

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF MAILVAGANAM MARKANDAN, solicitor, (The Respondent)

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

Miss J Devonish (in the chair)
Mr J P Davies
Mr R Slack

Date of Hearing: 15th July 2010

FINDINGS & DECISION

Appearances

Mr George Marriott of 4 Davy Avenue, Knowlhill, Milton Keynes MK5 8NL for the Applicant.

The Respondent did not appear and was not represented.

The application was dated 17th November 2009.

Allegations

The allegations against the Respondent were that:

1. He failed to act in the best interests of clients, contrary to Rule 1.04 of the Solicitors Code of Conduct 2007 ("SCOC").
2. He failed to make arrangement for the effective management of the firm as a whole contrary to Rule 5.01 SCOC.

Respondent's Application to Adjourn

The Tribunal had before it a letter dated 12th July 2010 from the Respondent requesting an adjournment of the hearing on the basis that a trial had taken place in the case of Lloyds TSB Bank Plc –v– Markandan & Uddin in the High Court Chancery Division on 29th May 2010 and judgement had been reserved. The Respondent expected judgement in his favour to be given any day. The Respondent had attached to his letter a number of articles relating to the clients that had been involved in the property transactions complained of and giving details of their convictions for fraud. The Respondent further stated in his letter of 12th July 2010 that if the adjournment was refused, he had submitted a skeleton argument for consideration of the Tribunal. The Respondent confirmed he was not fit to attend the hearing due to walking difficulties and he also suffered from hearing difficulties. He stated that even if the adjournment was granted, he would only be making written submissions enclosing the decision from the case of Lloyds TSB Bank –v– Markandan & Uddin at any future hearing.

The Applicant advised the Tribunal that the background to this case was that three fraudsters had attended the Respondent's office and money had been handed over to those fraudsters. It was said that as a result, Lloyds TSB Bank had pursued the Respondent and his firm for the recovery of the monies. The link between Lloyds and the Bank of Ireland was not clear. In any event, the Applicant had been unable to find any reference or information regarding the case by Lloyds referred to by the Respondent. The Respondent did not have a practising certificate and was not therefore a danger to the public, there was no allegation of mortgage fraud, there was no allegation of dishonesty and the Respondent had not provided enough information regarding the case against him by Lloyds TSB Bank in order for the Tribunal to ascertain whether anything useful from that judgement would assist his case.

The Tribunal's Decision on the Respondent's Application to Adjourn

The Tribunal had considered carefully the Respondent's letter dated 12th July 2010 together with the enclosures, and the submissions of the Applicant. The Tribunal's Practise Note on adjournments dated 4th October 2002 stated that the existence of other proceedings were not generally regarded as providing justification for an adjournment. Civil proceedings were even less likely to do so.

The Respondent had not provided the Tribunal with any details of the case referred to in his letter. The Respondent had made reference to his health difficulties but had not provided the Tribunal with any medical evidence concerning these and had also confirmed that even if an adjournment were granted, he would only be making written submissions enclosing the Court decision. Taking all the circumstances into account and the guidance provided by the Tribunal's Practice Note on Adjournments, the Respondent's application to adjourn was refused.

Factual Background

1. The Respondent, born in 1935, was admitted as a solicitor on 1st December 1989. His name remained on the Roll. At the material time he was the principal of Markandan & Uddin Solicitors of 720 Romford Road, London E12 6BT ("the Firm").
2. The Firm specialised in domestic conveyancing, immigration and civil litigation and the Respondent was assisted by another partner and six unadmitted members of staff.

3. On 5th August 2008 the Firm was visited by a representative from the Bank of Ireland who requested files and papers on three conveyancing transactions where it was believed that the Firm had drawn mortgage monies from Bristol and West Mortgages (a trading name of Bank of Ireland) in relation to conveyancing transactions which were fraudulent.
4. The basis for the suspicion of fraud in the three transactions was:
 - (i) Mortgage monies drawn down from Bristol and West were sent by the Firm to an unrelated third party instead of the sellers solicitors.
 - (ii) The proprietors of the properties due to be sold had no knowledge of the transactions.
5. The Respondent explained to the Bank of Ireland Representative that they could not hand over the papers as the files could not be located. According to Mr M (the unadmitted fee earner who had had conduct of the matters), he had placed them on a colleague's desk, but a thorough search of the Firm's office failed to locate them. The files were never recovered.
6. The Respondent explained that following an internal investigation and review of bank statements and an interview with Mr M it was confirmed that the Bank of Ireland assertions in relation to the transactions were correct.
7. The Respondent sold the Firm on 1st September 2008.
8. The Tribunal was provided with details of the three relevant property transactions in which the firm acted for both the buyer and the mortgage company. The main features in each of those were:
 - (i) Mortgage funds were transferred from the Firm's client account to solicitors who were not acting for the seller, and in one case, were transferred to the buyer on another of the three transactions.
 - (ii) Mortgage funds were released before the Firm had received all the funds necessary for completion.
 - (iii) The buyer did not contribute any funds towards the purchase.
 - (iv) Office copies obtained after completion showed the proprietor of the property was not the firm's client who was the buyer, and the mortgage company's charge was not registered.

