

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ERIC LIONEL LAWSON, (The Respondent)

Upon the application of George Marriott
on behalf of the Solicitors Regulation Authority

Mr J N Barnecutt (in the chair)
Mr A N Spooner
Mr R Slack

Date of Hearing: 28th September 2010

FINDINGS & DECISION

Appearances

George Marriott, Solicitor Advocate, Russell Jones & Walker, 50-52 Chancery Lane, London WC2A 1HL appeared for the Solicitors Regulation Authority (“SRA”).

The Respondent represented himself.

The application to the Tribunal on behalf of the SRA was made on 22nd February 2010.

Allegations

The allegations against the Respondent are that he:-

1. Failed to act in the best interests of institutional lender clients, contrary to Rules 1(c), 1(d) and 1(e) Solicitors Practice Rules 1990 (“SPR”) and Rules 1.04, 1.05 and 1.06 Solicitors Code of Conduct 2007 (“SCC”).
2. Failed to disclose material facts to institutional lender clients in accordance with instructions given under the Council of Mortgage Lenders’ Handbook, contrary to Rule 6(3) SPR and Rule 3.2 SCC.

3. Misrepresented the purchase price of a property by failing to record the true net cash price paid on documents submitted to HMRC and to the Land Registry, contrary to Rules 1(d) and 1(e) SPR and Rules 1.05 and 1.06 SCC.
4. Failed to honour an undertaking, contrary to Rule 10.05 Solicitors Code of Conduct 2007 ("SCC").

Allegations 1-3 were admitted. Allegation 4 was denied.

Factual Background

1. The Respondent was born in 1946 and admitted as a solicitor in 1971. He practises as a consultant in the firm of Sisman Nichols in Bristol. The Respondent formerly practised at Clutton Moore and Lavington, 7 Great George Street, Bristol BS1 5QT. The Respondent joined Clutton Moore and Lavington in 1980 and had become a partner in 1982. The firm closed on 31st July 2009 and the files were transferred to Sisman Nichols.

Allegations 1-2

2. The Respondent acted in the sale and purchase of three properties, all of which were purchased by A with the assistance of mortgages from institutional lenders. The Respondent also acted for the lenders in each transaction. In two of the three transactions, A purchased the properties from her stepfather, H, a mortgage broker, who purchased them from third parties and sold them to A on the same day for substantial profits in back-to-back transactions.
3. In the first transaction the Respondent acted for H in the purchase of a property and its immediate sale to A. The mortgage monies were used in circumstances and for a purpose other than that for which they were provided because A's purchase was completed using the funds drawn down from the lender and transferred from A to H and the funds represented more than 100 per cent of A's actual purchase price.
4. In the second transaction the Respondent acted for A in her purchase of a property from H. Again the purchase price was less than that stated in the mortgage papers. This discount however fell within the amount permitted by the lender without the need for them being informed. It was a back-to-back transaction. The Respondent signed a certificate of title which did not disclose that A's purchase was from a party (H) who had not owned the property for six months.
5. In the case of the third transaction, the Respondent acted for A in her purchase. The Respondent failed to notify the lender of a gifted deposit of 10% from the seller and signed an unqualified certificate of title. The lender funded 99% of the actual purchase price which was substantially more than the maximum loan to value noted upon the mortgage offer.

Allegation 3

6. In the case of the first two properties referred to above, stamp duty documents were completed and stamp duty paid to HMRC based on the purchase prices stated in the mortgage documents rather than the discounted prices actually paid. The inflated prices were also used in making declarations to the Land Registry.
7. The Respondent gave varying explanations for his failure to report to the mortgage lenders as required. He told the SRA that he relied upon assurances from H that the matters of the discounts and the back-to-back nature of the transactions had been disclosed to the lenders but in a letter to the Respondent of December 2008, H had stated that the back-to-back nature of the transactions did not need to be disclosed to the lenders and that the gifted deposit was within the terms of the mortgage offers.

Allegation 4 (contested)

8. The Respondent operated his practice from offices at 17 Great George Street, Bristol, which were leased. In anticipation of the closure of his practice from 31st July 2009, the Respondent wished to surrender the lease. Lindley Jonstone Solicitors (“LJS”) acted for the owner of the property and were instructed to prepare the draft Agreement for Surrender and Deed of Surrender.
9. On 1st July 2009 LJS wrote to the Respondent indicating that they would prepare the Agreement and Deed for Surrender upon receipt of the Respondent’s undertaking to pay their costs of £650 plus VAT whether or not the matter proceeded to completion.
10. The Respondent replied to LJS on 2nd July 2009, within which letter the Respondent gave the requested undertaking in clear terms:-

