

**The Tribunal's decision on sanction was overturned by the High Court (Holman J) on 4 April 2012 with the result that the suspension for a period of 12 months was replaced by a sanction striking Mr Rahman's name off the Roll.
Solicitors Regulation Authority v Motihur Rahman [2012] EWHC 1037 (Admin)**

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF MOTIHUR RAHMAN, solicitor (The Respondent)

Upon the application of Paul Robert Milton
on behalf of the Solicitors Regulation Authority

Mr D Potts (in the chair)
Mr C Murray
Mr D E Marlow

Date of Hearing: 7th December 2010

FINDINGS & DECISION

Appearances

Paul Robert Milton, solicitor employed by The Law Society at the Solicitors Regulation Authority, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE appeared on behalf of the Solicitors Regulation Authority ("SRA").

The Respondent appeared in person.

The application, supported by a Rule 5 Statement was made on 31 August 2010.

Allegations

- (i) He falsely created a letter dated 13 October 2009, the contents of which he knew or ought to have known were untrue, and submitted it to the Halifax Plc and thereby acted in breach of Rule 1.02 of the Solicitors Code of Conduct 2007;
- (ii) He falsely completed and submitted to Halifax Plc an 'employer's statement' dated 10 October 2009, the contents of which he knew or ought to have known were untrue, and thereby acted in breach of Rule 1.02 of the Solicitors Code of Conduct 2007;

- (iii) It was further submitted that the Respondent had behaved dishonestly in relation to the matters in allegations (i) and (ii) but it was not an essential element in these allegations.

Preliminary matter

The Tribunal was informed that the Respondent had admitted all three allegations, including the allegation of dishonesty. This was confirmed by the Respondent.

The Chairman explained to the Respondent, who was not represented, that the Respondent may agree with the factual matters in the Rule 5 Statement but should consider the legal meaning of "dishonesty". In particular, the Respondent should have regard to the objective and subjective parts of the test for dishonesty as set out in the matter of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. It was confirmed that the Applicant had available a copy of that case, which could be considered by the Respondent. The Tribunal rose to give the Respondent the opportunity to consider his position in the light of the test for dishonesty which would be applied by the Tribunal. The hearing subsequently re-convened, at which point the Respondent confirmed that he still admitted all three allegations.

Factual Background

1. The Respondent, born in 1982, was admitted as a solicitor on 15 January 2009. His name remained on the Roll of Solicitors at the date of the hearing. The Respondent did not hold a practising certificate at the time of the application but held a practising certificate at the date of the hearing.
2. At the material time the Respondent practised as an assistant solicitor at Charles Russell LLP, Compass House, Lypiatt Road, Cheltenham, GL50 2QJ.

Findings as to Fact and Law

3. The facts set out in the Rule 5 Statement were admitted by the Respondent and the Tribunal found them to have been substantiated.
4. The Respondent had completed a training contract with Eversheds LLP. On admission as a solicitor he had started work for Charles Russell LLP at their Cheltenham office dealing with construction matters.
5. On 9 October 2009 the Respondent's employment with Charles Russell was terminated with immediate effect. The employers stated that this was because the Respondent's performance was felt to be below the standard required.
6. On 16 October 2009 the Respondent's desk was cleared and a bundle of the firm's notepaper was found. That bundle of documents included several pages which appeared to be a template of a letter to Halifax Plc ("Halifax"). On 16 October 2009 the firm wrote to the Respondent seeking an explanation and the Respondent replied by email on 17 October 2009. The Respondent stated that he was in the process of renewing his mortgage deal and that the mortgagee wanted confirmation that he was employed and getting the salary that he claimed he was getting. The email went on to state that the Respondent had decided in the end not to go for the alternative mortgage product and the letter was not required and had not been sent. The Respondent

indicated that the employer was welcome to call Halifax to see if a letter had been sent to them under the firm's name.

7. On 21 October 2009 Charles Russell contacted Halifax and received a response dated 23 October 2009 which enclosed a copy letter dated 13 October 2009, purportedly from Charles Russell to the Respondent, together with a copy of an "employer's statement" purportedly completed by the firm. The letter and form were in connection with a proposed claim on the Respondent's mortgage protection insurance. The "employer's statement" showed the reason for unemployment as "compulsory redundancy". The statement" was purportedly completed and signed by a TM. The letter dated 13 October 2009 was also purportedly from TM. This also referred to the Respondent being made redundant.
8. On 29 October 2009 Charles Russell wrote to the Respondent requesting his explanation. In a response dated 30 October 2009 the Respondent apologised for his conduct. He confirmed that TM had nothing to do with the letter/document. The email referred to the Respondent being in a desperate state and that it was because of his desperation that he had written to Halifax.
9. On 22 January 2010 the SRA wrote to the Respondent requesting his explanation. This matter had been drawn to the SRA's attention by Charles Russell. The Respondent replied on 3 February 2010. The Respondent admitted creating the letter and the employer's statement. The Respondent described what he had done as "shameful" in that letter. The Respondent informed the SRA that he had advised Halifax to cancel his first application under the mortgage protection insurance scheme but by the time he did this Halifax and Charles Russell had been in contact. The policy had been cancelled.
10. In the light of the facts set out above, it was clear to the Tribunal beyond any doubt that the Respondent had falsely created a letter dated 13 October 2009 and an "employer's statement" dated 10 October 2009. In both cases he knew or ought to have known the contents were untrue. By creating and submitting those documents to Halifax the Respondent had acted in breach of Rule 1.02 of SCC.
11. The Tribunal noted that with regard to the allegation that the Respondent had behaved dishonestly, this had been admitted. The Tribunal found that in creating two false documents in order to make an application under a mortgage protection insurance scheme, the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal was further satisfied that the Respondent knew that what he was doing was dishonest by the standards of reasonable and honest people. In reaching this determination the Tribunal had regard to the Respondent's admissions and to what was said in mitigation.