The Firm did not comply with its obligations under the Council of Mortgage Lenders Handbook or the terms of the mortgage offer, or follow The Law Society's Green Card on Mortgage Fraud.

9. At an interview with the SRA, the Respondent stated that he adequately supervised Mr M and that he read all incoming and outgoing post as well as operating an open

door policy for all his staff. Mr M had worked for him for six years and he trusted him implicitly. He carried out regular file reviews but admitted that he had not reviewed the three files under discussion.

10. The Respondent was asked whether he made any checks in relation to the recipient bank accounts before he signed the authority for the transfers out of client account. He admitted that he had not and he stated that he signed numerous documents on any particular day and did not double check what he signed.
11. As the fee earner with conduct of the matters Mr M was questioned on the subject of the clients. He stated that he could not recall the exact date that the firm was instructed by the clients but did remember that all three clients came into the office together with a friend and requested quotes for dealing with the conveyancing transaction. Mr M provided quotes and they left only to return later the same day to instruct him to act. They also provided passports and utility bills for their identification.
12. Mr M stated that the seller's solicitors in two of the transactions were Soods Solicitors and in other it was S & S Solicitors. He also stated that all communications with S & S Solicitors was done by fax and all communications from Soods was delivered by hand which, according to Mr M, was common where local firms were conducting a conveyancing transaction. It was later discovered that the individual who was delivering letters purportedly from Soods did not match the description of any Soods' employees.
13. Mr M stated that he was under pressure from the clients to complete the transactions quickly. Mr M commented that none of the clients provided any monies on account and when they were pressed he was informed that the seller's solicitors would be covering the Firm's fees. He stated that that was why he retained his firm's costs when transferring the mortgage funds. He also explained that when he requested that the clients put the Firm in funds for completion he was informed that the clients knew the sellers and the monies had been paid directly to them. Mr M also informed the SRA that none of the clients wanted any searches carried out on their respective properties.
14. The Tribunal reviewed all the documents submitted by the Applicant, which included:
 - (i) Rule 5 statement together with all enclosures;
 - (ii) Statement of Costs dated 13th July 2010.
15. The Tribunal reviewed all the documents submitted by the Respondent which included:
 - Letter dated 12th July 2010 together with all enclosures.

Witnesses

16. No witnesses gave oral evidence.

Findings as to Fact and Law

17. The Respondent had submitted in his letter of 12th July 2010 that he had been a victim of a massive fraud perpetrated by a very big organised gang. He submitted Mr M's honesty had been exemplary in the past six years of employment with the Respondent and that the Respondent had been found to have a perfect supervisory and management system by the SRA for the past 20 years. The Respondent submitted it was unfair to find that he had failed to supervise the firm or the employee over this one incident involving a massive fraud which had escaped the attention of the police and the Banks who all had sophisticated management systems. The Respondent had obtained all the necessary documents on the file when he signed the certificates of title and when he authorised the funds transfer. The Respondent submitted he had already been punished by the SRA imposing a condition on his practising certificate and publication in The Law Society Gazette.

18. The Tribunal noted from the Forensic Investigation Report that the transactions complained of had all taken place in 2008 and it appeared therefore that the Forensic Investigation Report incorrectly stated the investigation started on 7th November 2007 when this should have said 7th November 2008. It was clear to the Tribunal on the facts before it that mortgage fraud had been perpetrated and the Respondent's Firm had effectively failed to comply with its obligations under the Council of Mortgage Lenders Handbook, The Law Society's Green Card on Mortgage Fraud and the Money Laundering Regulations. There were obvious and clear signs of Mortgage Fraud which were there to be seen and the Respondent's Firm had failed to inform the lender client that the special conditions of the mortgage offer had not been complied with. In particular, the Respondent's Firm failed to inform the lender client that the clients had not provided the whole of the balance of purchase monies. Furthermore, the Respondent had allowed mortgage funds to be transferred to a firm of solicitors who were not acting for the sellers in two of the transactions, and to a third party unconnected with the purchase on another transaction. It was also notable that some of the same parties were involved in each of the transactions. By releasing mortgage funds to parties who were not the seller or the seller's solicitors, particularly in circumstances where the Firm had not received all the funds necessary for completion, the Respondent had failed to act in the best interests of his clients.

