

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF RICHARD GEORGE CONNOR, solicitor (The Respondent)

Upon the application of David Barton
on behalf of the Solicitors Regulation Authority

Mr. I. R. Woolfe (in the chair)
Mr. S. Tinkler
Mr. R. Slack

Date of Hearing: 9th November 2010

FINDINGS & DECISION

Appearances

David Elwyn Barton of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX for the Applicant.

The Respondent did not appear and was not represented.

The Application was dated 23 June 2010 and a Supplementary Statement was dated 2 September 2010.

Allegations

- (1) The Respondent failed to deliver his accountant's report for the period ended 31 May 2009 due on or before 30 November 2009;
- (2) The Respondent practised as a solicitor in breach of conditions on his practising certificate from 1 February to 4 March 2010 upon which date his certificate was terminated;

- (3) The Respondent practised as a solicitor after 4 March 2010 without there being in force a certificate issued by the Law Society in accordance with the provisions of Part 1 of the Solicitors Act 1974, contrary to section 1(A) of the said Act and/or Rule 20.01 of the Solicitors Code of Conduct 2007;
- (4) Contrary to Rule 20.03 of the said Code, the Respondent failed to deal with the Authority in an open prompt and co-operative way.
- (5) Contrary to Rule 20.05 of the Solicitors Code of Conduct 2007 the Respondent failed to deal with the Legal Complaints Service and/or the Authority in an open prompt and co-operative way.

Service of Documents

The Applicant requested the Tribunal's leave to proceed in the Respondent's absence. The Tribunal had before it a letter dated 7 October 2010 from the Respondent addressed to the Tribunal. This referred to the proceedings, so it was clear that he was aware of the application. The Respondent stated in that letter that he did not envisage being fit enough to attend any future substantive hearing. He also stated it was in no one's interest to drag out the process. The Applicant confirmed the Respondent was personally served with the Rule 5 Statement and enclosures on 24 August 2010 at 7.40 pm at 2 Brockenhurst Road, which was his residential address as well as his former business address. The Applicant had written to the Respondent on 14 October 2010 by Special Delivery notifying the Respondent of today's hearing and serving him with the Supplementary Statement and attached Civil Evidence Act Notices. The letter was picked up by the intervening agents who confirmed the documents had been forwarded to the Respondent on 18 October 2010. The Respondent had also been served with details of today's hearing by the Tribunal by Special Delivery.

The Applicant accepted Rule 7 of the Solicitors (Disciplinary Proceedings) Rules 2007 had not been complied with, in that the Respondent had been given less than 30 days' notice of the Supplementary Statement prior to the date of today's hearing. However, the Applicant reminded the Tribunal that it had a discretion under Rule 21 of the Rules to dispense with any requirements of the Rules in respect of service or notices in any case where it appeared to the Tribunal to be just so to do. The Applicant requested the Tribunal to use its discretion to proceed in the Respondent's absence.

The Tribunal having considered the matter carefully was satisfied that the requirement for 30 days' notice of any supplementary statement prior to the substantive hearing should be waived and that the matter should proceed in the Respondent's absence.

Factual Background

1. The Respondent, born in 1956, was admitted as a Solicitor on 2 November 1981. His name remained on the Roll of Solicitors although the Authority resolved to intervene into his practice on 13 April 2010.
2. At all material times the Respondent was carrying on practice on his own account as Richard Connor Solicitors from offices at 2 Brockenhurst Road, Ramsgate, Kent, CT11 8ED.

Allegation 1: The Respondent failed to deliver his accountant's report for the period ended 31 May 2009 due on or before 30 November 2009

3. On 16 December 2009 the Authority wrote to the Respondent to request delivery of his accountant's report for the period ended 31 May 2009 which had been due by 30 November. The Respondent did not reply or deliver his report. The report remained outstanding.

Allegations 2-4: (2) The Respondent practised as a solicitor in breach of conditions on his practising certificate from 1 February to 4 March 2010 upon which date his certificate was terminated; (3) The Respondent practised as a solicitor after 4 March 2010 without there being in force a certificate issued by the Law Society in accordance with the provisions of Part 1 of the Solicitors Act 1974, contrary to section 1(A) of the said Act and/or Rule 20.01 of the Solicitors Code of Conduct 2007; (4) Contrary to Rule 20.03 of the said Code, the Respondent failed to deal with the Authority in an open prompt and co-operative way.

