

IN THE MATTER OF ERIEN DUBASH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. E. Richards (in the chair)
Miss T. Cullen
Mrs S. Gordon

Date of Hearing: 13th October 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by Linda Louise Rudgyard, solicitor employed by The Law Society at the Solicitors Regulation Authority (SRA) of 8 Dormer Place, Leamington Spa, Warwickshire CV32 5AE on 22nd April 2009 that Erien Dubash, solicitor, 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.

The allegation against the Respondent was that she has breached Rule 1.06 of the Solicitors Code of Conduct 2007 in that she has behaved in a way that is likely to diminish the trust the public places in her or the profession by reason of a fact that she was convicted on 23rd October 2008 upon indictment of one count of furnishing false information contrary to Section 17 (1) (b) Theft Act 1968.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 13th October 2009 when Peter Cadman, solicitor of Russell-Cooke, 8 Bedford Row, London WC1R 4BX appeared on behalf of the Applicant and the Respondent appeared and was not represented.

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

The Tribunal Orders that the respondent, Erien Dubash, solicitor, be Struck off the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £600.

The evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 Statement of the Applicant together with accompanying bundle which included a certified copy certificate of conviction from the Southwark Crown Court dated 12th February 2009 and a copy transcript of the sentencing remarks of His Honour Judge Hardy dated 27th November 2008, as well as the written submissions and admissions of the Respondent, together with testimonials on her behalf.

The facts are set out in paragraphs 1 – 5 hereunder:

1. The Respondent was admitted as a solicitor in August 1995 and her name remains upon the Roll of Solicitors. She was born in September 1958.
2. At all material times it is understood that the Respondent carried on practice as an assistant solicitor at Cleveland & Co Solicitors, 1-3 Floor, 234-236 Whitechapel Road, London E1 1BJ.
3. The Respondent was convicted on 23rd October 2008 in the Crown Court at Southwark upon indictment and upon her own confession of one count of furnishing false information contrary to Section 17 (1) (b) Theft Act 1968. She was sentenced on 27th November 2008 to a Community Sentence Order requiring her to carry out unpaid work for two hundred hours under the supervision of a probation officer and ordered to pay compensation in the sum of £3,885.70 to Transport for London together with £8,000 towards the costs of the prosecution. There has been no appeal.
4. On 8th December 2008 the SRA case worker wrote to the Respondent seeking her explanation.
5. The Respondent explained in response to the SRA that the basis of the plea entered at the Crown Court was that at the material time she was depressed and at a low ebb in her life. It had been submitted in mitigation by her Counsel on her behalf that she deeply regretted her actions, they were out of character and that as a solicitor she would stand to lose her livelihood if her practising certificate was withdrawn. She had submitted character references and a letter from her GP.

Submissions on behalf of the Applicant

6. Mr Cadman indicated that the allegation was admitted.
7. He referred to the remarks of the sentencing Judge:

“what possessed you, as a senior solicitor and supervisor of Housing and Welfare Benefits at the firm of solicitors where you were employed since 2004, during that time, to have engaged in this

thoroughly dishonest deception on Transport for London, on the underground system, from January 2004 to April 2007, by making false claims for refunds, I cannot think....I accept that you may well have pleaded guilty earlier had you not been suffering from depression, but I am faced with the fact that during the period in question you submitted 1440 false claims, falsely claiming back from the London Underground the sum of £3,885.70 – that is at a rate of one and a half claims per day – on the basis that your travel on the Underground had been delayed. It seems to me that in many ways I would be justified in passing a custodial sentence, because that would be an appropriate punishment in the circumstances and it would also be deterrent to others for this sort of dishonesty”.

8. Mr Cadman then directed the attention of the Tribunal to the case of The Law Society and Brendan John Salsbury [2008] EWCA Civ 1285. In that case at paragraph 21 Lord Justice Jackson is quoted from the Master of the Rolls in Bolton – v – The Law Society [1994] 1 WLR 512:

“It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, Ordered that to be struck off the Roll of Solicitors....the second purpose is the most fundamental of all; to maintain the reputation of the Solicitors Profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. ...a profession’s most valuable asset is its collective reputation and the confidence which that inspires....the essential issue which is the need to maintain among members of the public a well found confidence any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.”

