

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF BARJINDER KUMAR SHARMA, solicitor (The Respondent)

Upon the application of Katrina Elizabeth Wingfield
on behalf of the Solicitors Regulation Authority

Mr J N Barnecutt (in the chair)
Mr R Hegarty
Mrs L Barnett

Date of Hearing: 8th September 2010

FINDINGS & DECISION

Appearances

Katrina Wingfield, solicitor and a member in the firm of Penningtons Solicitors LLP, Abacus House, 33, Gutter Lane, London, EC2V 8AR was the Applicant.
The Respondent was present in person.

The application to the Tribunal, on behalf of the SRA, was made on 23rd September 2009.

Allegations

The allegations against the Respondent were that he had:-

1. Failed to act in the best interests of his clients in breach of Rule 1.04 of the Solicitors Code of Conduct 2007 (SCC), namely:
 - (a) By failing to notify lender clients of material facts in transactions;
 - (b) By failing to register lender clients' interests;
 - (c) By transferring funds without clear authority to do so.

2. Failed to comply with undertakings given during the course of the conveyancing transactions, in particular by way of Certificates of Title to Lender clients.

Preliminary Matters

The Applicant informed the Tribunal that Civil Evidence Act Notices had been served on the Respondent in particular in relation to the witness statements of Francis Reginald Navaratne and D.C. Nigel Powell and that no Counter-Notices had been received. Neither witness would be appearing to give evidence in person but the Applicant intended to rely on their statements. The Applicant explained to the Tribunal that Mr Navaratne was unwell and receiving medical treatment abroad. She asked the Tribunal to consider both statements.

The Tribunal noted that the documentation before it, submitted both by the Applicant and by the Respondent, made reference to previous proceedings although the Tribunal had no present knowledge of such proceedings. The Applicant asked the Tribunal to disregard any knowledge of any previous proceedings.

Factual Background

1. The Respondent, born in 1967, was admitted as a solicitor in 1996. As at the date of the hearing, his name remained on the Roll of Solicitors.
2. In July 2005 the Respondent had set up in practice on his own account under the style of BKS Solicitors, whose last address was at 150 Cranbrook Road, Ilford. In February 2006 he had become a partner in the firm of AM Patel & Co, practising from an address in Walthamstow, London E17, with one Muhammad Javad Ashraf. The said Mr Ashraf had also become a partner in the firm of BKS.
3. In April 2007 Mr Ashraf had abandoned the practice of AM Patel & Co and in May 2007 the Respondent had resigned from that practice. The practice had been intervened on 31st August 2007.
4. In May 2007 a Mr Muhammed Ali Javed had become a partner in BKS with the Respondent and the Respondent had become a partner in Mr Javed's firm of Conifer & Pines, also practising from Cranbrook Road in Ilford. In July 2007 they had respectively ceased to be partners in each others' firms. On 30th January 2008 the practice of BKS Solicitors had been intervened.
5. The Respondent had been granted a conditional practising certificate for the practice year 2007/2008 subject to a condition of approved employment.
6. In July 2008 Mr Francis Navartne who had practised on his own account under the style of Staniford Wallace Solicitors had sought the authority of the SRA to employ the Respondent as a consultant. Permission had been granted on 8th August 2008 subject to conditions inter alia in relation to supervision by Mr Navartne and a condition that the Respondent was not to be responsible for accounts or authorisation of withdrawal from client account.
7. The Respondent had signed an agreement on 8th August 2008 to be employed at Staniford Wallace as a solicitor consultant. On 20th November 2008 he had resigned

with effect from 1st December 2008 giving as his reasons his impending case before the Tribunal and his personal circumstances.

8. On 3rd December 2008 Mr Calvert of the SRA had commenced an inspection of the books of account and other documents of Staniford Wallace at their offices at 130a Uxbridge Road, Shepherds Bush Green, London W12 8AA. Mr Calvert's investigation had been limited to three conveyancing matters brought to his attention by Mr Navaratne, namely:
- (i) 122 O Drive, Slough;
 - (ii) Flat C, R Gardens, London;
 - (iii) Flat 39, H Street, London.

