

IN THE MATTER OF MICHAEL ALLAN LEVY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A. H. B. Holmes (in the chair)
Mr. A. Gaynor-Smith
Mrs N. Chavda

Date of Hearing: 22nd November 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by John Battersby solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Hertfordshire SG14 1BY on the 3rd July 2007 that Michael Allan Levy solicitor of Levys Solicitors, Manchester House, 84-86 Princess Street, Manchester M1 6NG might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

At the opening of the hearing the Applicant sought to withdraw certain allegations and to amend one of the remaining allegations. During the course of the hearing both parties invited the Tribunal to agree to the withdrawal and amendment. The Tribunal consented. The allegations set out below are in the finally agreed amended form.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars:

1. That he failed to comply with Rule 22 of the Solicitors' Accounts Rules 1998 in that client money was withdrawn from client account other than as permitted by that Rule.

2. That he has failed to comply with Rule 13 of the Solicitors' Practice Rules 1990 (as amended) in that the systems for supervision and management of the firm were not sufficient to prevent the misconduct of an employee as detailed herein.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Stephen John Battersby appeared as the Applicant and the Respondent was represented by Andrew Hopper of Queen's Counsel.

The evidence before the Tribunal included the admissions of the Respondent.

At the conclusion of the hearing the Tribunal made the following Order:

The Tribunal Orders that the Respondent MICHAEL ALLAN LEVY of Levys Solicitors, Manchester House, 84-86 Princess Street, Manchester M1 6NG, solicitor, do pay a fine of £7,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00 inclusive.

The facts are set out in paragraphs 1 - 19 hereunder:

1. The Respondent, born in 1944, was admitted as a solicitor in 1984. At the material times he was a principal in the firm of Levys Solicitors at Manchester.
2. On 10th February 2003 William Charles Rosenberg (Mr. Rosenberg) a solicitor was struck off the Roll of Solicitors.
3. Subsequently the Respondent sought permission from the Law Society to employ Mr. Rosenberg. Such permission was granted, subject to conditions on the 28th April 2003.
4. Mr. Rosenberg commenced his employment with the Respondent on 1st August 2003. The conditions imposed were:-
 - i. Mr. Rosenberg's work in the firm's conveyancing department to be directly supervised by Mrs W and in her absence by one of the partners of the firm.
 - ii. Mr. Rosenberg not to be a signatory to any office or client account cheques and not to hold, receive or have responsibility for clients' monies, or the firm's accounts function.
 - iii. The Office for the Supervision of Solicitors to be granted reasonable access in order to monitor compliance with the terms of the approved employment and to ensure that the interests of clients are not adversely affected.
 - iv. Mr. Rosenberg's name not to appear on the firm's headed notepaper, publicity material or external nameplate unless his current status is unambiguously stated.
 - v. Any changes in Mr. Rosenberg's duties as described in Mr Levy's letter of the 11th April 2003 to be notified immediately to the OSS.

- vi. This approval to be reviewable at the discretion of the OSS.
 - vii. The decision to be disclosable to the local Law Society.
5. Prior to the making of the Adjudicator's decision there had been an exchange of correspondence between the Law Society and the Respondent. On 31st March 2003, the Law Society wrote to the Respondent enclosing a copy of their report for the Adjudicator. The documents sent to the Respondent included the Findings of the Tribunal of 10th February 2003. The draft recommendation was that Mr. Levy's application should be refused, but it was granted by the Adjudicator who had before him a letter from the Respondent to the Law Society dated 11th April 2003, which letter was regrettably no longer in the possession of the Law Society.
 6. Mr. Rosenberg's employment with the Respondent's firm began on 1st August 2003 and he remained so employed on the 23rd August 2005 when an inspection of the firm's books of account and other documents was commenced by a Law Society Investigation Officer (the IO).
 7. The IO's report dated 5th April 2006 was before the Tribunal. It revealed that transfers of costs had been made from the firm's client account to office account which were not in respect of proper payment of the firm's fees. These totalled £14,071.59 and arose where additional bills generated by Mr. Rosenberg in respect of what was described as 'unbilled VAT work' on conveyancing matters of which he had conduct. These bills had been generated some time after completion and mainly cleared off the credit balance remaining on each client ledger.
 8. The firm's subsequent investigation identified £14,071.59 which was due back to clients. The sum had been paid back to clients in January and February 2006.
 9. The IO reviewed sample files. In each file there was a handwritten file note which recorded the reasons for the additional bill. There was also a letter to the client on each file enclosing the receipted bill. The letters typically included the narrative "we have been carrying out an audit of your file and noted that we did not in fact account to you in full for VAT purposes" and "we stress that you have already paid for this bill, it is merely for record purposes."
 10. The Respondent explained to the IO that he had been unaware of these transfers prior to the inspection. Subsequently the Respondent produced to the IO a letter, dated 6th January 2006, which he had handed to Mr. Rosenberg regretting what had happened and setting out more rigorous controls which were to be put into effect.
 11. In addition the IO had discussed with the Respondent the firm's use of private search companies and the charges involved. The Respondent stated that although an uplift on amounts paid was charged to the client, this still kept the total within the amount quoted for Local Authority Searches in the client care letter. The uplift should not have been more than £20.00 and the firm accounted to the client by showing the VAT paid on Search Fees as £2.97 separately on the firm's bill. The significance of this was that £17.03 plus VAT of £2.97 amounted to £20.00. The IO noted that there were transactions in which Mr. Rosenberg had been involved where a greater uplift had

been applied, even though the VAT had been shown as £2.97 which indicated that the uplift had been £20.00.

