

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF IBRAR AHMED, solicitor's clerk (The Respondent)
A person (not being a solicitor) employed or remunerated by a solicitor

Upon the application of Jonathan Goodwin
on behalf of the Solicitors Regulation Authority

Mr J N Barnecutt (in the chair)
Mr R Prigg
Mr P Wyatt

Date of Hearing: 30th November 2010

FINDINGS & DECISION

Appearances

Jonathan Goodwin, Solicitor Advocate, of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT appeared on behalf of the Solicitors Regulation Authority ("SRA").

The Respondent appeared in person.

The application to the Tribunal, on behalf of the SRA, for an Order under Section 43(2) of the Solicitors Act 1974 (as amended) was made on 26 February 2010.

Allegation

The allegation against the Respondent (as amended with the consent of the Tribunal) was that he had utilised a cheque received from a client, such cheque not having been made out to him or to the firm, and had failed either to pay the money into the firm's client account or to utilise the money in accordance with the client's instructions, and that such conduct had been an act or default in relation to a legal practice, involving conduct on his part of such a nature that it would be undesirable for the Respondent to be involved in a legal practice.

Preliminary Issue

In the light of the Respondent's statement dated 30th November 2010 which had been received by the Applicant just before the commencement of the hearing, the Applicant sought to amend the wording of the allegation to allege the utilisation rather than the cashing of the relevant cheque. The Respondent did not oppose the application explaining that the cheque had not been cashed by him but utilised on a different file in error.

In the light of the Respondent's, albeit somewhat late, explanation the Tribunal allowed the amendment.

Factual Background

1. The Respondent, who was not a solicitor, was employed by Riaz Solicitors until 15 October 2008. The Respondent was presently working as an unadmitted employee of Greenfield Solicitors, Northside House, 1 Northside Road, Bradford, West Yorkshire, BD7 2AY.
2. By letter dated 11 October 2008, Mr and Mrs B had made complaint to the Legal Complaints Service ("LCS"). Mr and Mrs B had instructed Riaz Solicitors to act in arranging indefinite leave to remain in the country for Mr B's mother, Mrs SK. The Respondent had acted in the matter.
3. On 17 January Mr and Mr B had sent a cheque in the sum of £750 to the Respondent in respect of the Home Office fee relating to the application made out to "HO Leave to Remain".
4. The cheque had been cashed on 7 February 2008, although it had not been sent to the Home Office, in respect of the matter of Mrs SK.
5. The Respondent had forwarded the application for indefinite leave to remain to the Home Office on 16 May 2008, in respect of the matter of Mrs SK.
6. By letter dated 16 May 2008 he had written to Mrs K and confirmed that he had lodged the application.
7. By letter dated 28 May 2008 the Home Office had written to Riaz Solicitors rejecting the application as invalid on the grounds that there had been insufficient funds in the account on which the cheque was drawn to cover the fee in the sum of £750.
8. The LCS had contacted Mr Riaz on 17 February 2009 in relation to the matter. The matter had been resolved by agreement with Mr Riaz agreeing to refund the cost of the application, the firm's fees, and to pay compensation to Mr and Mrs B for the inconvenience caused.
8. By letter dated 23 March 2009 the SRA had written to Mr Riaz seeking his explanation.
9. Mr Riaz replied by letter dated 6 April 2009. He had confirmed that the Respondent had been the fee earner who had had conduct of the case. He had not been able to

ascertain from the Respondent what had happened to the cheque, but had confirmed that the cheque had not cleared through the firm. He indicated that the Respondent had informed him that he had issued the cheque which had been sent to the Home Office, that the Respondent had not had authority to do so, and that at the relevant time the firm had only held the sum of £350 in respect of Mr and Mrs B which had been received on account of costs. He had also noted that the Respondent had taken the file with him when he had left the firm without authority to do so.

10. By letter dated 22 April 2009 the SRA had written to the Respondent seeking his explanation.
11. The Respondent had failed to reply.
12. The matter had been considered by an Adjudicator on 18 June 2009 who had resolved to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal for consideration as to the making of an Order pursuant to the terms of s.43(2) of the Solicitors Act 1974 (as amended).