122 O Drive

9. The Respondent had acted for a Mr MK and his mother KBM. The property had been held in the sole name of KBM. The transaction had been a remortgage with funds being provided by the Halifax totalling £204,000. A mortgage deed purportedly signed by both clients had been dated 5th September 2008.
10. The client file had been incomplete but had contained a three page extract of a Land Registry Office Copy which had shown no subsisting entries in the charges register as at 9th September 2008. On 10th September Mr Navaratne, at the Respondent's request, had signed a certificate of title and request for mortgage funds. On 11th September 2008, £203,970 had been received into the client bank account and credited into an account in the ledger which bore no name or matter number.
11. On 12th September 2008, £203,970 had been transferred by CHAPS from the client bank account to an account in the name of AB. The file had contained purported letters of authority in relation to the transfer with single signatures and a purported authority from DS1 Investigations signed by Mr B and both clients.
12. There had been correspondence on file addressed to the clients referring to a remortgage, signed by N Callard, who according to Mr Navaratne, had not been employed by his firm but had been a "city mortgage broker" who had access to a desk in the same office as the Respondent. No attempt had been made to repay any existing mortgage according to the file nor to register the Halifax charge. Mr Navaratne had obtained genuine Office Copy Entries which had shown a charge in favour of Abbey National registered on 18th July 2006.
13. Mr Navaratne had interviewed Mr B, the Respondent and Mr Callard in November 2008 but had been unable to establish how the fraudulent office copies had arrived on the file.

Flat C, R Gardens, London

14. The Respondent had acted for Mr TF in his purchase of the above property from Mr PM, who had been represented by LD Law Solicitors of Norwich. The firm had also

acted for Birmingham Midshires who had provided a mortgage advance of £286,875 gross on the basis of a purchase price of £375,000.

15. Mr Calvert had obtained Office Copy Entries in relation to the property in February 2009, which indicated that Mr M had purchased the property for £198,000 on 30th September 2008. The Office Copy Entries on the client file showed a PGS as registered proprietor and also showed that the lease expired in December 2021 leaving only 13 years unexpired.
16. The mortgage had been arranged by The Mortgage Matters, which had supplied “certified proof of I.D.” on behalf of the purchaser client. Birmingham Midshires had instructed the firm by letter dated 11th September 2008, received on 16th September 2008, “in accordance with the CML Lenders Handbook for England and Wales and our Part 2 Instructions”.
17. It appeared from correspondence that the client had paid a deposit of £106,000 to the vendor direct.
18. On 25th September 2008 the Respondent had signed a certificate of title and the net sum of £281,215 had been received into client account from Birmingham Midshires on 26th September 2008. It appears that contracts had been exchanged and completion had taken place on 29th September 2008. £269,000 had been paid to the vendors solicitors, and costs transferred leaving a balance on client account of £11,575. A copy of the SDLT form had been found on file, but not the original.
19. Mr Calvert identified three particular areas of concern in connection with the transaction, namely:
 - (i) The payment of a deposit direct to the vendor, which had not been reported to the lender client;
 - (ii) The vendor had only acquired the property the day after completion, which again had not been reported to the lender client; and
 - (iii) The security had been a lease with only 13 years remaining for a 20 year mortgage term.

Flat 39, H Street, London

20. The Respondent had acted for the purchaser, Mr TB, and for the Birmingham Midshires. Park Legal Services of Westcliff on Sea had acted for the vendor Mr S. The purchase price had been £275,000 and the mortgage advance £224,400 gross.
21. Land Registry documents on file dated 29th August 2008 showed one RG as registered proprietor. In addition, the documents showed that there had been less than 15 years remaining on the lease. Subsequent office copies showed that B Properties Limited had purchased the property on 30th October 2008 for £132,500, and that on that same date Mr S had become the registered proprietor at a price of £148,000.

