

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF PRATIK RAMBHAI PATEL, solicitor (The Respondent)

Upon the application of Jayne Willetts
on behalf of the Solicitors Regulation Authority

Mr K W Duncan (in the chair)
Mr A Ghosh
Mrs V Murray-Chandra

Date of Hearing: 21st October 2010

FINDINGS & DECISION

Appearances

Jayne Willetts of Townshends LLP solicitors, Cornwall House, 31 Lionel Street, Birmingham B3 1AP appeared for the Applicant.

The Respondent did not appear and was not represented.

The date of the Application was 5th February 2010.

Allegations

The Respondent failed to act with integrity and he behaved in a way likely to diminish the trust the public places in him or the legal profession, in breach of Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007 by creating and backdating two documents. Dishonesty was alleged but it was not necessary to prove dishonesty for the allegation to be made out.

Factual Background

1. The Respondent, born in 1970, was admitted as a solicitor in 2006. He had previously practised as a dentist. He was employed as an assistant solicitor by Bindmans LLP of London in its personal injury and clinical negligence team from 21st July 2008 until he

was dismissed on 30th September 2009.

2. The Respondent had had conduct of a personal injury file for Ms T. The case was funded on a conditional fee basis and was insured with Accident Line (“AL”). It was a term of the policy that if a case were allocated to the multi track the firm had to notify AL within 28 days of the date of the Allocation Questionnaire. A form “Notice of Additional Conditional Premium” also had to be sent to AL.
3. The case was lost at trial on 5th February 2009. The Respondent submitted a Claim Declaration Form to AL requiring payment of the firm’s costs.
4. On 20th February 2009 AL confirmed that only the costs up to the date of allocation would be allowed as it had not received the Notice of Additional Conditional Premium Form.
5. On the same day the Respondent faxed to AL a covering letter dated 1st September 2008; an Allocation Notice dated 1st September 2008 and a sealed order of Master Hoffman.
6. On 24th February 2009 Bindmans received a telephone call from AL confirming that the Notice dated 1st September 2008 could not have been created on that date as it was printed on AL’s new branded material which had been in use only since 1st October 2008.
7. The covering letter had been printed on an edition of Bindman’s stationery which was not in use at the date that appeared on its face.
8. At an internal meeting at Bindmans on 24th February 2009 the Respondent confirmed that he had created the two documents on 20th February 2009.
9. The Respondent was dismissed from his employment with six months’ notice effective from 30th September 2009.

Submissions of the Applicant

10. The applicant alleged that the Respondent acted dishonestly in creating and backdating the two documents. It was contended that the Respondent created these documents in an attempt to induce AL to accept them as genuine and to persuade AL to pay his firm’s costs. There were no copies of the documents on the file and there were no electronic versions of the correspondence held on the IT system of Bindmans. There was nothing that would enable the Respondent to identify the date upon which the documents could have been sent in the past and therefore the date to insert in the documents prepared by the Respondent on 20th February 2009. Further the Respondent did not inform AL that the documents that he sent on 20th February 2009 were not “file” copies. They appeared on their face to be documents prepared on the date written thereon. It was alleged that the production of these documents was a deliberate attempt to mislead AL in order to recover costs for the firm.
11. The appropriate test for establishing dishonesty was the two part test set out in Twinsectra v Yardley [2002] UKHL 12, [2002] 2 AU CR 377. The objective test was satisfied by the fact that reasonable and honest people would consider that the

production of two documents backdated so that they appeared to have been written and sent on the date which appeared on the face of them where the Respondent claimed that he had been “recreating” existing documents that had been lost and where those documents would deceive the recipient was a dishonest act.

12. With regard to the subjective part of the test, it had been asserted that the Respondent had recreated original documents. He had not in fact been able to do this as the claimed original documents had not existed. No hard copies had been on the file and there were no electronic copies on the firm’s computer. There had been nothing available to the Respondent to identify the date that appeared on the claimed original document. The Respondent could not have known that date; he created the date. The effect of the non-receipt at the appropriate time of the documents by AL did not only mean that Bindmans’ costs would not be paid but that firm stood to lose a substantial sum as it would not be reimbursed disbursements and would find itself liable for the defendant’s costs. The Respondent’s proper course would have been to check the existence of the documents on paper and electronically and on AL’s file, and when it appeared that a mistake had been made to seek the assistance of his senior or supervisor. The Respondent had claimed that the relevant person was not available. The matter had not been one of such urgency that it could not wait for that person’s return to the office. The Respondent had not pointed out to AL the circumstances in which he had created the documents. They had been held out by him as genuine copies and AL had been led to believe that they were file copies.
13. The partners at Bindmans that had investigated the matter themselves had found that the Respondent had not acted with the honesty and candour that was to be expected.
14. The Respondent’s motive in acting as he did was to avoid significant loss to the firm. His submission of the manufactured backdated documents had been in order to convince AL to pay the costs. The Respondent had everything to gain and nothing to lose.
15. Even if the Respondent had acted on the spur of the moment, the subjective part of the Twinsectra test was satisfied.