Mitigation

12. The Respondent submitted that he had admitted the allegations promptly. He knew that what he had done was wrong. The Respondent wanted to explain to the Tribunal the background to what he described as the "craziness" of his action.
13. The Respondent had started work at Charles Russell on 24 November 2008 in anticipation of his admission in January 2009 as a newly qualified solicitor in the

Cheltenham office. He commuted to the office in Cheltenham from Birmingham. He had been keen to work in construction law.

14. The Respondent told the Tribunal that he felt the "learning curve" he had experienced in the role with Charles Russell had been very steep. He was working with one other solicitor, who was very experienced but worked part-time. He felt that he was not adequately supervised.
15. In a performance review earlier in 2009 the Respondent had been told to improve his performance. Soon after that he had gone to work for the firm in Bahrain at short notice for a period of four weeks. He felt that his performance in that period had been good and in particular his billing had increased substantially.
16. The Respondent had considered the decision to dismiss him in October 2009 to be unfair. However, the decision was made before he had completed the qualifying period to bring any claim to the Employment Tribunal. The Respondent described his horror and hurt at being dismissed. He had felt completely dejected when he was informed that his contract was terminated. From having made an excellent start in his career, with a training contract with a well regarded firm, he felt that his life and career had come "crashing down". The Respondent sought leniency from the Tribunal. He was thoroughly sorry about what had happened. He could not believe that his judgement had been so clouded that he had carried out the dishonest acts. He had behaved irrationally and in a way that was completely out of character.
17. The Respondent had been unemployed between his dismissal by Charles Russell and starting with another firm in August 2010. The new employer was aware that he was appearing before the Tribunal and was considering the Respondent's position. The Respondent appreciated that he was likely to lose his job.
18. The Respondent owned a house with his brother. Mortgage repayments were about £1,800 a month. Recruitment agents had told the Respondent when he was first dismissed that there was little work around. Arrears on the mortgage had first accrued in about February or March 2010 and now stood at approximately £2,500. In addition, the Respondent owed money to his brother who had been paying a larger share of the mortgage payments. The Respondent explained that he had other debts, payment of which was being organised through PayPlan.

Costs Application

19. The Applicant informed the Tribunal that the Respondent had agreed to pay the Applicant's costs agreed at £1,000.

Previous Disciplinary Sanctions before the Tribunal

20. None.

Sanction and Reasons

21. The allegations which the Respondent had admitted, and the Tribunal had found proved, were extremely serious. The Respondent had admitted the creation of false documents, and admitted dishonesty. Normally, any proven and/or admitted

dishonesty on the part of a solicitor would lead to a decision to strike off that solicitor. The Tribunal had regard to the principles set out, for example, in Bolton v The Law Society [1994] 1 WLR 512CA, and in particular in the judgment of Sir Thomas Bingham MR. The Tribunal was also aware of the decision of SRA v Sharma [2010] EWHC 2022 [Admin].

22. However, the Tribunal accepted that the Respondent's dishonest behaviour was an aberration for him. The Tribunal took into account his personal circumstances and in particular his youthfulness and inexperience. The Respondent had insight into the fact that what he had done was wrong. He had shown immediate contrition.
23. The Tribunal noted the Respondent's perception that he had not been supervised to the extent that he required. The Tribunal noted that the Respondent had felt that his dismissal was unfair. The Tribunal considered that what the Respondent had done was very serious but was an act of panic. It had been out of character and had occurred in a particular set of circumstances in which the Respondent's judgement had been irrational.
24. Whilst striking off would be the normal outcome before the Tribunal where a solicitor had been dishonest, the Tribunal considered this to be an exceptional case. However dishonesty could not go unpunished. It was therefore appropriate and proportionate for the Tribunal to Order that the Respondent to be suspended for one year.

Costs

25. The Tribunal agreed that it was appropriate that the Respondent should pay the Applicant's costs fixed at £1,000.

Order

26. The Tribunal Ordered that the Respondent, Motihur Rahman of Great Barr, Birmingham, West Midlands, solicitor, be suspended from practice as a solicitor for the period of 12 months to commence on the 7th day of December 2010 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

DATED this 27th day of January 2011
on behalf of the Tribunal

D Potts
Chairman