12. The Law Society wrote to the Respondent on the 8th May 2006 sending him a copy of the IO's report and inviting him to explain. The Respondent replied substantially on 30th May 2006 saying that Mr. Rosenberg had been asked by him to clear up numerous client balances which had been brought to his attention by the accounts department. Mr. Rosenberg had presented copies of bills to the accounts department who had acted upon them having been misled into believing that the original bills had been authorised.
13. The Respondent examined 5000 of the firm's bills, including around 2000 of which Mr. Rosenberg had conduct. 297 of these were questionable. The Respondent and his colleagues had devoted hundreds of hours to this task. Mr. Rosenberg had acted in a cavalier fashion and had breached the Respondent's trust in him. He would never have contemplated Mr. Rosenberg doing what he had.
14. The Respondent had not terminated Mr. Rosenberg's employment immediately but had monitored him closely (in the event Mr. Rosenberg remained with the firm until 17th March 2006).
15. The Respondent had made refunds to clients on 91 bills, totalling £14,071.59
16. Less than 8% of Mr. Rosenberg's bills had been involved and it was not difficult for them to have slipped through the firm's system.
17. The Respondent had introduced revised terms which were now clear and transparent which would prevent recurrence of the over charging of search fees. The Respondent had been led to believe that the total mark up was no more than £20.00 on search fees. The majority of search fee uplifts had been within the £20.00 limit. Those that were not had been disguised by Mr. Rosenberg's reference to VAT of only £2.97.
18. With the benefit of hindsight the Respondent agreed that he could have supervised Mr. Rosenberg more closely.
19. The uplifts on bills were something which, perhaps, should have been noticed but they were on original bills and no part of the offending post completion bills.

The Submissions of the Applicant

20. The Respondent admitted the allegations. He accepted that the systems operated by his firm had not been sufficiently robust. The failure of the system had been evidenced on a single isolated occasion.
21. The Applicant's case was that the Respondent did not supervise Mr. Rosenberg properly or supervise adequately his clients' matters. As a result of this lack of supervision, Mr. Rosenberg was able to produce 297 unauthorised bills which caused monies to be transferred from client to office account, thereby giving him a direct responsibility for client monies and the firm's accounting function. After the event, the Respondent introduced a system whereby all copies of bills had to be signed by

himself or Mrs W – had this procedure been in place from the outset, the problems could have been avoided.

22. The Respondent should have been well aware of the reasons why Mr. Rosenberg had been struck off the Roll. Mr. Rosenberg's behaviour giving rise to proceedings against the Respondent was not dissimilar from that which led to his being struck off. That alone should have led the Respondent to be more rigorous in his supervision.
23. Striking off was not a sanction which the Tribunal imposed lightly. The Law Society does not readily grant permission to solicitors to employ former solicitors who had been struck off. Solicitors to whom such permission is granted need to be assiduous in exercising full and proper supervision over such an employee and complying with conditions imposed by the Law Society.
24. As the Respondent had himself pointed out Mr. Rosenberg derived a significant benefit from the unauthorised billing because he was remunerated by being paid an amount equivalent to a third of the billing income on his matters, which gave him an incentive to bill as much as possible. Given that there were almost three hundred unauthorised bills generated by Mr. Rosenberg it was the Applicant's position that the problem should have been discovered by the Respondent, particularly as it had been going on since November 2003.
25. The Respondent had conceded that he did not know Mr. Rosenberg's files and he accepted that Mr. Rosenberg could have been more closely supervised. The changes introduced by the Respondent after the problems were discovered demonstrated that the systems which had been in place beforehand were inadequate.

The Submissions of the Respondent

26. Initially the IO did not discover the problems with Mr. Rosenberg's matters. They had been discovered by the firm's own accountants who qualified their report. It was only on the IO's second examination that he was able to report on the problems which had already been brought to his attention.
27. The following were matters to be taken into account. Mr. Rosenberg's work was directly supervised by Mrs W who only ever took one week's continuous holiday per year; the remainder of the holiday entitlement was taken in days here and there and at the most three days at a time. On those occasions only would the Respondent have any responsibility for supervision.
28. Mrs W was a solicitor of 18 years experience who had qualified late in life and who had been employed by Mr. Levy since he started the practice in 1994. She was a trusted employee who was a co-signatory on the firm's bank mandates; she had always been treated like a partner and was consulted on all important decisions and whose counsel was sought on many problems. Mrs W had care and control of the conveyancing department in which Mr. Rosenberg was employed. The Respondent was not a conveyancer.
29. The Respondent saw incoming post and distributed it to the department heads.

