

On 17 November 2011, Mr Gurpinar appealed against the Tribunal's decision on sanction. The appeal was dismissed by Lord Justice Moore-Bick. Kemal Howard Gurpinar v Solicitors Regulation Authority [2012] EWHC 192 (Admin.)

No. 10011-2008

No. 10324-2009

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF KEMAL HOWARD GURPINAR, SOLICITOR

- AND -

IN THE MATTER OF KEMAL HOWARD GURPINAR
& [*RESPONDENT 2*], solicitors

Upon the application of James Moreton on behalf of the Solicitors Regulation Authority

Mrs K Todner (in the chair)
Mr J C Chesterton
Mrs L McMahon-Hathway

Date of Hearing: 22nd April 2010

FINDINGS & DECISION

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

Appearances

Mr James Moreton a partner in the firm of Bankside Law Solicitors, Thames House, 58 Southwark Bridge Road, London SE1 0AS for the Applicant.

The Respondent Kemal Howard Gurpinar did not appear.

The Respondent [*Respondent 2*] appeared and was not represented.

Applications Dates & Consolidation

Case number 10011/2008 against Kemal Howard Gurpinar alone 13th June 2008 with a supplementary statement in that matter on 8th May 2009.

Case number 10324/2009 against Kemal Howard Gurpinar and [*Respondent 2*] 15th September 2009.

The two matters were consolidated by Order of the Tribunal on 13th October 2009.

Allegations relating to case number 10011/2008 against Kemal Howard Gurpinar alone:

1. That he delivered late an Accountant's Report for the six month period ending 31st March 2007, a Report which was due to have been delivered by 14th June 2007, in breach of a condition on his practising certificate for the practice year 2005/2006 and as required by Section 34 of the Solicitors Act 1974 and the Rules made thereunder.
2. That he failed to comply with a condition attached to his practising certificate for the practice year 2005/2006.
3. That he permitted client accounts to be overdrawn in breach of Rule 22(5) of the 1998 Rules.
4. That he failed to remedy breaches of the Solicitors Accounts Rules promptly as required by Rule 7 of the 1998 Rules.

and by the supplementary statement pursuant to Rule 7:

5. That he delivered late an Accountant's Report for the six month period ending 31st March 2008, a report which was due to have been delivered by 31st May 2008 and in breach of a condition on his practising certificate for the practice year 2006/2007, as required by Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.

Allegations relating to case number 10324/2009 against Kemal Howard Gurpinar & [*Respondent 2*]:

1. That they failed to keep books of account properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 ("the 1998 Rules").
2. That they paid client money into office account other than in accordance with Rule 1 and Rule 15 of the 1998 Rules.
3. That they practised as solicitors through a business in the style of a Limited Liability Partnership without prior approval to practise as a recognised body, in breach of Rule 12.01 (1) (d) of the Solicitors Code of Conduct 2007.

Preliminary Matter

The Applicant told the Tribunal that the hearing had been adjourned from 25th March at the request of Mr Gurpinar who had been admitted to hospital in Turkey. However on that occasion his counsel, Mr Ahmed, attended to request the adjournment and a direction had been made that Mr Gurpinar serve his defence bundle on the Tribunal and the Applicant by 14th April 2010. Mr Gurpinar had not complied with this direction. An Administrative Officer from the Tribunal had telephoned Mr Ahmed's Chambers, Clapham Law Chambers and had been informed that they were without any further instructions and had not heard from Mr Gurpinar since the last hearing. In the circumstances the Applicant asked that the Tribunal hear the matter in Mr Gurpinar's absence.

The Tribunal having considered the matter, decided that the matter should indeed proceed in Mr Gurpinar's absence. The Tribunal was satisfied that Mr Gurpinar had been given notice of the hearing and that he had been properly served with the papers relating to the matter. There had been previous adjournments in this matter and indeed Mr Gurpinar had only engaged with the Tribunal in seeking adjournments. He had been represented by counsel at the hearing on 25th March 2010 and had not been compliant with the directions given on that occasion. It was now apparent he had not contacted counsel to give any further instructions nor had he contacted the Tribunal since that day.

