

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ROBERT GEORGE WILLIAMS, (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, of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR, the Applicant, appeared on behalf of the Solicitors Regulation Authority ("SRA").

The Respondent was present and represented himself. Also present was Mr Gary Page, SRA Forensic Investigation Officer, as a witness for the SRA. No objection was raised to his presence whilst the case was opened.

The application was dated 5th March 2010.

Allegations

- (a) The Respondent failed to maintain properly written up accounting records and up-to-date reconciliations in breach of Rule 32 (1) and (7) of the Solicitors' Accounts Rules 1998 ("SAR 1998").
- (b) The Respondent made a withdrawal from client account otherwise than in accordance with Rule 22 of the SAR 1998.

- (c) The Respondent failed to act with integrity contrary to Rule 1.02 of the Solicitors' Code of Conduct 2007 ("SCC").
- (d) The Respondent behaved in a way that was likely to diminish the trust that the public places in the legal profession contrary to Rule 1.06 of the SCC.
- (e) The Respondent failed to remedy shortfalls on client account promptly upon discovery in breach of Rule 7 of the SAR 1998.
- (f) The Respondent failed to safeguard client money contrary to Rule 5.01(g) of the SCC.

Factual Background

1. The Respondent was born on 1st May 1948 and was admitted to the Roll of Solicitors on 15th March 1994. At all material times the Respondent practised on his own account as "Robert G Williams and Co" from premises at 77A George Street, Croydon, Surrey CR0 1LD.
2. At the time of the hearing the Respondent did not hold a current practising certificate. The Respondent's name remained on the Roll.
3. As a result of a document headed "Report on present difficulties" sent by the Respondent to the SRA on 1st March 2007 the SRA began an investigation of the books of account and other documents of the Respondent on 20th March 2009. The Forensic Investigation Officer ("FIO") was Mr Gary Page. The FIO's Report was dated 17th June 2009. On 12th August 2009 the Regulatory Proceedings Adjudication Panel of the SRA resolved to intervene in the Respondent's firm.

Witnesses

4. The FIO had been invited to attend to give evidence as the contents of his Report had not been agreed by the Respondent. The FIO gave oral evidence about his investigation and the contents of the Report dated 17th June 2009.
5. In cross examination, the FIO explained that the Report had been prepared by him but had been signed by M J Calvert, then Head of Forensic Investigation at the SRA, in accordance with the SRA's usual practice. It was suggested that the Report should contain a Statement of Truth if it were to be relied on in these proceedings. However, it was stated that the "Statement" pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007 is that of Peter Steel made on 5th March 2010 and the FI Report is part of the exhibit to that statement.
6. The FIO was cross examined about the number of visits he had made to the Respondent's firm and the timing of those, which comprised information in the FI Report. He was asked about the contemporaneous notes he had made and whether there was a reason those had not been annexed to the Report. There was no particular reason these had not been annexed but they had not been considered material. In particular, the FIO was asked whether he had discussed with the Respondent the problem, described by the Respondent as a paradox, that if a solicitor finds there is a difference between the sums shown on the client account ledgers and the sum in the

client bank account, if a payment were made into client account to ensure that the figures balanced, it was unclear how that payment could be noted when posted. The FIO agreed that this issue may have been discussed but he had not made a note of it and did not recall any discussion about what the Respondent referred to as this “paradox”.

Submissions

7. The Applicant submitted that although the content of the FIO’s Report had not been agreed, in many respects the Respondent had admitted the allegations. There had been a shortfall between the amount held on client bank accounts and the amount due to clients. The Respondent had been unable to make good the shortfall and there had been a loss of client account funds. There had been one transaction where the Respondent had paid an office expense from client account.
8. The Respondent submitted that he did not dispute that there had been problems with his firm’s accounts from 2002 and he did not dispute the transaction in which a credit card terminal had been used to pay funds from client account to settle an office expense. However, he had been let down by his bank which had transferred money over a period of time from client to office account without his authority. One or possibly two former employees had taken money from client account. The firm’s accountant had failed to disclose that transfers had been made in error. There had been problems with the computerised accounting system, which had been recommended and approved by the Law Society for small practices such as his. It was submitted that if there was absolute liability on the solicitor principal of the firm then others (employees, banks or accountants etc) could remove money from client account with impunity. The principle of absolute liability was therefore queried.

Findings as to Fact and Law

9. The Respondent had experienced problems with the accounts systems of his practice from about 2002.
10. The Respondent had failed to maintain properly written up accounting records and up to date reconciliations, in breach of Rule 32 (1) and (7) of the SAR 1998. In particular, as of March 2009 it had appeared there was a shortfall on client account of something over £11,000 although further enquiries and the FIO Report had shown an indicated cash shortage as of February 2009 of £18,661.33. Reconciliations had not been carried out promptly, such that the errors were not uncovered until early 2009.
11. The Respondent had admitted, and the Tribunal found, that he had made a withdrawal from client account otherwise than in accordance with Rule 22 of the SAR 1998. The figure of £2,846.25 had been transferred improperly from client to office bank account in order to pay a recruitment agent’s fee. The Respondent’s failure to manage his accounts, and the improper transfer, also showed breaches of Rule 1.06 of the SCC, Rule 7 of the SAR and Rule 5.01 (g) of the SCC.
12. The Tribunal found that all the allegations had been proved. The Tribunal had noted the Respondent’s comments concerning difficulties experienced with the firm’s accountants and others. However, there was absolute liability on the principal of a

practice to ensure compliance with the Rules. That did not rule out that others may be at fault. The proprietor of the practice was responsible to the profession and to the public for compliance with the SCC and SAR.

