

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JULIA MORAG STIRLING and
GARY DAVID WARD, solicitors (The Respondents)

Upon the application of David Barton
on behalf of the Solicitors Regulation Authority

Mr D J Leverton (in the chair)
Mr R Prigg
Mr J Jackson

Date of Hearing: 16th September 2010

FINDINGS & DECISION

Appearances

David Elwyn Barton, solicitor, of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Applicant.

Andrew Blatt, solicitor of Murdochs, 45 High Street, Wanstead, London E11 2AA appeared for the Respondents.

The Application to the Tribunal on behalf of the Solicitors Regulation Authority (“SRA”) was made on 11th June 2009.

Allegations

The allegations against the Respondents were that:-

- (a) Client money was withdrawn from client account in breach of Rule 22 of the Solicitors’ Accounts Rules 1998;
- (b) Client money was held in office account in breach of Rule 19 of the said Rules;

- (c) They failed to keep accounting records properly written up in breach of Rule 32(1) of the said Rules;
- (d) They failed to carry out reconciliations of their client account in accordance with the requirements of Rule 32(7) of the said Rules;
- (e) Contrary to the provisions of Rule 1 of the Solicitors' Practice Rules 1990 they have compromised or impaired each and all of the following:
 - (i) their independence or integrity;
 - (ii) their good repute of both themselves and the solicitors' profession;
 - (iii) their proper standard of work;
 - (iv) their duty to act in the best interests of their clients

The particulars are that they acted in or otherwise facilitated conveyancing transactions during the course of which they failed to be alert to the suspicious characteristics of those transactions;

They failed to advise their lender clients of material facts, or to otherwise ensure such clients were so advised.

The Respondents admitted all the allegations.

Factual Background

1. The First Respondent was born in 1962 and was admitted as a solicitor in 1999. The Second Respondent was born in 1965 and was admitted as a solicitor in 2001. Their names remain on the Roll of Solicitors.
2. At all material times the Respondents were carrying on practice in partnership as Stirling Ward Solicitors from 18 Charlotte Road, London EC2A 3PB. They were now employed as consultants with Healys LLP.
3. The Respondents had trained together at Gawor & Co and then set up their own practice in 2002. The First Respondent specialised in employment, property and general litigation and the Second Respondent specialised in commercial and residential property.

Allegations (a) – (d)

4. The SRA carried out an inspection of the accounts and other documents of Stirling Ward in November 2007. In respect of the Accounts Rules the investigation revealed a cash shortage caused by a combination of improper withdrawals from client accounts and clients' money being improperly held in office account. Receipts into client account were not recorded anywhere and the reconciliation process was inadequate. There was a cash shortage on client account of £652.81 at the end of October 2007 which had been replaced by the transfer of funds from office to client account during November 2007. There were further liabilities to clients not shown by the books of £702.81. The firm operated a suspense ledger "Misc Small Matters", to

which small residual balances on the conclusion of client matters were transferred. The ownership of those funds was not recorded on that ledger, other than by the matter reference of the original matter. Client account reconciliations were incomplete. A reconciliation statement setting out the comparison of the adjusted bank balance with the cash account balance was produced using the firm's computer accounting package and retained on a monthly basis. The SRA was unable to identify any reconciliation statements showing the necessary further comparison with the total of client ledger balances. The firm's accountants' report for the period 1st April 2006 to 31st March 2007 was qualified. It showed client shortages which arose for the same reasons identified in the investigation. These shortages of £4,567.98 and £1,618.75 at 30th November 2006 and 31st March 2007 respectively, had been corrected. The accounting breaches were relatively modest arising out of the accounting process adopted by the Respondents. Stirling & Ward's freelance bookkeeper normally only attended the office once a week which could result in ledgers not being fully up to date. There were occasional situations where he was not able to complete the outstanding posting on a particular day and would need to complete the posting the following week. This could result in posting being up to two weeks in arrears.

5. The investigation initially identified five conveyancing transactions which gave cause for concern. The First Respondent signed certificates of title in connection with two of the transactions. The Second Respondent signed the other three. During the investigation a further similar transaction was discovered.
6. In each of the five transactions the Respondents acted for the purchaser and lender, the then Bank of Scotland. The lender's instructions incorporated the second edition of CML Lenders' Handbook. All five transactions had common features as follows:
 - a. The Respondents' buyers client purchased by way of assignment of a contract at a substantially increased price;
 - b. Those buyers obtained mortgages based on those increased prices;
 - c. The so called assignor of the contract was in substance a sub seller and the transactions were sub sales or back to back transactions;
 - d. The assignor's profit or premium was effectively paid for by the sub buyer's lender;
 - e. The contract documentation was incomplete because it did not disclose the price paid by the "assignor" and this appears in the Green Card Warning on page 49 as a pointer to property fraud;
 - f. The buyers were introduced by the selling agent;
 - g. In some cases as specified above not all the purchase money passed through the Second Respondent's client account. This feature also appears in the Green Card Warning as a pointer to property fraud;

- h. The lender in all cases was the same, and was not informed of price differences, the existence of so called assignments or the true position on ownership.

Submissions by the Applicant in relation to the Allegations

Allegation (e)

7. This was the more serious allegation. The Respondents had failed to report facts to the lender as they should have done, to comply with the CML Handbook and the Solicitors' Practice Rules, when completing the certificates of title. The certificate of title is usually the only formal communication between the lender's solicitor and the lender. The Respondents had taken the view that the lender had based advances on values provided by a professional valuer in what was at the time a buoyant market and that where the lender had suffered a loss, having repossessed and sold a property, the fault lay with the valuation. However, had the lender been aware of the full position regarding the assignment of contracts and significant increases in price, it might not have made the loans at all. The lender had in fact subsequently sued Stirling Ward for negligence in connection with four of the transactions.