9. The written submissions of the Respondent indicated that her lapse was “a failing which is isolated and plainly out of character”. However the position of the Applicant was that these were not isolated failings having been repeated between January 2004 and April 2007.
10. The Respondent had also cited the case of Burrowes – v – The Law Society [2002] EWHC 2900 (Admin). However, Mr Cadman submitted that this was a highly unusual case where a striking off had been replaced by a suspension for three years on the basis that it has been accepted that the solicitor had been entitled to the money and that his conduct was “at the very bottom of the scale of dishonesty”. The Applicant urged the Tribunal to follow the principles in Salsbury and Bolton.

11. The Respondent had submitted a number of references and the Tribunal would in Mr Cadman's submission need to decide what weight should be given to these but he noted that the doctor's report submitted was dated 28th October 2008 and detailed the Respondent's depression on that day. When the offences had taken place between 2004 and 2007.
12. The Applicant asked for costs in the sum of £1,315.63.

The submissions of the Respondent

13. The Respondent had put in a written submission to the Tribunal fully acknowledging the gravity of the offence and the circumstances in which she found herself at the time in question and she expressed sorrow for her actions. She had previously been of good character and her lapse could only properly be described as "a failing which is isolated and plainly out of character".
14. She had submitted a number of character references and a letter from her General Practitioner confirming that she was clinically depressed. She also asked that her case be dealt with mercifully in accordance with the guidance at paragraph 14.32 of the Solicitors Handbook 2008 and the decision in Burrowes – v – The Law Society. She asked that the Tribunal impose a financial penalty or suspension for a period which would be reasonable in the extremely difficult financial and personal circumstances in which she found herself.
15. At 14.32 of the Solicitors Handbook 2008 it was said that:

“however in some cases which could reasonably have attracted the label of dishonesty, but where the failing is isolated and plainly out of character, the Tribunal and/or the Divisional Court has on occasion taken a merciful approach, recognising that honest people can do very strange and irrational things in circumstances of acute stress.”
16. At the time that she had committed the offences for which she had been convicted at the Crown Court she had been isolated and depressed. She needed to be occupied with something and was currently working on a part time basis in a job unrelated to the Law. Her professional life had been one of helping people but she now felt unsupported herself. She had no savings and had been ashamed to speak to anyone about her depression. Due to her part time work she was not in receipt of any benefits and a striking off order would clearly make matters worse. In relation to the costs requested by the Applicant these were too much for her to pay in her current circumstances.

The decision of the Tribunal

17. The Tribunal found the allegation proved indeed it had not been contested.
18. There were previous Findings of the Tribunal against the Respondent. On 10th and 11th April 2002 the Respondent admitted an allegation that she had breached the Solicitors Publicity Code 1990 and thereby Rule 2 of the Solicitors Practice Rules 1990 and was Ordered to pay a fine of £5,000 and costs of £4,153.60.

The Tribunal's findings and its reasons

19. Whilst the Tribunal gave the Respondent full credit for appearing before them and admitting the allegation, they would apply Paragraph 21 of the Salsbury case and were able to distinguish the Burrowes case cited in aid by the Respondent. In the case of Burrowes, where the allegation was that he had been guilty of conduct unbecoming a solicitor in that he forged the signatures of two purported witnesses to two Wills (who were not in fact present when the Wills were signed by the Testators), there was no intention by Mr Burrowes to prejudice anyone else or to make a gain for himself. Neither had Mr Burrowes been convicted of an offence related to the allegation in the Criminal Courts. The misconduct by Mr Burrowes had been isolated; the conduct of the Respondent had taken place over a period of over 3 years.
20. In all the circumstances and always bearing in mind the maintenance of the reputation of the Solicitors' Profession, the Tribunal had decided to impose an Order striking off the Respondent.
21. In regard to costs, the Tribunal had born the principles of D'Souza – v – The Law Society [2009] EWHC 2193 (Admin) in mind. In the light of the Order now made and the lack of the ability to work as a solicitor as a result of it the costs would be reduced to £600.
22. The Tribunal Orders that the respondent, Erien Dubash, solicitor, be Struck Off the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £600.

Dated this 23rd day of December 2009

On behalf of the Tribunal

Mr E Richards
Chairman