duty had been paid on that figure. The mortgage advance had been £204,750 and, on completion, the buyers had received a rebate of £21,623.71. There had been a direct deposit paid of £34,125, which represented 15% of the purported price. The buyer had also paid the seller's costs of £636.11.
12. The Respondent had acted for Mr F on the purchase of Apartment 112 at S, for the price of £231,000. That was the price stated on the office copies and the stamp duty had been paid on that figure. The mortgage advance had been £207,900 and, on completion, the buyer had received a rebate of £21,937.18. There had been a direct deposit paid of £34,650, which represented 15% of the purported price. The buyer had also paid the seller's costs of £636.11.
13. The Respondent had acted for Mr and Mrs L on the purchase of Apartment 111 at S, for the price of £231,500. That was the price stated on the office copies and stamp duty had been paid on that figure. The mortgage advance had been £208,350 and, on completion, the buyers had received a rebate of £21,914.67. There had been a direct deposit paid of £32,692.50, which represented 15% of the purported price. The buyer had also paid the seller's costs of £636.11.
14. The Remainder of the S transactions had had a similar pattern.
15. On all of those transactions, the Respondent had failed to report to Wave that there had been a gifted deposit being provided by the developer, a rebate being provided to the borrower on completion and the payment of the seller's costs.
16. There were telephone attendance notes on the file. The Respondent said that he had telephoned the lenders and had reported on the direct deposit being paid by the developer.

B Grove

17. The Respondent had acted for the buyers and the lenders on the purchase of twelve properties at B Grove, which had borne similar characteristics to the S properties. The purchase price had been reduced by the existence of direct deposits and/or allowances from the developer, CN Limited. Some of the buyers on the S properties had also featured on the B Grove purchases. Completion had taken place on the transactions in October 2007.
18. The Respondent had acted for a Mrs J on the purchase of Apartment 114 at B Grove for £324,950. The mortgage advance had been £302,173 and there had been a gifted deposit of £23,272.73, in addition to a deposit of £14,110. The buyer had received a rebate of £4,668.52.
19. The Respondent had acted for a Mr and Mrs P on the purchase of Apartment 110 at B Grove for £284,950. The mortgage advance had been £256,455 and there had been a gifted deposit of £19,947, in addition to a deposit of £12,250 that had been on exchange.
20. The Respondent had acted for a Mr and Mrs T on the purchase of Apartment 118 at B Grove, for £289,950. The mortgage advance had been £271,125 and there had been a gifted deposit of £28,995, in addition to a deposit of £12,048 paid on exchange. The buyer had received a rebate of £13,900.33 on completion.
21. The Respondent had acted for a Mr and Mrs L on the purchase of Apartment 92 at B Grove, for £279,950. The mortgage advance had been £246,419.75 and there had been a gifted deposit of £19,956.50, in addition to a deposit of £12,018 paid on exchange.
22. The Respondent had acted for a Mr and Mrs D on the purchase of Apartment 91 at B Grove, for £279,950. The mortgage advance had been £261,525 and there had been a gifted deposit of £19,980.56, in addition to a deposit of £12,018 paid on exchange.
23. The remainder of the B Grove transactions had a similar pattern.

Submissions by the Applicant

24. The Applicant explained that allegations two, four and five had been pleaded in the alternative as the Solicitors' Code of Conduct 2007 had come into force in July 2007 and some of the material transactions had been completed prior to that date. He stressed that there were no allegations of dishonesty against the Respondent and confirmed that the SRA accepted the fact of the attendance notes.
25. The Applicant informed the Tribunal that allegation one had been admitted.
26. In relation to the purchases of leasehold properties at the S, the Applicant submitted that the Respondent had failed to report to his lender client (Wave) that there had been gifted deposits provided by the developer, rebates from the developer to the purchasers/borrowers and the payment of the seller's costs. He submitted that the

incentives and allowances could have been intended to conceal a price reduction and as such the Respondent had been under a duty to report those matters to the lender. Moreover, incentives and allowances could be hallmarks of mortgage fraud.

27. In addition, the Applicant submitted that the Respondent had failed to report to his lender client not only the existence of substantial rebates but also that he would not have full control of the purchase price of the property. In failing to make such reports in writing, the Applicant submitted that there had been a conflict of interest between the Respondent's purchaser clients and his lender client.
28. While the Applicant accepted that there had been some telephone attendance notes on the file, he submitted that it had not been clear from those notes to who the Respondent had spoken and in any event, he submitted that the Respondent had been under a duty to report material matters to the lender client in writing.
29. In relation to the purchases of properties at B. Grove, the Applicant submitted that there had been similar issues as in the S transactions. Again he submitted that the Respondent had failed to report to the lender clients the details of the unusual features of the purchases in writing leading in addition to a conflict of interest.
30. The Applicant submitted that the Respondent had not reported that in all the cases the mortgage advance had exceeded the amount of the purchase monies going through his firm's client account and the existence of direct deposits. Moreover, he said that the Respondent had failed to advise his lender client when purchasers had received rebates following completion.
31. The Applicant submitted that it was essential that solicitors heed the Green Card warnings because a failure to do so could result in substantial financial claims and damage to the reputation of the Profession. He stressed that in situations where deposits had been paid direct, there was no evidence that money had in fact changed hands and that both direct and gifted deposits could be used to inflate both the purchase price and the mortgage.
32. In addition, the Applicant submitted that the Respondent had also been under a duty to report unusual features to a lender client as for example when borrowers bought second or more properties.