Documentary Evidence before the Tribunal

13. The Tribunal reviewed the Rule 8 Statement, dated 26 February 2010, together with its exhibits. The Tribunal also had the benefit of a statement, by the Respondent dated 29 November 2010 with references attached, handed in during the hearing.

The Submissions of the Applicant

14. The Applicant reminded the Tribunal that s.43 of the Solicitors Act 1974 (as amended) was a regulatory provision designed to afford safeguards and to exercise control when in any given case that is considered to be appropriate. The Applicant stressed that the making of an Order was not a punishment and should not be viewed as such.
15. A fundamental principle was to maintain the reputation of the profession, in the interests of both the profession and the public. The profession's most valuable asset was its collective reputation and the confidence that it inspired, not only in respect of solicitors but also in respect of those that they employed, whether qualified or not.
16. The Applicant confirmed that he had explained to the Respondent that if the Order under s.43 was made by the Tribunal, his firm would have to apply for permission to employ him. However, the Applicant confirmed that he had no instructions that such an application would be refused.

The Submissions of the Respondent

17. The Respondent referred to and relied upon his statement dated 29 November 2010. He gave the Tribunal details of his professional and personal history and of his financial position. The Respondent explained that the complaint from Mr and Mrs B had been the first complaint against him in the ten years he had spent working as an immigration advisor. He detailed the difficulties in the case. The Respondent

accepted that because he could not find the cheque from Mr and Mrs B, he had used his wife's cheque for the £750 fee. That cheque had not been paid hence all the subsequent problems.

18. The Respondent said that he had not seen the letter of 28 May 2008 from the Home Office and had therefore not been immediately aware of the difficulty. He explained that Mrs K, the subject of the application, had not wished to continue her application and it had not been pursued.
19. The Respondent accepted that the mistaken use of the mislaid cheque, made payable to the Home Office, on another file had been a serious mistake. However, he stressed that he had never sought to take money from a client or to utilise the money for his personal use. He apologised to the Tribunal both for what had happened and for his delay in explaining in detail both to the Adjudicator and to the Tribunal exactly what had happened and why.

Application for Costs

20. The Applicant sought an order for costs assessed in the sum of £3,000.00.

Sanction, Reasons and Costs

21. Having considered all the evidence and the submissions of the parties, the Tribunal was satisfied that it was appropriate to make the order under s.43. There were a number of matters that concerned the Tribunal; the Respondent's failure to tell his employer of his loss of the cheque, the subsequent use of a personal cheque, the taking of the file to his next firm and not least the consequences of his actions for Mrs K and Mr and Mrs B. Taking all those factors into account, the Tribunal was satisfied that a regulatory Order was appropriate in all the circumstances.
22. However, in making its Order the Tribunal stressed that it was not indicating that the Respondent should not be allowed to continue to practice as an immigration advisor. The Tribunal noted that the Applicant had no instructions from the SRA that such would be the case.
23. The Tribunal also noted that the Respondent had repaid all the costs, the Home Office fee together with compensation of £750 to the complainants.
24. The Tribunal was satisfied that the proceedings had been properly brought and Ordered the Respondent to pay costs assessed at £3,000.00. In making the Order the Tribunal had considered the information provided by the Respondent as to his means and expressed its view that the SRA should seek to recover the sum by way of appropriate instalments.

The Order of the Tribunal

25. The Tribunal Ordered that as from 17 day of January 2011 except in accordance with Law Society permission:

- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Ibrar Ahmed;
- (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Ibrar Ahmed;
- (iii) no recognised body shall employ or remunerate the said Ibrar Ahmed;
- (iv) no manager or employee of a recognised body shall employ or remunerate the said Ibrar Ahmed in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit the said Ibrar Ahmed to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said Ibrar Ahmed to have an interest in the body;

And the Tribunal further Ordered that the said Ibrar Ahmed do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000.

Dated this 25th day of January 2011
On behalf of the Tribunal

J N Barnecutt
Chairman