Factual Background

1. Kemal Howard Gurpinar was born in January 1944 and admitted as a solicitor in November 2001. His name remains on the Roll of Solicitors. [*Respondent 2*] was born in December 1962 and was admitted as a solicitor in April 2002. His name remains on the Roll of Solicitors.

Case Number 10011/2008

2. At all material times Kemal Howard Gurpinar ("the Respondent") carried on practice on his own account under the style of Howard Gurpinar & Co of Suite 4-6, Unit 4F, N17 Studios, 784 -788 Tottenham High Road, London N17 0DA.

Allegation 1

3. On 10th July 2006, an Adjudicator of The Law Society made a decision to grant the Respondent a practising certificate for the practice year 2005/2006 subject to conditions, inter alia, that he deliver half yearly Accountant's Reports and to deliver such within two months of the end of the period to which they related.
4. The Respondent delivered his Accountant's Report for the six month period ending 31st March 2007 to the Solicitors Regulation Authority ('SRA') late. The report was due to be delivered on or before 31st May 2007. The Respondent was granted an extension of time until 14th June 2007 within which to provide the required report. A request for a further extension of time, on 15th June 2007, was refused.
5. On 24th July 2007 the SRA wrote to the Respondent requesting an explanation for his failure to deliver the report within time. A Report was received by the SRA on 13th August 2007.

Allegation 2

6. On 10th July 2006, an Adjudicator of The Law Society made a decision to grant the Respondent a practising certificate for the practice year 2005/2006 subject to the condition, inter alia, that he attend a course on immigration law and practice, approved by The Law Society for continuing professional development purposes, within three months of the date of notification of the decision and to provide confirmation of his attendance when the Respondent next applied for a practising certificate.
7. The Respondent was notified of the condition in a letter from The Law Society dated 14th July 2006 and was, therefore, due to attend the course by no later than 14th

October 2006.

8. By letter dated 12th January 2007 the Respondent wrote to The Law Society confirming that he could not demonstrate compliance with the condition.
9. On 31st January 2007, the SRA wrote to the Respondent seeking an explanation for his non-compliance.
10. The Respondent replied on 9th February 2007 conceding that he had not complied with the condition.
11. Despite further correspondence passing between the SRA and the Respondent on this matter, to date the Respondent has failed to provide confirmation of his attendance on a course in compliance with the condition.

Allegations 3 and 4

12. Upon due notice to the Respondent, on 30th January 2007 an Investigation Officer ('IO') of the SRA attended the Respondent's firm and carried out an inspection of the Respondent's books of accounts. The IO produced a report dated 29th March 2007.
13. The IO discovered that the books of account were not in compliance with the Solicitors Accounts Rules 1998.
14. The IO conducted a comparison of the balances shown in the client's ledger with cash held in client bank as at 31st December 2006 and identified a cash shortage of £2,830.69.
15. The IO found that the cash shortage was caused by overpayments and over transfers taking place between 13th January 2006 and 11th September 2006. In his report the IO exemplified the matter of HD. On this matter a shortage of £822.50 remained in existence for almost twelve months.
16. The IO found that the cash shortage had been replaced by the Respondent on 5th January 2007.
17. The matters set out above were considered by an Adjudicator of the SRA on 12th November 2007 when a decision was made to refer the Respondent's conduct to the Solicitors Disciplinary Tribunal.

Allegation 5

18. On 17th July 2007, an Adjudicator of the SRA made a decision to grant the Respondent a practising certificate for the practice year 2006/2007 subject to conditions, inter alia, that he deliver half yearly Accountant's Reports, such reports to be delivered within two months of the end of the period which they relate and any Cease to Hold Accountant's Report required under the SAR to be delivered within two months of the end of the period to which it relates.
19. The required Accountant's Report for the six month period ended 31st March 2008, which was due by 31st May 2008, was received late on 17th July 2008.