“We undertake to pay your costs of £650.00 plus VAT whether or not the matter proceeds to completion”
11. In reliance upon the Respondent’s undertaking, LJS prepared the Agreement and Deed for Surrender. However, the matter did not complete and the draft documents prepared by LJS were not signed.
12. On 29th July 2009 LJS sent the Respondent an invoice for the work that it had done in preparing the documents in the amount of £747.50, being £650.00 plus VAT thereon at the rate of 15%. As had been agreed between the parties and as was specified in clear terms in the undertaking given by the Respondent on 2nd July 2009, the invoice was noted as being payable by the Respondent.
13. The Respondent failed to pay LJS’s costs.
14. LJS made efforts to encourage payment of their invoice in response to which, on 28th October 2009, the Respondent wrote that he considered that “the account was issued prematurely and should only be payable once the relevant work has been concluded”.

15. The SRA assert that this was an effort to vary the undertaking at best or to avoid the undertaking at worst.
16. LJS reminded the Respondent of the terms of the undertaking that he had given in email correspondence on 30th October 2009 and 4th November 2009. On 17th November 2009 the Respondent wrote to LJS and indicated that notwithstanding the terms of the undertaking that he gave he would not make payment until “final resolution of the matter”.
17. The Respondent was made bankrupt on 5th January 2010.
18. Having learned of the bankruptcy, LJS made a complaint to the SRA on 10th February 2010 that the Respondent had not honoured the undertaking that he gave on 2nd July 2009.
19. The SRA raised the matter with the Respondent on 21st April 2010, requiring his explanation of LJS’s complaint.
20. The Respondent replied by letter of 9th May 2010. The Respondent accepted that he had not settled LJS’s invoice and that the undertaking remained outstanding. The Respondent stated that he was unable to settle LJS’s invoice on account of his bankruptcy.

Submissions on behalf of the Applicant

Allegations 1-3

21. It was emphasised that there was no allegation of dishonesty. There had been misrepresentation of purchase prices which was quite serious and could be described as reckless.

Allegation 4

22. It was submitted that undertakings are a core principle of a solicitor’s practice and operating in business without them would be very cumbersome. They oil the wheels of commerce. Breaching an undertaking is a serious matter. Rule 10.05 obliges a solicitor to file an undertaking within a reasonable time. It was a matter for the Tribunal to decide what that was but it was asserted on behalf of the SRA that one month was a reasonable time for compliance in this particular case. The work covered by the undertaking had been carried out and the invoice was dated 29th July 2009. It would therefore have been reasonable for the undertaking to have been fulfilled by the end of August 2009. The Respondent was not in a good financial position and eventually went bankrupt but this did not occur until January 2010 six months after the undertaking had been given. Having regard to the fact that the Respondent was unrepresented the Applicant reminded the Tribunal that in order to find a breach of allegation 4 it would have to be satisfied that Rule 10 had been breached and professional misconduct had resulted.

Representations by the Respondent regarding allegation 4

23. The Respondent accepted that the bill which was the subject of the undertaking had not been paid. Where he differed from LJS was that he contended the work had not been completed. Originally it was envisaged that he would leave the premises occupied by his former firm at the end of July 2009, would wrap up the surrender documents and then costs would become payable immediately to LJS. At that stage the landlord was planning to convert the property to student accommodation and wanted the Respondent to move out in time for him to prepare the property for the new university term. The landlord's position then changed and he advised the Respondent that he could take as long as he reasonably liked to clear the four or five floors and thousands of files left in the building. The Respondent was the only person available to do this as his partner had already joined Sisman Nichols. There was also a suggestion that the landlord might want to purchase some of the furniture of the former practice because he was thinking of turning the building into office accommodation. The Respondent was well acquainted with the landlord and their dialogue continued for several months. It was his contention that until he had reached the stage where he could sign a Deed of Surrender and hand over the keys he was not prepared to pay LJS's costs. It was his view that if there had been a complete change of circumstances and he could have restarted his former practice and not proceeded with the surrender then the costs would have been payable. The building was not in fact cleared until nearly Christmas 2009. It was not his priority to carry out the clearance. By Christmas he had a meeting coming up with the landlord at which time he intended to hand the keys back. Unfortunately this was overtaken by the Respondent being made bankrupt on 5th January 2010. He had hoped that as he had merged his former firm into Sisman Nichols that they would discharge the burden of the undertaking for him as he regarded the bill in question as one payable by his former practice. Sisman Nichols were not however prepared to make the payment. The Respondent felt that he had discharged his responsibilities under Rule 10.05 by continuing to ensure that the recipient of the undertaking had been kept informed of the position. Their client, the landlord was also kept informed as there was an ongoing dialogue between him and the Respondent. The Respondent submitted that LJS had not engaged in dialogue with him but instead had reported him to the SRA for breach of undertaking.