Findings as to Fact and Law

16. The Tribunal found the facts to have been established, indeed they were not contested by the Respondent.
17. The Tribunal found that the facts supported the allegation made against the Respondent.
18. The Tribunal was required to make a finding on the question of dishonesty and in considering this aspect of the allegation against the Respondent the Tribunal applied the two part test set out in Twinsectra -v- Yardley.
19. The Tribunal found that in preparing a letter and a form of notice on which the Respondent placed a date that was not one which had been established by the writing of these documents on an earlier occasion and in entering a date that made it appear that the documents had been sent to the insurers, AL, within the time limits specified in the policy on insurance, with the intention of leading AL to believe that these were

copies of original existing documents, the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having taken into account the explanations provided by the Respondent and those representing him and his assertions that he had genuinely believed that the documents had been sent but had been misfiled and that he had created the documents in fact sent to AL to put right the problem which had occurred when AL indicated that it had not been in receipt of these documents, the Respondent had knowingly deceived AL as to the nature of the documents supplied and as to the date upon which it was said the original documents had been prepared and sent. He took no step to explain the circumstances in which he had "recreated" the documents supplied to AL. The Tribunal accepts that the Respondent had the motive of covering up a mistake which he had made and his action amounted to an endeavour not to place his firm in a position where it was liable not to recoup outgoings made on behalf of the client and where it would be liable for the payment of the Defendant's costs. The Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that his "recreation" of the documents was a replacement of missing documents which had been prepared earlier and delivered to AL, and that in creating those documents, even if the Respondent had as he asserted at the time, a belief that the documents had been written and sent on an earlier occasion, sending those documents without detailed explanation as to how they were created, the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he was acting as an honest solicitor should, and therefore that he knew that what he was doing was dishonest by those same standards.

Mitigation

20. The letters addressed to the SRA by the Respondent's advisors and the submissions sent to the Tribunal by email set out a number of mitigating factors, in particular the Tribunal took note of the fact that the Respondent had apparently otherwise acted as a conscientious and competent solicitor. The Respondent, during his entire working life, had never received any warnings in relation to his capability or performance, or for any other reason until the incident in question. He had always received positive feedback from clients and his superiors, indeed even after the conclusion of the disciplinary hearing conducted by Bindmans he had been informed that he would be given a final written warning rather than be dismissed.
21. The Respondent criticised the system utilised by his employers and said that it was not unusual for documents to be misfiled or go missing. At the time when his error occurred there had been no formal procedures in place to follow up or check that all relevant reporting forms had been sent and since the incident before the Tribunal the department in the firm had implemented a new system of procedures to avoid a recurrence.
23. Bindmans themselves had accepted that the Respondent had honestly believed that the form and the letter had been sent on or by the date which had been diarised and that all he was doing was recreating a copy of both documents.
24. The Respondent always genuinely believed that the documents had been sent in proper time to AL. This assertion had been maintained by the Respondent as soon as matters came to light.

Costs

25. On the subject of costs, the Applicant sought the costs of and incidental to the application and enquiry, and provided a costs schedule to the Tribunal. The Tribunal accepted that the Applicant should have her costs but saw fit to reduce the quantum sought.

Sanction and Reasons

26. In acting as he did, the Respondent fell very far short of the integrity, probity and trustworthiness required of a member of the solicitors' profession, who is also an Officer of the Court. The public is entitled to believe that it can trust a solicitor to the ends of the earth. The Tribunal had found the Respondent to be dishonest and he had thereby seriously damaged his own good reputation and the good reputation of the solicitors' profession. Mindful of its duty to protect the public and the good reputation of the solicitors' profession the Tribunal concluded that it was both appropriate and proportionate to order that the Respondent be struck off the Roll of Solicitors.

27. The Tribunal made the following Order:

The Tribunal Ordered that the Respondent, Pratik Rambhai Patel, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00 inclusive.

Dated this 23rd day of November 2010
On behalf of the Tribunal

K W Duncan
Chairman