4. On 28 May 2009 the Adjudicator decided to grant the Respondent a practising certificate for the year 2008/2009 subject to the following conditions:

“1.1 He is not a sole practitioner or sole director of a registered body.

1.2 He is not a manager or owner of a recognised body where all the other managers or owners

1.2.1 have less than three years' experience practising as a lawyer in a firm regulated by the Solicitors Regulation Authority unless the arrangements have first been approved by the Solicitors Regulation Authority

1.2.2 are recognised bodies of which he is a sole director

1.2.3 Mr Connor shall immediately inform any actual or prospective employer, co-manager, co-owner of these conditions and the reasons for their imposition.”

5. The conditions came into effect on 29 August 2009 being three months from the date upon which the Respondent was notified of the decision to impose them. On 29 September 2009 the Respondent appealed against the date upon which the said conditions became effective, and on 21 October 2009 the Authority decided that the conditions should come into effect on 31 January 2010. The conditions themselves remained the same.
6. On 21 January 2010 the Respondent informed the Authority that he had arranged for another firm of solicitors to take over his firm. The Respondent was advised that if the takeover was not finalised by 31 January he ought to have in place some contingency arrangements such as the temporary closure of his practice. He was advised to contact professional ethics for advice.
7. The Authority's caseworker, Mr Smith, telephoned the Respondent's office on 1 February 2010 at 14.17 hours. The number was engaged and there was no facility to

leave a message. He telephoned again on the same day at 14.21 hours and on this occasion there was no answer.

8. On 10 February at 09.48 hours Mr Smith telephoned the Respondent's office. The call was answered "Richard Connor Solicitors" and Mr Smith was informed that the Respondent was out of the office. He was asked to telephone by 4 pm that day. There was no response. Mr Smith wrote to the Respondent on 15 February 2010. In the absence of a response Mr Smith telephoned the Respondent on 4 March. His call was answered "Richard Connor Solicitors" and a message was left for the Respondent to telephone back urgently. The Respondent's practising certificate was terminated that day.
9. Another telephone call was made on 8 March which again was answered "Richard Connor Solicitors". Mr Smith left a message to say that it was imperative that the Respondent should telephone Mr Smith on issues relating to his practising certificate.
10. Mr Smith made another telephone call that day at 12.18 hours. The call was again answered "Richard Connor Solicitors" and Mr Smith was told that the office remained open. The person answering the telephone was the Respondent's probate assistant Ms Jan Carol.
11. Mr Smith attempted to send the Respondent a fax on the same day having telephoned at 12.53 hrs to obtain the fax number. The attempt to send a fax was unsuccessful, and the letter was sent by email.
12. By letter dated 25 March 2010 Mr Smith gave the Respondent a final opportunity to deal with the regulatory issues raised in previous communications. The Respondent did not reply and on 13 April 2010 the Authority decided to intervene into the Respondent's practice.

Allegation 5: Contrary to Rule 20.05 of the Solicitors Code of Conduct 2007 the Respondent failed to deal with the Legal Complaints Service and/or the Authority in an open prompt and co-operative way.

13. The Respondent failed to reply to a number of letters from the Legal Complaints Service and the Authority, dated between 29 March 2010 and 2 August 2010.

Review of Documents

14. The Tribunal reviewed all the documents submitted by the Applicant, which included:-
 - (i) Rule 5 Statement together with all enclosures;
 - (ii) Supplementary Statement dated 2 September 2010, together with all enclosures;
 - (iii) Applicant's Statement of Costs dated 8 November 2010.

15. The Tribunal reviewed all the documents submitted by the Respondent, being the letter dated 7 October 2010 from the Respondent to the Tribunal and his response to the Tribunal's questionnaire.