22. A company, FMW Limited, owned by Mr S, had procured the mortgage on behalf of Mr TB.
23. Birmingham Midshires had sent written instructions to the firm dated 16th September 2008, specifying again that instructions were on the basis of compliance with CML Lenders Handbook and Part 2 Instructions.
24. Mr Navaratne had signed the certificate of title on 21st October 2008, and on 22nd October 2008 the net sum of £219,965 had been received into client bank account. Contracts appeared to have been exchanged on 30th October 2008, however £210,565 had been paid to the vendor's solicitors on 29th October 2008. That had left a balance due, according to the completion statement, of £64,435. There was no evidence on the file relating to the payment of a deposit nor was there any indication on the ledger of any other sums being paid to the vendor's solicitors, in connection with the completion.
25. The lenders had not been informed about the remaining term on the lease, nor had they been informed that the vendor had acquired the property the day after completion, nor of the fact that the firm had not been in control of the whole of the purchase monies.
26. Copies of Mr Calvert's report had been forwarded to the Respondent and Mr Navaratne under cover of letters dated 30th April 2009. No response had been received from the Respondent. A response had been received from Mr Navaratne dated 5th June 2009.
27. On 17th June 2009 an authorised officer of the SRA had authorised inclusion of these matters in existing disciplinary proceedings. However, as it had been in excess of 12 months since the initial proceedings had been issued it was necessary to issue a separate application.

Documentary Evidence before the Tribunal

28. The Tribunal reviewed the Rule 5(2) Statement together with its documentary exhibits. The Tribunal also had the benefit of a statement from the Respondent dated 8th September 2010 to which was attached his letter to the Applicant dated 9th September 2009, written statements from Melaku Getachew, Francis Reginald Navaratne and D. C. Nigel Powell and the Applicant's written Opening Submissions.

Submissions of the Applicant

29. The Applicant referred the Tribunal to her written Opening Submissions and took the Tribunal through the allegations and the background facts. She also referred the Tribunal to the written statements of Mr Navaratne and D.C. Powell. The Applicant stressed that the matters before the Tribunal were extremely serious and that the allegations were made on the basis that the Respondent had acted dishonestly. The Applicant noted the suspicious issues in relation to each of the three specific transactions and referred the Tribunal to the relevant test for dishonesty referred to in both Twinsectra v Yardley [2002] UKHL 12 and in Bultitude v The Law Society [2004] EWCA Civ 1853.

Witnesses

30. Melaku Getachew gave evidence adopting the contents of his statement dated 23rd November 2009. He explained that he had joined Staniford Wallace Solicitors in March 2003 as a partner to do residential and commercial conveyancing. Although he had resigned from the partnership in June 2006, he had continued to work for the firm.
31. Mr Getachew said that during 2008 the managing partner of the firm, Mr Navaratne, had asked him to join a meeting in which Mr Navaratne had been interviewing the Respondent with a view to him joining the firm. At that meeting the Respondent had said that he was a conveyancer and that he could generate fee income of some £8,000.00 per month. The Respondent had brought a Mr Callard with him, who, the Respondent had said, was a mortgage broker, who would introduce clients to the Respondent.
32. Although Mr Getachew said that he had on occasions seen Mr Callard in the first floor office with the Respondent, he explained that he had never actually seen Mr Callard doing any work there. Mr Getachew said that Mr Navaratne had no idea about conveyancing work and as such had relied on the integrity and honesty of solicitors in the firm undertaking conveyancing work.
33. Mr Getachew explained that he had been at home one morning in September 2008 when he had received a 'phone call from Mr Navaratne asking him to come into the office to look at a file because the Respondent and Mr Callard wanted him to transfer a large sum of money arising from a re-mortgage of 122 O Drive to a third party. Mr Getachew had checked the file and noted from the copy of the office copy entries on the file that there appeared to be no mortgage so monies should be transferred to the client. The Respondent had shown him copies of letters signed by the owners and Mr Getachew had agreed that on the face of it a transfer to a third party had appeared to be in order. However, it turned out that there had been a mortgage on the property and that the copy office copy entries on the file were false.
34. Following the 122 O Drive matter, Mr Getachew explained that he and Mr Navaratne had looked at some of the Respondent's other files. In two matters involving the purchases of leases, Flat C, R. Gardens and Flat 39, H Street, Mr Getachew had been concerned because relevant matters relating to the length of the leases and to the deposits had not been reported by the Respondent to the Lender Clients.
35. In response to questions from the Tribunal, Mr Getachew said that there had been office manuals and copies of the Green Warning Card in the office, that Mr Navaratne usually signed Reports on Title and that there had been no copies of any searches on the 122 O. Drive matter file.
36. In cross-examination by the Respondent, Mr Getachew insisted that the Respondent had come to the firm as an experienced conveyancer to do conveyancing work and not, as far as he was aware, to assist Mr Navaratne in his litigation work. He also insisted that Mr Callard had not been employed by the firm but that he had introduced clients to the firm through the Respondent.