20. The matter was authorised for inclusion in the existing disciplinary proceedings affecting the Respondent by an authorised officer of the SRA on 30th April 2009.
Case number 10324/2009
21. At all material times Kemal Howard Gurpinar (“the First Respondent”) and [*Respondent 2*] (“the Second Respondent”) carried on practice in partnership under the style of Howard Gurpinar & Co of Suite 4-6, Unit 4F, N17 Studios, 784-788 Tottenham High Road, London N17 0DA. The practice was intervened into by the SRA on 3rd September 2009.
22. On 2nd December 2008 an Adjudicator decided to approve the First Respondent’s proposed partnership with Mr BAM and [*Respondent 2*] subject to conditions, inter alia;
- (i) that the accounting functions of the practice were not the First Respondent’s sole responsibility;
 - (ii) that the First Respondent inform Regulatory Investigations immediately of any changes in the composition of structure of Howard Gurpinar & Co.
23. The First and Second Respondents were informed of the decision by letters from the Solicitors Regulation Authority dated 2nd December 2008.
24. On 2nd March 2009, upon due notice to the Respondents, a Senior Investigation Officer of the (SIO) of the SRA attended the Respondents’ firm at Suite 4-6, Unit 4F, N17 Studios, 784-788 Tottenham High Road, London N17 0DA. The SIO produced a report dated 15th May 2009.
25. On 2nd March 2009 the office was found to be staffed by two individuals, neither of whom was a solicitor, who said that the Second Respondent would not be in attendance at the firm until the evening. During a telephone conversation with the Second Respondent it was agreed that the SIO would return to the office again the following day.
26. The SIO returned to the office premises on 3rd March 2009 and met with the Second Respondent. The Second Respondent said that he was unable to provide the SIO with details of the firm’s books and records. The Second Respondent informed the SIO that he was employed on a full time basis by a local authority and only worked at the firm during the evening. He explained that the First Respondent, who had left the country on a previously arranged trip to Turkey on 2nd March 2009, was due to return on 9th March 2009.
27. The SIO returned to the premises on 10th March 2008 and carried out an inspection of the books of account and other documents.

Allegation 1

28. The SIO discovered that the books of account were not in compliance with the Solicitors Accounts Rules 1998.
29. The First Respondent was unable to produce client ledger accounts or client account reconciliations for inspection. He informed the SIO that his accounting records were

missing. The First Respondent said that he believed the accounting records to have been taken by the firm's former practice manager. That individual appears to have left the firm at a time prior to 10th December 2008.

30. The SIO returned to the firm on 30th March 2009 to continue with the inspection. The First Respondent provided the IO with handwritten client ledger accounts for six matters detailing the firm's client account transactions for the period 24th November 2008 to 12th March 2009. There were no entries on the office side of the ledger accounts.
31. The Respondents failed to provide any accounting records for any period prior to 6th November 2008.
32. The Respondents failed to provide client account reconciliations for the firm's client account at Barclays Bank, nor did they produce client ledger accounts relating to the funds in this account.
33. The SIO found that the hand written ledger accounts related only to dealings with client funds that had passed through a Lloyds TSB office bank account which had been opened on or about 6th November 2008.

Allegation 2

34. During the period 24th November 2008 to 12th March 2009 the Lloyds TSB office bank account was used to dealing with both client and office money. The Respondents did not produce for inspection any reconciliations of the Lloyds TSB office bank account.
35. Both the First Respondent and the Second Respondent agreed with the SIO that client money had been incorrectly lodged in the Lloyds TSB office bank accounts and that many of the withdrawals from the account were in respect of office expenditure. The First Respondent advised the SIO that the account had continued to be used for both client and office transactions until 30th March 2009.
36. The SIO did not consider it practicable to attempt to calculate the firm's total liabilities to clients as at 28th February 2009, or to express an opinion as to the firm's ability to meet liabilities to clients.