Witnesses

16. No witnesses gave evidence.

Findings as to Fact and Law

17. The Tribunal had considered carefully the submissions of the Applicant and all the documents provided.
18. The Respondent had stated in his letter of 7 October 2010 that all the allegations related to his having suffered a mental breakdown. However, he did not deal with the substantive allegations in that letter, but instead referred mainly to complaints about the conduct of the Authority, and also to mitigation.
19. It was evident to the Tribunal that the Respondent had failed to deliver his accountant's report for the period ended 31 May 2009, indeed that report remained outstanding. Accordingly, the Tribunal found allegation 1 was proved.
20. The conditions on the Respondent's practising certificate came into effect on 31 January 2010 and although the Respondent had advised the Authority that he had arranged for another firm of solicitors to take over his firm on this date, it appeared that this had not in fact happened and the Authority's caseworker had significant difficulties contacting the Respondent from 1 February 2010 onwards. Notably, the Respondent's office telephone continued to be answered "Richard Connor Solicitors" until at least 4 March 2010 when the Respondent's practising certificate was terminated. Accordingly, the Tribunal found allegation 2 was proved.
21. It appeared that the Respondent's office telephone continued to be answered "Richard Connor Solicitors" after 4 March 2010 when his practising certificate was terminated, indeed, the Tribunal noted a telephone call was made on 8 March 2010 when the office telephone was answered in the same manner. Accordingly, the Tribunal found allegation 3 was proved.
22. The Authority had tried to contact the Respondent on numerous occasions from 1 February 2010 until 25 March 2010, such communications taking place by telephone, letter and email but there was no response to any of these communications. Accordingly, the Tribunal was satisfied allegation 4 was proved.
23. The Tribunal had been provided with copies of five letters which had been sent to the Respondent on various dates between 29 March 2010 and 2 August 2010 from the Legal Complaints Service and the Solicitors Regulation Authority. The Respondent had failed to reply to these letters and accordingly, the Tribunal found allegation 5 was proved.

Mitigation

24. In the Respondent's letter dated 7 October 2010 to the Tribunal, the Respondent stated that he had suffered a mental breakdown and he doubted whether he would be fit mentally to work ever again, except in a menial capacity. The Respondent stated that he had no intention of re-applying for a practising certificate and had no wish to remain on the Roll of Solicitors. He had endeavoured to work always in the best interests of his clients whilst winding down his practice. He asked the Tribunal to take into account his fragile state and requested all contact with him be made sympathetically.

Costs Application

25. The Applicant requested an Order for his costs in the total sum of £1,918.25.
26. The Respondent had stated in his letter of 7 October 2010 that he had no independent income or savings and the intervention of his practice might ultimately bankrupt him. He could not afford the services of legal representation nor the costs of any proceedings against him.

Previous Disciplinary Sanctions before the Tribunal

27. None.

Sanction and Reasons

28. The Tribunal had considered carefully all the documents, in particular the Respondent's letter of 7 October 2010.
29. This was a particularly sad case where the Respondent appeared to be suffering from medical difficulties although the Tribunal noted no medical evidence had been provided by the Respondent. The Respondent appeared to have buried his head in the sand and it certainly seemed to be the case that his failure to engage and communicate with the Authority was at least in part to blame for the intervention into his practice.
30. The Rules and Regulations were in place to ensure the proper protection of clients and to allow the authority to carry out its regulatory duties. By failing to comply with those rules and regulations, the Respondent had potentially placed clients at risk and had not been able to satisfy the Authority that he was running his practice in a proper manner.
31. However, the Tribunal noted that the Respondent on his own admission doubted that he would ever be mentally fit to work again and in all the circumstances, the Tribunal considered the appropriate sanction was to suspend the Respondent indefinitely.

Decision as to Costs

32. The Tribunal had considered the Applicant's Schedule of Costs and took the view that these were a little high. The Tribunal assessed those costs in the sum of £1,500 plus VAT, making a total of £1,762.50 and Ordered the Respondent pay this amount.

However, the Tribunal took into account the case of Frank Emilian D'Souza -v- The Law Society [2009] EWHC 2193 (Admin), and also the case of William Arthur Merrick -v- The Law Society [2007] EWHC 2997 (Admin) in relation to the Respondent's means. The Respondent did not appear to have any savings, he had lost his practice and was not currently working. Furthermore, as he had now been indefinitely suspended, it was unlikely the Respondent would be working in the legal profession within the foreseeable future. Accordingly, the Tribunal ordered that the Order for costs was not to be enforced without the permission of the Tribunal.

Order

33. The Tribunal Ordered that the respondent, Richard George Connor, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 9th day of November 2010 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,762.50, such costs not to be enforced without the permission of the Tribunal.

Dated this 26th day of January 2010
On behalf of the Tribunal

I. R. Woolfe
Chairman