37. In relation to the 122 O. Drive matter, Mr Getachew insisted that Mr Navaratne and not the Respondent had 'phoned him and that he had not been aware of the Respondent flagging up any problem on the matter but he had been aware of Mr Navaratne being put under pressure to transfer the money. Mr Getachew said that there was always only one file and not two files for each conveyancing matter and that when he had been asked to look at the 122 O. Drive file, there had been no signed mortgage deed in that file.
38. Michael Calvert, the former Head of Forensic Investigation and the author of the Forensic Investigation Report dated 19th March 2009, gave evidence relying on the contents of that Report. He explained that he had been contacted by Mr Navaratne, who had become concerned about three matters being undertaken by the Respondent. Mr Calvert had begun his inspection, which had been limited to the three matters, on 3rd December 2008 but had been unable to interview either the Respondent or Mr Callard.
39. Mr Calvert said that from his examination of the three files and based on his experience it had been clear to him that the Respondent had had the conduct of the matters, with some involvement from Mr Callard. In addition, Mr Navaratne had signed some documents. Mr Calvert explained that in relation to 122 O. Drive, genuine office copy entries had shown the existing charge and the fact of its existence had made any distribution of monies, before its redemption improper. On the two lease-hold matters the Respondent had failed to tell the Lender Clients about recent purchases, elevated prices, lack of control of all funds and short leases. Mr Calvert confirmed that the decision of the SRA to approve the employment of the Respondent had been on the understanding that he was to undertake conveyancing work.
40. The Respondent did not wish to cross-examine Mr Calvert.

Submissions by the Respondent

41. Having been given some time, at his request, to consider whether he wished to give evidence subject to cross-examination, the Respondent decided that he would not do so but would rely on his Statement dated 8th September 2010 and make submissions to the Tribunal. The position as to the relative weight to be attributed to such evidence was explained to the Respondent.
42. The Respondent told the Tribunal that he had not been dishonest and explained that the culprit had been Mr Callard, who had absconded. He said that he had only been at the firm for four months, that his health had not been good as he had been receiving treatment for depression and had been under stress and that he had not been properly focussed. The Respondent insisted that his main function, at the initial meeting with Mr Navaratne, had been to introduce Mr Callard who had the conveyancing work. He explained that he himself was not a conveyancer and had been joining the firm to help Mr Navaratne with his litigation. The Respondent explained that he had needed to earn money on a commission basis.
43. The Respondent referred to the conditions of his employment and stressed that he had no authority to transfer funds. He said that he had never intended to mislead anyone and that Mr Callard had lent money to Mr Navaratne and had helped with his bank

overdraft. The Respondent insisted that Mr Callard had dealt alone with the clients involved in the three transactions detailed in the Report.

The Tribunal's Findings as to Fact and Law

44. Having considered all the evidence, both written and oral, and the submissions from the Applicant and from the Respondent, the Tribunal was satisfied that both allegations had been proved to the higher standard.
45. The Tribunal found that the Respondent had introduced Mr Callard to the firm as an introducer of work but that there had been no contractual arrangement between the firm and Mr Callard to undertake any conveyancing work. The Tribunal accepted the evidence of Mr Getachew and of Mr Navaratne on this matter in that it was the Respondent who was to undertake conveyancing work referred by Mr Callard for the firm. The Tribunal was satisfied that any work undertaken by Mr Callard on conveyancing files had been with the knowledge of the Respondent.
46. Moreover, the Tribunal was satisfied that the Respondent had been the solicitor with the conduct of and responsible to his clients (including his lender clients) for the three relevant matters; 122 O. Drive, Flat C, R. Gardens and Flat 39, H. Street. It accepted the evidence of Mr Calvert and Mr Getachew, both of whom the Tribunal considered to be credible witnesses. The Respondent had been employed by the firm as a conveyancing solicitor on a commission basis. The Tribunal did not accept the Respondent's submissions, made during the hearing that the three matters had been dealt with by Mr Callard alone.
47. The Tribunal noted the inconsistencies between the submissions made by the Respondent during the hearing and those made by him in his letter of 9th September 2009, upon which he relied as his statement. In his letter, the Respondent had detailed work done by him on the relevant files but had claimed that it had been the duty of Mr Navaratne, as his supervisor, to notify lender clients of material facts in transactions. While the Tribunal was concerned about the inadequacy of the supervisory arrangements, given that Mr Navaratne, a solicitor with little or no experience of conveyancing, had been responsible for the supervision of the Respondent, who was a conveyancing solicitor, it did not accept the Respondent's claim. The Respondent, as solicitor with conduct of the files, bore responsibility for the undertaking of a conveyancing solicitor's duties to lender clients.
48. The Tribunal was satisfied that it had been the responsibility of the Respondent to notify his lender clients of material facts and that, in relation to the matters of Flat C, R. Gardens and Flat 39, H. Street, he had failed to do so.
49. The Tribunal was satisfied that it had been the responsibility of the Respondent, as the solicitor with conduct of the file, to register the lender clients' interests and that in all three matters he had failed to take any steps to register the lender clients' charges.
50. The Tribunal was satisfied that as the solicitor acting for Mrs KBM and for Mr MK in relation to the re-mortgage of 122 O Drive, the Respondent had transferred funds without clear authority to do so, albeit indirectly, by requesting and insisting upon such transfer in reliance on documentation that he had known to be inadequate. The