The Tribunal's Findings as to Fact and Law

Allegations 1, 2 and 3

24. Having carefully considered all the evidence and the submissions the Tribunal found allegations 1, 2 and 3 proved to the higher standard. Indeed they had been admitted.

Allegation 4

25. The Tribunal found that the Respondent had failed to honour an undertaking contrary to Rule 10.05 Solicitors Code of Conduct 2007. The undertaking had been open ended in a form common in conveyancing work. The Respondent had given the undertaking voluntarily and had not sought to qualify it in any way. He had clearly undertaken to make the payment whether or not the Deed of Surrender was

completed. The Tribunal further considered that the period which elapsed between the invoice being delivered in July 2009 and the date of the Respondent's bankruptcy in January 2010, without payment of the invoice, was unreasonable within the terms of Rule 10.05.

Mitigation

26. The Respondent accepted that in respect of the conveyancing matters the subject of allegations 1 – 3, he should have made full disclosure to the lenders of the various facts. He had however relied on his client H who was a mortgage broker and very well known to him as he had dealt with him over a period of time and trusted his statements that he had given the lenders the necessary information. He accepted that it was inappropriate for him to have relied on H in this way but he contended that he had not been entirely reckless in doing so as he had considered the position and believed his client to be telling the truth. He also accepted that it had been wrong for him to sign certificates of title without declaring that the vendor had not owned the properties in question for six months in two of the transactions. Having regard to the representations made to HMRC and the Land Registry he had mistakenly believed that it was appropriate to submit these on the basis of the gross rather than the net purchase price and in the case of HMRC there had been no intention to deprive them of duty because duty had in fact been paid on the higher price.
27. More generally, the Respondent stated that he was fully aware of the need to comply with the Solicitors Practice Rules and the Council of Mortgage Lenders' requirements. He accepted that it was critical that the integrity and discipline of the profession be maintained and clients be protected. He accepted that he had failed to act to the required standard. Having regard to the pressure of work and its volume, especially during 2008, ideally more staff would have been employed but the level of remuneration, particularly residential conveyancing, did not permit that. The Respondent drew attention to the detail of his career as a solicitor over a period of forty years and the distinguished history of his former firm. It had held personal injury and matrimonial Legal Aid franchises and always passed the required Legal Aid audits in a good manner. When he became senior of the two partners in his former firm in 2003 he had committed himself to total compliance with all the regulatory requirements including appointing an experienced Lexcel assessor as quality assessor for the firm. During 2008 and into 2009 he had committed to apply for the Lexcel kite mark. Four months before the investigation into his firm which led to these allegations it had successfully undergone an SRA monitoring visit during which only a few points had been raised.
28. The firm had been badly hit by the recession and in spite of a great deal of hard work, incoming business had reduced by 70% and the firm was no longer able to continue. By July 2009 the Respondent had decided to close the firm down. It was very sad for him to have to preside over the closure of such a famous Bristol law firm. This had impacted severely on the Respondent and his family and in June 2009 he had sold his home. He and his wife now lived in free accommodation provided by friends. His wife was a teacher. They retained two small cars only because they needed them for work, otherwise they had no assets. He was now aware that in two days time he would be out of work as his present firm was unable to continue past the end of September 2010 and he asked the Tribunal to take into account his financial position

when determining sanctions. The Respondent also asked the Tribunal to take into account the references which he was now providing and Lexcel Commitment Scheme registration form. In spite of the impending closure of his present firm he was hoping to continue working in Law.

Costs

29. A schedule of costs had been submitted. Having regard to the fact that the Respondent was unrepresented the Applicant reminded the Tribunal of the case of D'Souza and its obligation to take the means of the Respondent into account. The SRA would prefer a fixed order for costs.

Sanction and Reasons

30. The Tribunal had found all the allegations proved. It had noted the points set out in mitigation by the Respondent and the testimonials submitted on his behalf. It regarded the allegations very seriously. It was willing to accept that the Respondent had been misled by his client but found that he had been reckless in the way that he had dealt with the various matters. He had an independent duty to his lender clients to protect their interests and he had not done so. The Tribunal had taken into account that he had an outstanding unblemished record of nearly forty years in practice. Having regard to the seriousness of the offences the Tribunal had considered imposing a period of suspension on the Respondent. However the Tribunal had taken the view that a suspension would be tantamount to a striking off order in the Respondent's present circumstances which the findings did not merit. Accordingly it had decided to impose a fine. On the question of costs the Tribunal considered that the sum sought was somewhat high and had made some reduction.

Order

31. The Tribunal Ordered that the Respondent, Eric Lionel Lawson of Sisman Nichols Solicitors, 11 Elmdale Road, Clifton, Bristol, BS8 1SL, solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 16th day of November 2010

On behalf of the Tribunal

J N Barnecutt
Chairman