Allegation 3

37. On 22nd April 2009, the Second Respondent wrote to the SRA on letterheaded paper in the name Howard Gurpinar & Co LLP, advising that the partnership had become a LLP on 1st April 2009. Companies House documentation was enclosed with the letter.
38. On 27th April 2009, the First Respondent wrote to the SRA enclosing an application for approval of a new limited liability partnership together with documentation from which it was apparent that the First Respondent had, since 1st April 2009, traded as Howard Gurpinar & Co LLP without the approval of the SRA.
39. The SRA wrote to the First Respondent and Second Respondent by letters dated 4th June 2009 requesting their explanation of matters raised in the IO's report. The

- Respondents replied by letters dated 9th June 2009 and 11th June 2009.
40. By letter dated 10th July 2009, the First Respondent provided documentation described as the accounts of the firm with Lloyds Bank. The Respondents failed to provide the SRA with documentary evidence to show that their books of account had been brought properly up to date, or to show that they were carrying out proper reconciliations of their client account.
 41. The matters subject of the report were considered by an authorised officer of the SRA on 15th July 2009 when a decision was made to refer the conduct of both Respondents to the Solicitors Disciplinary Tribunal.
 42. The Tribunal reviewed all of the documents before it which included a Rule 5 statement dated 13th June 2008 in case number 10011/2008, together with accompanying bundle, a supplementary statement in case number 10011/2008 dated 8th May 2009 together with accompanying bundle, a Rule 5 statement dated 15th September 2009 in case number 10324/2009 together with accompanying bundle and previous memoranda of directions of the Tribunal dated 8th May 2009, 11th June 2009, 13th October 2009 and 25th March 2010. The Tribunal also had before it an email dated 17th March 2010 from [*Respondent 2*] to the Applicant containing details of admissions and denials and mitigation.

Witnesses

43. The following persons gave oral evidence;

Mr R Sage, the SIO of the SRA and [*Respondent 2*], the Second Respondent in case number 10324/2009.

Findings as to Fact and Law

Case number 10011/2008

Allegation 1

44. That the Respondent, Kemal Howard Gurpinar delivered late an Accountant's Report for the 6 month period ending 31st March 2007, a report which was due to have been delivered by 14th June 2007, in breach of a condition on his practising certificate for the practice year 2005/2006 and as required by Section 34 of the Solicitors Act 1974 and the Rules made thereunder.
45. It was clear from the evidence presented to the Tribunal at Exhibit JCM/1 that the Respondent had failed to deliver the Accountant's Report by the due date despite his having been granted an extension of time and that this was in breach of a condition on his practising certificate for the practice year 2005/2006. The Tribunal therefore found this allegation to have been substantiated on the facts.

Allegation 2

46. That the Respondent, Kemal Howard Gurpinar failed to comply with the condition attached to his practising certificate for the practice years 2005/2006.
47. The allegation related to a condition that the Respondent attend a course on immigration law and practice, approved by The Law Society within three months of

being notified that an Adjudicator of The Law Society had made a decision to grant him a practising certificate subject to that condition. He was due to attend the course by no later than 14th October 2010. He also had to provide confirmation of his attendance when he applied for his next practising certificate. It was clear from the evidence before the Tribunal at Exhibit JCM/1 that the Respondent had been unable to provide any confirmation that he had attended such a course; indeed he had written to The Law Society confirming that he could not demonstrate such compliance.

48. The Tribunal therefore found this allegation to have been substantiated on the facts before it.

Allegations 3 & 4 - 3 that he permitted client accounts to be overdrawn in breach of Rule 22 (5) of the 1998 Rules and 4 that he failed to remedy breaches of the Solicitors Accounts Rules promptly as required by Rule 7 of the 1998 Rules.