19. The Tribunal was satisfied that if proper supervision and effective management of the Firm had been taking place, the mortgage fraud could have been prevented and clients would not have suffered.

The suspicious facts which should have alerted the Respondent to the signs of mortgage fraud were: -

- (i) All three clients relating to the three transactions came into the office together on the same date requesting quotes for dealing with conveyancing transactions, and then returned the same day with instructions to act.

- (ii) Mr M stated he was under pressure from the clients to complete the transactions quickly, that none of the clients had provided monies on account and the clients had said that the sellers solicitors would cover the Firm's fees.

- (iii) None of the clients required any searches to be carried out on their respective purchases and they all requested quick completions.
- (iv) All the clients informed Mr M that they had paid the balance of completion monies directly to the sellers.

The Respondent had stated in his letter of 12th July 2010 that he was satisfied with all the documentation before signing the certificates of title and the authority for transfer of funds. However, it was quite clear to the Tribunal that had the Respondent checked the ledger properly, he would have immediately become aware that the firm did not hold sufficient funds necessary for completion and that the shortfall was substantial. He would have also become aware that none of the clients had paid any costs on account and had not contributed any monies to the transaction. By signing the certificates of title, the Respondent had been grossly reckless and had not acted in the best interests of his clients.

In all the circumstances, the Tribunal found both allegations were proved.

Mitigation

- 20. The Respondent in his letter of 12th July 2010 submitted he had already been punished by the SRA who had imposed a condition on his practising certificate and publication in The Law Society Gazette. He stated he had disposed of his Firm for nil consideration due to being removed from the Building Society's Panel of Solicitors and that he was now confined to his home due to disgrace and poverty. He was 75 years old and his affairs were now being managed by a debt management company in order to avoid bankruptcy proceedings. He was unable to afford to pay for legal representation and asked the Tribunal to grant justice to him.

Costs Application

- 21. The Applicant provided the Tribunal with a Schedule of Costs and requested an Order for his costs in the total sum of £19,263.56.
- 22. The Respondent submitted in his letter of 12th July 2010 that he could not afford to pay any costs.

Previous Disciplinary Sanctions before the Tribunal

- 23. None.

Sanction and Reasons

- 24. The Tribunal were concerned to note the Respondent had not accepted responsibility for the breaches and was blaming other parties for the fraud that had taken place. He failed to appreciate that solicitors were the gatekeepers of mortgage funds and provided an essential safeguard for lenders. In this case, as a result of the breaches, the Respondent's lender clients had suffered a loss of almost £600,000 and as a result serious damage had been caused to the reputation of the Profession. The Respondent was now 75 years of age and it appeared from his letter of 12th July 2010 that he had health difficulties, although no medical evidence had been provided confirming this.

25. Taking all the circumstances into account and the seriousness of the consequences of the breaches, the Tribunal Ordered the Respondent be fined £10,000.

Decision as to Costs

26. The Tribunal Ordered the Respondent pay the costs in full in the sum of £19,263.56. Whilst the Respondent had stated in his letter of 12th July 2010 that he could not afford to pay any costs, he had not provided the Tribunal with any evidence of his financial situation, and had not provided a schedule of income, expenditure, assets and liabilities. Accordingly, although the Tribunal did consider the cases of Frank Emilean D'Souza -v- The Law Society [2009] EWHC 2193 (Admin) and William Arthur Merrick -v- the Tribunal [2007] EWHC 2997 (Admin) in relation to the Respondent's ability to pay the costs and fine, were satisfied that the costs should be paid in full.

Order

27. The Tribunal Ordered that the Respondent, MAILVAGANAM MARKANDAN of 22 Lynton Crescent, Ilford, Essex, IG2 6DH, 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 £19,263.56.

Dated this 13th day of October 2010
on behalf of the Tribunal

J Devonish
Chairman