

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10689-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NATHANIEL BERTRAND FELTON

Respondent

Before:

Mr A N Spooner (in the chair)

Mr P Housego

Mr S Hill

Date of Hearing: 31st January 2012

Appearances

Bradley Albuery, solicitor of Blake Laphorn, New Kings Court, Tollgate, Chandler's Ford, Eastleigh, Hampshire SO53 3LG for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 He failed to cooperate with the Solicitors Regulation Authority in the course of their investigations as defined in Rule 20.5(1) of the Solicitors Code of Conduct 2007.
 - 1.2 He failed to comply with a decision of an Adjudicator of the Solicitors Regulation Authority made on 23 August 2010 thus diminishing the trust that the public placed in the profession contrary to Rule 1.06 of the Solicitors Code of Conduct 2007.
 - 1.3 He failed to register his client's legal title to a property in which he acted for the purchaser and therefore failed to act in the best interests of his client, contrary to Rule 1.04 of the Solicitors Code of Conduct 2007.
 - 1.4 By failing to register his client's interest in the property, he failed to provide a good standard of service to his client, contrary to Rule 1.05 of the Solicitors Code of Conduct 2007.
 - 1.5 He failed to respond to letters from the SRA dated 25 January 2011 and 17 February 2011 and therefore failed to deal with the SRA in an open, prompt and cooperative way, contrary to Rule 20.05 of the Solicitors Code of Conduct 2007.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 23 December 2010 together with attached Rule 5 Statement and exhibits;
- Supplementary Statement dated 11 April 2011;
- Schedule of Costs;
- Letter dated 2 August 2011 from the Respondent to Mr Albuery together with attached medical report dated 28 July 2011 from Dr CM Munro and copy prescriptions dated 23 July 2011.

The Applicant's Application to Proceed in the Respondent's Absence

3. The Applicant submitted that although the Respondent was not present, he had been properly served with all the relevant documents and was aware of the date of the substantive hearing. The Tribunal had written to the Respondent at his home address on 13 October 2011 by Special Delivery notifying him of today's hearing. Proof of delivery was confirmed and provided to the Tribunal. In addition to this, the Applicant had also written to the Respondent on 17 January 2012 by Special Delivery reminding him of today's hearing. That letter was also received and the Applicant

provided proof of delivery. The Respondent had been informed in that letter that if he did not attend the hearing, the Tribunal would proceed in his absence.

4. The Applicant had also written to the Respondent on 17 January 2012 at his business address but those letters had recently been returned stating “addressee gone away”. In addition, emails that had been sent to the Respondent’s business email had been returned “undelivered” and “undeliverable”.
5. The Applicant reminded the Tribunal that the Respondent did have medical difficulties and although he had written to the Respondent several times to try and engage with him, there had been no reply. The Respondent had also failed to file a response to the Rule 5 Statement and the Supplementary Statement, despite being ordered to do so by the Tribunal on 4 August 2011. Regrettably the Respondent had not engaged with the proceedings and therefore it was difficult to update the Tribunal concerning his health. The Applicant reminded the Tribunal that there was no application to adjourn and no evidence that even if the substantive hearing were adjourned, the Respondent would attend on a future date.
6. The Tribunal having heard the Applicant’s full explanation, and the efforts made to notify the Respondent, was satisfied that the Respondent had been properly served with details of the date of the substantive hearing. Accordingly, the Tribunal granted leave to proceed in the Respondent’s absence.

Factual Background

7. The Respondent, born in 1967, was admitted as a solicitor on 17 November 1997. At the material time the Respondent was the sole principal of Nathaniel Felton Solicitors (“the firm”) of 27 Station Road, New Barnet, Hertfordshire, EN5 1PW.