30. Mrs W had been instructed to check the outgoing post of the fee-earners under her control. Mrs W dealt with all electronic transfers and transfers of money in respect of her department.
31. After all of Mr. Rosenberg's files had been checked the Respondent had returned upwards of £34,000 to clients. It was estimated that some £10,000 of this was the firm's money, but the Respondent had taken the commercial view that the cost of resolving whether such money was properly due to clients would have been greater than paying it over.
32. The firm's cashier had estimated that the cost to the firm in terms of money paid to clients, payment of remuneration to Mr. Rosenberg to which he was not entitled and the cost of time spent by the Respondent and members of the firm's staff in resolving all of the issues was in excess of £100,000.
33. In a sense the firm's system did work. The problems had been identified by the firm's own accountants. To that extent the checks and balances in place were sufficient. It had, of course, been the qualified Accountant's Report relating to these matters which had made them known to the Law Society.
34. The Respondent had considered Mr. Rosenberg to be an honest person. He had been confirmed in that view by the fact that the Law Society had granted permission to him to employ Mr. Rosenberg. The bills on their face were entirely proper and there was nothing on them that would put anyone on enquiry.
35. The Respondent himself was a person of the highest integrity. He had had an unblemished record as a solicitor. The Tribunal was invited to give due weight to the glowing written testimonials put in in his support all of which spoke highly of his competence and probity.
36. The Respondent had recognised what had gone wrong and had taken enormous steps at great expense to put matters right and ensure that nothing of the sort would happen again. The Respondent's efforts had been entirely laudable.

The Tribunal's findings

37. The Tribunal found the allegations to have been substantiated, indeed they were not contested. The Law Society had granted permission for the Respondent to employ Mr. Rosenberg and had imposed stringent conditions. Even in the light of the very specific conditions imposed by the Law Society any solicitor employer of a struck off solicitor must have in place all appropriate safeguards.
38. If a firm of solicitors does employ a solicitor who has been struck off the Roll, then the public is entitled to expect the employing solicitor to exercise the highest standards of supervision.
39. The Respondent indicated that he had not read the Tribunal's detailed findings relating to the striking off of Mr. Rosenberg. The Tribunal finds it extraordinary that any prospective employer of a struck off solicitor should not make the fullest possible investigation into the background and the reasons why he was struck off. The

Tribunal had been referred to an earlier case in which a solicitor in a similar position was described as having put himself in a state of deliberate ignorance. That was wholly unacceptable. A solicitor has clear duties and responsibilities to the public and he must ensure that no member of the public is put in danger or that matters handled on a client's behalf or money held on that client's behalf are put in jeopardy. Failure to do so brings the profession's reputation into disrepute.

40. The Respondent accepted that notwithstanding the submission in paragraph 28 above, his systems for supervision and management of his firm had not been sufficient to prevent the misconduct of Mr. Rosenberg. As a result there had been a breach of Rule 22 of the Solicitors' Accounts Rules 1998 in respect of which the Respondent had absolute liability.
41. The Respondent's failures had been at the serious end of the scale. The Tribunal gave the Respondent credit for the fact that he had used his best endeavours to put matters right and ensure that such a situation could not arise again in the future; the fact that the Respondent's efforts to correct the position had cost a great deal of money; for his admissions and for his good character and finally for the excellent testimonials written in support of the Respondent all of which testified to his integrity and competence.
42. In all of the circumstances of this case the Tribunal concluded that it would be both proportionate and appropriate to impose a substantial financial sanction upon the Respondent. The Tribunal ordered the Respondent to pay a fine of £7,500.00.
43. After hearing submissions from both parties on the question of costs and taking into account the fact that initially the Applicant pursued an allegation in respect of which, if found substantiated, there would have been a mandatory sanction that would have affected the Respondent's ability to practise. The facts of the matter were such that it would be right for the Respondent to pay the Applicant's costs. The Applicant had provided a schedule of his costs and had agreed a reduction of some £1,000 in recognition of the withdrawal of the allegation that would attract either the ultimate sanction or a suspension. The Tribunal considered that the Applicant's costs were reasonable and after taking into account his adjustment of £1,000 ordered the Respondent to pay the Applicant's costs fixed in the sum of £5,000. In fixing the costs payable the Tribunal had saved the expenditure of further time and money in this case which would have been necessary had costs been made subject to a detailed assessment.

Dated this 30th day of January 2008
On behalf of the Tribunal

A. H. B. Holmes
Chairman