

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JOHN CHARLES TRACY KELLY, solicitor (The Respondent)

Upon the application of Peter Steel
on behalf of the Solicitors Regulation Authority

Mr R B Bamford (in the chair)
Mrs K Thompson
Mr D Gilbertson

Date of Hearing: 30th September 2010

FINDINGS & DECISION

Appearances

Peter Steel, solicitor and partner of Capsticks, 1 St George's Road, Wimbledon, London, SW19 4DR appeared for the Solicitors Regulation Authority ("SRA").

The Respondent was present and represented himself.

Also present was Ms Sarah Ferdinand, the Respondent's partner in the firm of Ferdinand Kelly Solicitors.

The application was dated 4th March 2010.

Allegations

The allegations against the Respondent were that:

- (a) he received cash amounting to £4,190 from a client on account of his costs but failed to account for this money or pay it into his firm's client account immediately in breach of Rules 15 and 19 of the Solicitors Accounts Rules 1998 ("SAR 1998"); and

- (b) he failed to ensure the safekeeping of assets entrusted to the firm in breach of Rule 5.01(g) of the Solicitors Code of Conduct 2007 ("SCC").

There was no allegation of dishonesty.

Factual background

1. The Respondent, born in 1951, was admitted as a solicitor in 1996. His name remained on the Roll of Solicitors and he holds a current practising certificate.
2. At all material times the Respondent was a partner in the firm of Ferdinand Kelly of West Wing, Yew House, Freasley, Tamworth, Staffs, B78 2EY.
3. On 3rd January 2008 the Legal Complaints Service received a complaint about the Respondent from a former client, Mr G. In due course that complaint was settled upon payment by the firm of Ferdinand Kelly to Mr G in the sum of £1,000. Nevertheless, the SRA began an investigation as the matters raised in the complaint caused concern and the investigation began on 23rd June 2009 and was conducted by way of correspondence with the Respondent's business partner, as the Respondent himself did not respond.
4. Between approximately 27th August 2005 and early 2008, the Respondent had acted for Mr G in a litigation matter. He had asked for and received cash totalling £4,190, inclusive of VAT, during that period. That sum had not been paid into client account. Bills were not delivered to the client until the complaint referred to above had been made to the SRA. The sum of £4,190 had not been posted into client account until 7th February 2008, by way of a transfer from the Respondent's capital account. On 16th October 2008 a bill for the total £4,190 was posted. In the SRA's submission, the Applicant was in breach of Rules 15 and 19 of SAR and Rule 5.01(g) of SCC.
5. The Respondent had received the cash total in £4,190 from the Respondent over a number of dates. On each occasion he had given a receipt by way of a handwritten note on a business card. The Respondent carried out an amount of work for his client such that at any given time he may have been justified in rendering bills to the client for an amount equal to or greater than the cash sums received.

The submissions of the Respondent

6. No admissions had been made by the Respondent to date in respect of the allegations.
7. The Respondent requested that the Tribunal should rule on two issues. He accepted the facts stated by the Applicant but sought a ruling on whether the conduct described amounted to a breach of the SAR and/or SCC. In particular:
 - (a) if at all material times the client had owed the Respondent money for work done, did the Respondent or his firm have a beneficial interest in the money such that it would not be regarded as client money? If the money were not regarded as "client money" then it was submitted that there would be no breach of Rule 5 SCC.

- (b) Under Rule 19(4) of the Solicitors Accounts Rules a payment on account would generally be regarded as client money and must be held in a client account until the solicitor had complied with Rule 19(2). That Rule required that:

"A solicitor who properly requires a payment of his or her fees from money held for a client or trust in a client account must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party."

In this instance notice in writing had been given by way of the wording and signature on the Respondent's business cards. The Respondent sought a ruling on whether what he had done was sufficient to comply with the requirement to "give notice in writing".

7. In reply to the Respondent's submissions the Applicant stated that, as agreed by the Respondent's business partner, the series of "bills" for the sum of £4,190 and which appeared to be dated between 27th August 2005 and 10th April 2007 had in fact not been rendered as bills and were in any event described as "interim request for payment on account". The Respondent had not been entitled to retain the funds without paying them into client account promptly and was therefore in breach of the SAR and SCC. The position had not been regularised until February 2008.

Findings as to fact and law

8. The Tribunal ruled that the Respondent was not beneficially entitled to monies received from the client until the bill had been delivered. Further, the cash received on account of costs remained client money and should have been paid into client account accordingly. The Respondent's receipts for money received did not meet the requirements of Rule 19(2) of SAR.
9. The Tribunal was satisfied so that it was sure that the factual matters alleged had been proved and indeed had been admitted by the Respondent. The Respondent had received a total of £4,190 of client money from approximately August 2005 which had not promptly been posted into client account and in respect of which the position was not regularised until February 2008. The Respondent had breached Rules 15 and 19 of SAR and Rule 5.01(g) of SCC.

Mitigation

10. The Respondent was now aged 59 and this was his first appearance before the Tribunal.
11. The Respondent had expertise in business disputes concerning the operation of public houses. The Respondent stated that he offered great value for money in complex cases, particularly where licensed premises were concerned. The client in this case had been recommended to him by another client. In the case of the client in question the Respondent carried out a substantial amount of emergency work in a complex matter. He was under pressure to carry out the work quickly and properly and was aware that the client was not in a position to pay promptly the full value of the work to be done.

12. The Respondent had suffered a number of health problems from about 2005, about which he did not wish to go into detail before the Tribunal. He would like to retire from practice fairly soon. He was not at the moment making much money from practice, as he worked only part-time in the firm. Generally, he would be available for consultation by telephone but was otherwise carrying out very little work.

Costs application

The Applicant applied for costs in the sum of £5,520.22.

Previous disciplinary proceedings before the Tribunal

13. None

Sanction and reasons

14. The Respondent had not intended to act inappropriately or in breach of the Rules. The Respondent had not appeared to understand the requirements of the SAR. The Respondent had tried to provide a good service to his client but in doing so had breached the SAR and SCC. He had issued the client with a form of receipt for the cash he received. No dishonesty had been alleged. In all of the circumstances it was appropriate for the Tribunal to issue a reprimand.

Costs

15. The Tribunal found that the Respondent had contributed to the need for this hearing and the amount of the costs. He had failed to cooperate or respond during the SAR's investigation and during the course of these proceedings. The Tribunal had enquired into the Respondent's means. It was satisfied that the amount of costs sought by the Applicant was reasonable. Accordingly, the Respondent was Ordered to pay the Applicant's costs in full.

Order

16. The Tribunal Ordered that the Respondent John Charles Tracy Kelly of 5 The Avenue, Rowledge, Farnham, Surrey, GU10 4AL, solicitor, be Reprimanded and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,520.22.

Dated this 8th day of November 2010
On behalf of the Tribunal

R B Bamford
Chairman