49. The Senior Investigation Officer told the Tribunal that he had not personally carried out the inspection that had led to these allegations. The inspection had been carried out by an IO who was no longer with the SRA. However he had inspected the files of that officer and was able to give evidence as to his findings. The IO's Findings were in his report of 29th March 2007. The Tribunal was also taken to the documentation in the bundle marked JCM/2 and two examples where clients' accounts had been overdrawn, in particular to evidence of the cash shortage of £2,830.69 and the matter of Mr HD where a shortage of £822.50 remained in existence for almost 12 months. The IO had found that the cash shortage had not been replaced by the Respondent until 5th January 2007.
50. The Tribunal found this allegation to have been substantiated on the facts presented to it..

Allegation 5 - that he delivered late an Accountant's Report for the six month period ending 31st March 2008, a report which was due to have been delivered by 31st May 2008 and in breach of a condition on his practising certificate for the year 2006/2007 as required by Section 34 of the Solicitors Act 1974 (as amended) and the Rule made thereunder

51. The Applicant referred to Exhibit JCM/3 and to the relevant decision of the Adjudicator and the fact that the Accountant's Report was not delivered until 17th July 2008.
52. The Tribunal found this allegation to have been substantiated on the facts.

Case number 10324/2009 against Kemal Howard Gurpinar (the First Respondent) and [Respondent 2] (the Second Respondent)

Allegation 1 - that they failed to keep books of account properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 ("the 1998 Rules")

53. In his oral evidence, the SIO, Mr Sage, referred to his Forensic Investigation Report at pages 1-5 of Exhibit JCM/1 and told the Tribunal that he had not considered it practicable to calculate the total liabilities of the firm. This had been because they were not using the client account for client money but lodging such monies in office account. There had been a clear mixing of office and client monies. The records were not adequate or satisfactory and because money had been placed in office

- account there were insufficient monies in client account.
54. The Second Respondent admitted this allegation.
 55. The Tribunal found this allegation to have been substantiated on the facts and evidence before it.

Allegation 2 - that they paid client money into office account other than in accordance with Rule 1 and Rule 15 of the 1998 Rules.

56. The SIO told the Tribunal that the Lloyds TSB office bank account was used to deal with both client and office money. As an example at page 80 of JCM/1 there were payments from this account to British Gas, HM Revenue, Thames Water and others which appeared to be office payments and other which were client payments. The Tribunal was also referred to ledger sheets between pages 83 and 89 of Exhibit JCM/1 which were individual client ledgers. It was apparent that there was no separate client and office account but one account.
57. The Second Respondent admitted this allegation.
58. The Tribunal found this allegation to have been substantiated on the facts and evidence presented to it.

Allegation 3 - that they practised as solicitors through a business in the style of a Limited Liability Partnership without prior approval to practise as a recognised body, in breach of Rule 12.01 (1)(d) of the Solicitors Code of Conduct 2007.

59. The Applicant told the Tribunal that the Second Respondent had written to the SRA on 22nd April 2009 on letterheaded paper which bore the title 'Howard Gurpinar & Co LLP' advising that the partnership had become an LLP on 1st April 2009. However it had not been until 27th April 2009 that the First Respondent wrote to the SRA enclosing an application for approval of the new LLP together with documentation from which it was apparent that the First and Second Respondents had traded as Howard Gurpinar & Co LLP without the approval of the SRA since 1st April 2009. In particular the Applicant took the Tribunal to the partnership agreement between the First and Second Respondents dated 1st April 2009 at pages 54 and 55 of Exhibit JCM/1 and to the letter dated 22nd April 2009 at page 34 of JCM/1.
60. The Second Respondent denied this allegation. The Second Respondent had signed the LLP headed letter but had said they were in the process of making the change. He had always known that they weren't an LLP until the matter had become formalised and the intervening period had been something of an oversight. He had had no intention to be deceptive. The firm had made no profit as an LLP but he was not aware if the First Respondent had made any profit out of it being an LLP.
61. The Tribunal found the allegation to have been substantiated on the facts and evidence presented to it.