Submissions on behalf of the Respondent

33. Counsel for the Respondent submitted that in relation to the remaining three contested allegations, the Respondent had no case to answer.
34. Turning to the issues of the basis of the mortgage offers on the S properties and the requirement of the notification of deposits by purchasers of less than 5% of the purchase price, Counsel submitted that on an examination of the figures on the individual cases, it was clear that neither issue had arisen. That was because regardless of incentives, the purchase price had been the relevant price as stated both in the contract and on the office copies for the purposes of Stamp Duty. Moreover, Counsel submitted that deposits had been part of the purchase price whereas rebates had only been paid after completion and therefore after the payment of the purchase

price. As such those rebates had not been available to the purchasers when the reservation deposits of more than 5% had been paid.

35. In relation to allegation 2; failing to report material facts to the lender client, Counsel submitted that it was not clear in each individual case which material facts had not been reported by the Respondent. However, in relation to the reporting of incentives, Counsel noted that while acknowledging that such reporting should have been in writing, it had been accepted by the Applicant that such had in fact been done, albeit by telephone.
36. Counsel noted that allegation 2 did not refer to failing to report material facts “in writing” and that the Applicant had accepted that lender clients had been notified by telephone.
37. As to the reporting of the payment of legal costs and rebates, Counsel submitted that there was no evidence before the Tribunal that such had been unusual features. She submitted that such payments had in fact been perfectly normal features of incentive packages.
38. In relation to allegation 4; failing to report that he would not have control over the payment of all purchase monies, again Counsel submitted that the allegation was unclear, particularly as incentives such as gifted deposits would of course always be in the hands of the seller. However, the Respondent had been in control of the balance of the purchase monies payable at completion and incentives had been reported by telephone.
39. In relation to allegation 5; acting in conveyancing transactions, for both the buyer and the lender, where there had existed a conflict of interest or the potential for a conflict of interest, Counsel noted that such an allegation would prohibit all solicitors acting for both purchasers and lenders in all transactions involving incentives. She submitted that however solicitors can act in such circumstances when, as in the matters before the Tribunal, all incentives had been notified to the lender, albeit by telephone. Counsel submitted that it would only be in cases where a purchaser did not agree to such notification that a situation of conflict would arise.
40. Counsel reminded the Tribunal that allegation 2; acting in relation to transactions that bore the hallmarks of mortgage fraud, had been withdrawn. She noted the references to mortgage fraud in the Rule 5 Statement but submitted that incentives, which had not been at all unusual in commercial transactions, had been reported by the Respondent.

The Tribunal’s Findings as to Fact and Law

41. Having considered all the evidence and the submissions from the Applicant and on behalf of the Respondent, the Tribunal found allegation 1 both admitted and proved but did not find the remaining three contested allegations proved to the higher standard.
42. The Tribunal noted that in the absence of oral evidence from the Forensic Investigation Officer, who had examined the relevant files and, in particular, the

telephone attendance notes, it had been difficult for the Tribunal to assess the effectiveness of the reporting of material facts.

43. However, the Tribunal was concerned to stress that such reporting, on the basis both of the requirements of the CML Handbook and of good practice, should have been in writing.
44. The Tribunal noted that there had been some direct deposits but it appeared that the matters in which such deposits had been paid had been taken over from previous solicitors. The Tribunal stressed that it was for the Applicant to prove the allegations to the higher standard, which, on the basis of the evidence available to the Tribunal and on the actual wording of, in particular, allegation 2, the Tribunal was satisfied that he had failed to do.

Mitigation

45. Counsel explained that the shortfall relating to allegation 1, which took place on 12th June 2008, had not been identified until the firm's book-keeper had returned from holiday at the end of July 2008. At that point the firm had tried to recover the money but having been unsuccessful, had replaced the sum of £7,042.45 on 14th August 2008. Counsel was instructed that the firm was now completing reconciliations on a daily basis.
46. Counsel gave the Tribunal details of the Respondent's professional history and referred to a previous appearance before the Tribunal. She stressed that the Respondent had co-operated fully with the SRA and submitted that the seriousness of the allegation proved against him was at the lower end of the scale.

Application for Costs

47. Referring to his estimate of costs, the Applicant sought an Order for costs in the sum of £15,338.20. He submitted that the case had involved serious allegations and that costs had been properly incurred.
48. The Applicant explained that it had been necessary to examine the original files under a Section 44B Notice and that statements from the mortgage broker that had led to the withdrawal of allegations 6 and 7, had only been received a week before the substantive hearing.
49. Counsel referred to various items on the estimate that appeared to involve some duplicate work. She explained that the two money-laundering allegations had not been raised by the Forensic Investigation Officer during his visit and reminded the Tribunal that the three contested allegations had not been proved.

Previous appearances before the Tribunal

50. The Respondent had previously been before the Tribunal on 8th October 2007.

Sanction and Reasons

51. Having fully considered the details of the allegation as proved and the mitigating circumstances, the Tribunal considered that a financial penalty of £2,500.00 was appropriate and it so Ordered.

Decision as to Costs

52. The Tribunal assessed the costs and ordered that the Respondent pay costs fixed in the sum of £3,000.00.
53. The Tribunal Ordered that the respondent, NADEEM AKHTAR of c/o Tavistock Law Limited, Painters Hall Chambers, 8 Little Trinity Lane, London, EC4V 2AN, solicitor, do pay a fine of £2,500, 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 £3,000.

Dated this 19th day of October 2010

On behalf of the Tribunal

K Todner
Chairman