Findings as to fact and law

8. The Tribunal found all the allegations proved, indeed they had all been admitted.

Mitigation

9. The Respondents had submitted a joint statement, which was unusual in such circumstances. They wished to save the Tribunal time. Neither sought to blame the other.
10. In respect of allegations (a) to (d) concerning the breaches of the Accounts Rules, these had been formally admitted on 31st July 2009 and before that in a response to the SRA of August 2008. Allegation (e) had been admitted after the Respondents had been able to clarify that they were not being accused of any dishonest activities.
11. The Respondents had set up their firm during an economic boom, when the conveyancing market was blossoming. Their business grew quickly. To some extent they were victims of their own success. Instead of attending to detail, they focused on working in the best interests of their clients. It was submitted on their behalf that without the breach set out in allegation (e), this matter would normally have been dealt with at adjudicator level.

Allegations (a) - (d)

12. In respect of allegation (c) the Respondents had been surprised to face this allegation as they had acquired a Law Society approved software package, AlphaVantage. However, the Respondents did not appreciate that additional accounting work had to be done in order to achieve compliance. In order to avoid incorrect posting they had got into the habit of placing unidentified small amounts of money in a suspense account intending to allocate them correctly later but because of pressure of work had

not done so in a timely fashion. Following the investigation visit those steps were taken and there was no chance that any similar problems would recur as the practice was now being fully closed.

Allegation (e)

13. The Respondents accepted that they should have picked up and reported to the lenders particular features about these transactions. It was submitted that the First Respondent had signed two reports on title as an administrative act. She had not worked on the cases and had no reason to doubt that the Second Respondent had properly dealt with the transactions. The Respondents were, however, anxious to point out that although indicators of fraud were present there was no evidence that actual fraud had occurred. They considered the activities in the five transactions to be commonplace in a booming market where individuals bought properties off the plan and sold them on at a profit. They had relied on the lenders undertaking independent valuations of the properties in question. The Respondents accept now that they should have picked up these signs and reported them to the lender in any event, even if fraud was not actually taking place. The Second Respondent was relatively inexperienced at the time, having been qualified for less than three years.
14. The SRA had imposed conditions on both the Respondents' practising certificates which could have been much more restrictive. It was submitted that this was an indication of the way the Regulator viewed the level of seriousness of what the Respondents had done.
15. Since the investigation both Respondents had attended courses on the Solicitors' Accounts Rules, on conveyancing, including mortgage frauds, and on the money laundering requirements. In the context of the overall work undertaken by Stirling Ward, some 500 property transactions in two years, the numbers involved in these proceedings were modest. The accounting irregularities had been rectified before the investigation started, and both Respondents otherwise had exemplary past records with no other complaints having been brought to the Regulator.
16. Both Respondents apologised fully for their failure to check the accounts, and especially for the failure to report material facts to the lenders.

Costs

17. Costs had been agreed between the parties, including the costs of the investigation, the costs of the application and VAT at £12,867.15.

Sanction and Reasons

18. The Tribunal reviewed all of the documents submitted by the Respondents, including their admissions and statement in mitigation, and the references provided by their current employer and by clients. Having regard to allegations (a) to (d), all of these had been admitted. They involved relatively small amounts of money and the breaches of the Accounts Rules had been put right prior to the commencement of the SRA investigation. It was clear that for a busy practice to have an accountant in attendance for only one day a week was in no way sufficient. It meant that some

matters were not dealt with for two weeks at a time, and reconciliation was delayed. If solicitors were running a busy practice it was essential that reconciliation took place every four to five weeks, to keep matters up to date. The Solicitors' Accounts Rules were there for the protection of the public and it was important that they are adhered to. In respect of these allegations the Tribunal imposed a fine of £2,500 on each Respondent.

19. Having regard to allegation (e), it was quite clear that the Second Respondent should have recognised the features of the transactions which should have been reported to the lender. The lender was given no opportunity to reconsider its lending in these five cases. The green card guidance on mortgage fraud is well known and has to be followed. Particular attention also has to be paid to completing the certificate of title. As far as the First Respondent was concerned she played a very minor role and was entitled to rely on her partner in signing the certificates. In respect of allegation e the Tribunal imposed a reprimand on the First Respondent and a fine of £5000 on the Second Respondent.

Orders

20. The Tribunal Ordered in respect of allegations 5(a) to 5(d) that the First Respondent, Julia Morag Stirling of 18 Charlotte Road, London, EC2A 3PB, solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to Her Majesty the Queen. In respect of allegation 5(e) the Tribunal Ordered that the Respondent be Reprimanded. It further Ordered that she do pay the costs of an incidental to this application and enquiry fixed in the sum of £12,867.15, such costs to be joint and several with the Second Respondent Gary David Ward.
21. The Tribunal Ordered in respect of allegations 5(a) to 5(d) that the Second Respondent, Gary David Ward, of 18 Charlotte Road, London, EC2A 3PB, solicitor, do pay a fine of £2,500.00 and in respect of allegation 5(e) the Tribunal Ordered that the Respondent do pay a fine of £5,000.00 such penalties 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 £12,867.15, such costs to be joint and several with the First Respondent Julia Morag Stirling.

Dated this 27th day of October 2010

On behalf of the Tribunal

D J Leverton
Chairman