property had been in the sole name of Mrs KBM yet the two letters of 9th September 2008, relied on by the Respondent as providing authority to transfer the funds to a third party, appeared to have been signed only by Mr MK, who did not own the property subject to the mortgage. Moreover, none of the signatures on an undated letter, faxed on 11th September 2008 by the recipient of the funds, appeared to resemble those on the letters of 9th September 2008 or those on the mortgage deed dated 5th September 2008. In addition, no copies of a signed transfer into the joint names of Mrs KBM and Mr MK had appeared to be on the file. No details of any investigation of any of these concerns by the Respondent had appeared on the file. Moreover, as the conducting solicitor, the Respondent should have obtained, from an appropriate source, the correct office copy entries relating to the property to be subject to a mortgage.

51. The Tribunal was satisfied that as the solicitor signing a certificate of title on 25th September 2008 in relation to the matter of Flat C R. Gardens, the Respondent had failed to comply with his undertakings.
52. Finally, the Tribunal was satisfied that in relation to the allegations it found as proved, the Respondent had acted dishonestly in that his conduct had been dishonest by the standards of reasonable and honest people and that he himself had realised that by those standards his conduct was dishonest.

Mitigation

53. The Respondent insisted that he had never acted dishonestly. He reminded the Tribunal that his livelihood was at stake and that he could not afford to be struck off the Roll of Solicitors. Although he was no longer bankrupt, the Respondent explained that he was unable to practice as a solicitor until October 2011 and that he considered that he had been punished enough. He had previously established a firm in Ilford and had undertaken conveyancing work but his partner had stolen £1.8 million and had absconded to Pakistan. The Respondent gave the Tribunal details of his personal and financial circumstances and repeated that because of his mental state he had been unfocused and had been used by Mr Callard, who had absconded to China.

Application for Costs

54. The Applicant handed a Schedule of Costs to the Tribunal totalling £17,450.73 and asked for assessed costs.
55. The Respondent referred to his financial position and submitted that the costs appeared to be high.

Previous disciplinary sanctions before the Tribunal

56. The Respondent had previously appeared before the Tribunal on 20th, 21st & 22nd October 2009.

Sanction and Reasons

57. Having fully considered the submissions of the Respondent, the Tribunal was of the view that given its findings of dishonesty in relation to the allegations it found as proved, the appropriate penalty, in the particular circumstances, was that the Respondent be struck off the Roll of Solicitors and it so Ordered .

Decision as to Costs

58. The Tribunal was satisfied that an order for costs should be made and assessed costs in the sum of £15,000.00. However, taking into consideration the financial circumstances of the Respondent, it ordered that the order for costs should not be enforced without its leave.

Order

59. The Tribunal Ordered that the respondent, Barjinder Kumar Sharma of 86 Vaughan Gardens, Ilford, Essex, IG1 3PD, solicitor, be Struck Off the Roll of Solicitors, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00, such Order not to be enforced without the leave of the Tribunal.

Dated this 26th day of October 2010

On behalf of the Tribunal

J N Barnecutt
Chairman