Mitigation

62. The Second Respondent told the Tribunal that he had joined the firm in September of 2008 in a part time capacity. At that stage he had been told by the First Respondent that a Mr BAM was the managing partner who would be his supervisor. He had been

appointed as compliance officer to deal with complaints. He had informed the SRA that he was part time working 2-3 evenings a week for 2-3 hours. There had been a backlog of complaints and he had told the First Respondent that the firm could not go on like that but the First Respondent had responded that he should do his best. By December of 2008 the First Respondent had rejoined the firm and Mr BAM was supposed to be in charge of the client accounts. However, Mr BAM was seldom at the office and when he had gone to Lloyds Bank to open the client account the bank had said that they needed to see Mr BAM but that had never happened.

63. The Second Respondent had had no reason to believe that his other partners couldn't deal with basic things like accounts. When Mr Sage the SIO had arrived he was very embarrassed but had known he was a partner and was responsible. He had tried to do his job well and had advised the First Respondent how important it was to comply with the SRA.
64. The Second Respondent had taken Mr Gurpinar on trust and had maybe met him a year before he had gone into partnership with him. The Second Respondent had been a partner before in successful firms. When asked by the Applicant how the £200,000 which he had been required to put into the business had been computed he responded that Mr Gurpinar had had a lot of Turkish business contacts and that maybe he had been careless but that he had thought the partnership in the firm had been worth it.
65. The Second Respondent fully accepted his liability as a partner. He believed that if given a further opportunity to practise he would not fall into the same trap as he had on this occasion. He was currently not working as a solicitor and had employment in job that did not pay very well.

Costs Application

66. The Applicant told the Tribunal that costs in matter number 10011/2008 against Mr Gurpinar alone were £22,737.48. The costs in matter 10324/2009 against Mr Gurpinar and [*Respondent 2*] were £13,445.84. The costs of the previous adjournment on 25th March 2010 of £1,256.08 had been incorporated into the schedules. The costs of intervention had been £24,101.18 and nothing had been paid against those costs to date.

Previous Disciplinary Sanctions before the Tribunal

67. None

Sanction and Reasons

68. The Tribunal found all of the matters against Mr Gurpinar to have been proved. It concluded that Mr Gurpinar was incapable of being regulated and that he brought discredit to the profession by his refusal to operate within the relevant rules of the profession and that he exposed the public to risk and the profession to disrepute. In those circumstances Mr Gurpinar would be struck off the Roll of Solicitors.
69. The Tribunal found that the three allegations against [*Respondent 2*] had been proved. He had entered into partnership with Mr Gurpinar and had thereby enabled Mr Gurpinar to practice. In doing so he had put his own practising certificate at risk and

the appropriate penalty in this case, given his role in the firm, would be a suspension for a period of 1 year.

Decision as to Costs

70. The Tribunal heard the Applicant's submissions with respect to costs in this matter. The previous adjournment costs of £1,256.08 should be borne by Mr Gurpinar, the Second Respondent had been at that hearing and had been prepared to proceed. The Tribunal found that the culpabilities of the First and Second Respondent were different and therefore judged that the Second Respondent should pay £3,189.76 in relation to the proceedings against him. In so far as the First Respondent Mr Gurpinar was concerned his costs would be the £22,737.48 for the proceedings against him alone and £10,256.08 in respect of the proceedings against him and [*Respondent 2*].

Orders

71. The Tribunal Ordered that the respondent, Kemal Howard Gurpinar of Enfield, Middlesex, EN3, solicitor, be Struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £32,993.56.
72. The Tribunal Ordered that the respondent, [*Respondent 2*] of London, N19, solicitor, be suspended from practice as a solicitor for the period of one year to commence on the 22nd day of April 2010 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,189.76.

Dated this 24th day of June 2010
on behalf of the Tribunal

K Todner
Chairman