Mitigation

13. The Respondent had substantially admitted the allegations made. Indeed, it was the Respondent who had drawn his difficulties to the attention of the SRA.
14. The problems with the Respondent's accounts related in particular to the period 2002 to 2006. However, it was only in early 2009 that the Respondent had become convinced he could not rely on the firm's reporting accountant. The computerised accounting system that the Respondent had introduced, as recommended and approved by the Law Society, had been used from the start of the practice. The Respondent stated that a difficulty with the system was that software assumed complete compliance with the SAR. This created problems when, for example, the bank made payments from client to office account in breach of his instructions. The Respondent's attempts to reconcile the ledgers with the bank statements did not show a match. Therefore, the reconciliation feature on the software did not work. The failure to carry out reconciliations properly in turn made it difficult to keep the accounts properly. Ad hoc reconciliations were done and the Respondent relied on the firm's accountant, who did not raise any fundamental difficulties with the accounts.
15. In 2006 the Respondent had expanded his practice and moved office. He had therefore been busy and had a lot on his mind. There had been a problem with the administration of an estate. The Respondent now understood how this difficulty had occurred and how the transfer of money in relation to that client which was not resolved until 2009 had created reconciliation problems.
16. The Respondent had repaid, by the time his practice was intervened in, all but about £2,500.00. In relation to that sum, the Respondent still did not know how the shortfall or gap had arisen. Although money had been misplaced, the Respondent had acted in good faith and as soon as he was sure that the advice he had hitherto received from his accountant was wrong, he tried to remedy it and replace the money. He had been trying to fulfil the spirit of the Rules although he admitted that he had not been successful. The Respondent had issued proceedings against the firm's accountant to seek recompense, but that claim had been dismissed. The Respondent was not clear about the High Court's reasons for dismissal of the claim.
17. The Respondent admitted that it was an act of stupidity on his part to try to raise money on an Amex card to pay an office expense. He had carried out that transaction to try to keep his practice open. He had been reducing the number of employees and the number of hours the trainee solicitor was undertaking. He had borrowed some money from a relative to keep the practice afloat. It had been intended that the money would be replaced immediately but the transaction failed because of Amex's terms and conditions. The Respondent was not sure if he had read the terms and conditions fully before carrying out the transaction but if he had done so he had forgotten them.

18. The Respondent had hoped to keep his practice open through the difficult times of the recession. However, it had been hard to keep going without doing what the Respondent accepted was a “non standard” transaction.

Costs application

19. The Applicant applied for costs in the sum of £9,543.21. Those costs included the Forensic Investigation costs. It was submitted that the costs had reached the level claimed due to the Respondent’s approach to the proceedings and he had been put on notice about the level of costs.
20. The Respondent told the Tribunal that he is insolvent, with debts of over £200,000. He has no assets and is currently working as a taxi driver. He accepted that the SRA had incurred costs in dealing with these proceedings. The Tribunal could make an Order but the costs would be a debt amongst those owed to other unsecured creditors. The Respondent had a responsibility to his other creditors to ask the Tribunal to look at the Applicant’s bill critically.

Sanction and Reasons

21. The Tribunal had considered this matter carefully. The Tribunal had taken into account the fact that the Respondent had himself reported to the SRA the faults and matters which had led to these proceedings. The Respondent had been aware of problems with his accounts from 2002. He had not been dishonest but had not had sufficient understanding of the SAR and his actions had teetered on the edge of being reckless. It may be that he had not been well served by his staff. However, although these matters might appear trivial to the Respondent, it was the solicitor principal’s duty to ensure that the accounts of his practice are in perfect order.
22. Taking into account all of the circumstances it was appropriate for the Respondent to be suspended for two years.
23. The Tribunal recommended that the SRA should, on the termination of the suspension, determine what conditions should apply to the Respondent’s practising certificate. The Tribunal recommended that the SRA should in particular consider a condition that the Respondent should not be able to practise on his own account.

Decision as to costs

24. The Tribunal had noted the Applicant’s costs schedule and accepted that the amount claimed was reasonable and appropriate. However, the Tribunal had also taken into account the Respondent’s financial position as stated to the Tribunal. It was therefore appropriate to Order the Respondent to pay the costs fixed in the sum £9,534.21 but that such costs should not be enforced without the permission of the Tribunal.

Order

25. The Tribunal Ordered that the Respondent, ROBERT GEORGE WILLIAMS of 2 Tidenham Gardens, Croydon, Surrey, CR0 5UT, solicitor, be suspended from practice as a solicitor for the period of two years to commence on the 30th day of September 2010 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,534.21, such costs not to be enforced without the permission of the Tribunal.

Dated this 11th day of November 2010
On behalf of the Tribunal

R B Bamford
Chairman