

IN THE MATTER OF MOHAMED FARAH,
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs J Martineau (in the chair)
Mr A Gaynor-Smith
Lady Bonham Carter

Date of Hearing: 24th March 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Stephen John Battersby, solicitor and partner in the firm Jameson & Hill of 72-74 Fore Street, Hertford, Hertfordshire, SG14 1BY on 16th June 2008 that an Order under Section 43 of the Solicitors Act 1974 (as amended) be made by the Tribunal directing as from a date to be specified in such Order no solicitor, recognised body or Registered European Lawyer should employ or remunerate Mohamed Farah of Leyton, London E10 5PB who was or had been remunerated by a solicitor except in accordance with permission in writing granted by The Law Society.

The allegations were that the Respondent had:-

1. Produced or caused to be produced a document which was misleading in that it gave the impression that he was a solicitor when he was not so qualified.
2. Witnessed a Statutory Declaration when he was not a person qualified to do so.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 24th March 2009 when Stephen John Battersby appeared as the Applicant and the Respondent appeared in person.

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

The Tribunal Orders that as from 24th day of March 2009 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Mohamed Farah of Leyton, London, E10 a person who is or was a clerk to a solicitor and the Tribunal further Order that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the investigation of the Law Society.

The evidence before the Tribunal included the admissions of the Respondent as to the facts.

The facts are set out in paragraphs 1 - 5 hereunder

1. The Respondent, born in 1959, was at the material time employed by Khans Solicitors with offices at 165 Ley Street, Ilford, Essex, IG1 4BL and 271 Hoe Street, London E17 9PT. The Respondent had been working at the Hoe Street office when he produced and witnessed the document giving rise to the allegations.
2. The Respondent was acting on behalf of Miss S Y M, the mother of a child who was involved in a dispute with the local Education Authority at Enfield as to which school year the child should be in. The mother was anxious to persuade the Local Authority that her child had been born on 14th June 1992 and not 14th June 1990 as the Local Authority records showed.
3. On behalf of the mother, the Respondent drew up a document dated 29th September 2005. The cover sheet described the document as a "Deed-Poll for Change of Date of Birth". The heading on the document itself described it as a "Statutory Declaration for Change of Date of Birth". The document provided that Miss S Y M abandoned one date of birth and replaced it with another.
4. In the document devised by the Respondent Miss S Y M signed the Deed twice, once above the "former date of birth" and once above the "adopted date of birth."
5. The Declaration had been made before the Respondent who described himself as "Mohamed Farah, LLB, Lawyer". To the left of his signature appeared the words "Solicitor for Oaths". The stamp of Khans Solicitors appeared beneath the Respondent's signature.

The Submissions of the Applicant

6. The Respondent had offered written explanations to The Law Society when requested to do so.

7. Although in his statement accompanying the application the Applicant had alleged that the Respondent had acted dishonestly, having had the opportunity of discussing the matter with the Respondent the Applicant was satisfied that he had not been dishonest and withdrew that allegation.
8. The document produced by the Respondent had been strange. He should not have produced that document and it was reckless of him to do so. It was not a document that he was qualified to execute and the document that he created had no validity. It had been no part of the Applicant's case that the document provided false information about a date of birth. The document had been described on the front sheet as "Deed Poll for Change of Date of Birth". A Deed Poll would normally deal with a change of name. The main part of the document referred to itself as a "Statutory Declaration." The Deed or Declaration had been provided to the London Borough of Enfield and that authority had complained about the Respondent's actions to The Law Society.
9. The fact that the Respondent had produced such a document made it desirable that his future employment within the solicitor's profession should be controlled by The Law Society.
10. The Applicant sought the costs of and incidental to the investigation and enquiry in the figure of £2,500.00.

The Submissions of the Respondent

11. The Respondent was a law graduate and was referred to as a "lawyer" within the Somali community.
12. He had drafted the document using a template form which had been stored on his employer's computer.
13. The Respondent accepted that it had been wrong for the description "Solicitor for Oaths" to appear on the document. He said that this should have been deleted and he had made an honest mistake in allowing it to remain on the document signed by the client. The Respondent apologised for the fact that he had made that mistake. Nothing like that had happened before and he had not been negligent before.
14. The Respondent had not asked his employers if it was alright to witness such a document in the way that he had. He confirmed that he had not done so.
15. The Respondent considered that his action had been negligent, it had not been reckless, it had been an honest mistake.

The Findings of the Tribunal

16. The Tribunal found the facts to have been proved, indeed they were not contested. The Tribunal found the allegations to have been substantiated and found that in acting as he did the Respondent had acted recklessly.

The Respondent's Mitigation

17. The Respondent explained that he was chairman of Waltham Forest Somali Community Organisation and at the time of the hearing he was no longer employed in a solicitor's firm. He confirmed that the making of the order sought would not affect his current employment.
18. The Tribunal pointed out to the Respondent that it was his responsibility to pay the costs incidental to the application and enquiry. It was noted that the Applicant had agreed the level of costs but in view of his belief that his former employers would meet those costs the Tribunal concluded that it would be appropriate to order that such costs be assessed unless agreed between the parties.
19. The extraordinary nature of the document produced by the Respondent, and the fact that he had not given any consideration to the fact that if he had prepared a Statutory Declaration to be executed by his client, there was a requirement that the Declaration should be made before another independent person authorised to administer oaths. The Tribunal was concerned by the Respondent's failure to grasp such fundamental matters and considered that it was both appropriate and proportionate to make him subject to an order pursuant to Section 43 of the Solicitors Act.

Dated this 18th day of June 2009

On behalf of the Tribunal

J Martineau
Chairman