Allegations 1.1 and 1.2

8. Following a visit to the firm, the Practice Standards Unit of the SRA prepared a report dated 2 March 2009 (“the PSU report”). The report identified certain areas requiring further action and a copy was sent to the Respondent on 12 March 2009. The Respondent failed to reply or acknowledge the report and three further letters were sent to him between May and August 2009.
9. The Respondent eventually replied on 12 January 2010 explaining the delay was due to him being ill throughout 2008 and 2009. He did not produce any evidence that he had actioned the areas identified in the PSU report and two further letters were sent to him on 9 March 2010 and 1 April 2010 requesting this evidence.
10. The Respondent replied on 27 May 2010 with a copy of a letter he said was sent to the SRA on 24 March 2010. However the letter of 24 March 2010 did not enclose the required evidence and accordingly the SRA wrote to him again on 19 July 2010. The Respondent did not reply to that letter.
11. Due to the Respondent’s failure to reply to the SRA letters, his case was referred to an Adjudicator who made a decision dated 23 August 2010 requiring the Respondent to reply in full to the actions identified in the PSU report within 28 days of the date of

the letter notifying him of the decision, or if ill-health prevented him from doing so, he should provide up to date medical evidence within the same period. The Adjudicator's decision was sent to the Respondent on 24 August 2010 but he did not reply to the letter and he did not comply with the Adjudicator's decision.

Allegations 1.3, 1.4 and 1.5

12. The Respondent acted for a purchaser of a property in 2009. Completion took place on 18 November 2009. The seller continued to receive letters from the Local Authority and the managing agents of the property requesting him to pay Council Tax and service charges. As the seller was no longer responsible for the property he made enquiries and discovered that the title to the property remained in his name. The seller tried unsuccessfully to request the Respondent to comply with the requirements of completion and register the property in his client's name. On 13 September 2010 the seller wrote to the SRA complaining about the Respondent's conduct.
13. On 25 January 2011, the SRA wrote to the Respondent requesting a response to these concerns. The Respondent did not reply and the SRA wrote to him again on 17 February 2011. The Respondent did not reply to that letter and had not corresponded with the Authority about these matters.
14. Office copies of the Register of Title for the property at the Land Registry were obtained on 5 April 2011 and revealed the seller was still registered on the Proprietorship Register. Furthermore, a Charge in favour of the seller's lender also remained undischarged on the Charges Register.

Witnesses

15. No witnesses gave evidence.

Findings of Fact and Law

16. The Tribunal had considered carefully all the documents provided, and the submissions of the Applicant. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.
17. **Allegation 1.1. The Respondent failed to cooperate with the Solicitors Regulation Authority in the course of their investigations as defined in Rule 20.5(1) of the Solicitors Code of Conduct 2007.**
- 17.1 In their letter of 12 March 2009, the SRA referred the Respondent to paragraph 9 of the PSU report and asked him to:

“Please confirm by 3rd April that the actions set out in paragraph 9 will be carried out and enclose copies of any documentation requested”.

Paragraph 9 of the PSU report contained a Summary of Actions, requiring the Respondent to do various things, which included amending his email template to add

the wording “Regulated by the SRA” and forward a copy with his response to the SRA.

- 17.2 It appeared the Respondent had not provided a copy of this email template to the SRA as requested, and in the absence of any explanation from him, the Tribunal found this allegation proved.

18. **Allegation 1.2. He failed to comply with a decision of an Adjudicator of the Solicitors Regulation Authority made on 23 August 2010 thus diminishing the trust that the public placed in the profession contrary to Rule 1.06 of the Solicitors Code of Conduct 2007.**

- 18.1 The Tribunal was troubled by the fact that it appeared the Respondent had, to some extent, responded to the Authority in his letter of 12 January 2010 but not in great detail, and he had not provided a copy of the email template referred to in Paragraph 9.11 of the Summary of Actions. In his letter of 12 January 2010 the Respondent simply stated:

“However, I have actioned the issues that Mr [W] and I discussed and also on the basis of his report.”

- 18.2 The decision of the Adjudicator of the SRA made on 23 August 2010 required the Respondent to provide clarification of the action he had taken. The decision stated:

“I therefore **EXPECT** Mr Felton within 28 days from the date of the letter notifying him of this decision to respond in full to paragraph 9 (Summary of Actions) of the Practice Standards Monitoring Report dated 02 March 2009 (which is to include supporting documentary evidence where necessary) or, if ill-health prevents him from so doing, he is to provide up to date medical evidence within the same time period

- 18.3 It was clear to the Tribunal that the regulator was not satisfied with the Respondent’s initial reply in his letter of 12 January 2010 and requested him to provide a full response. It appeared the Respondent had failed to comply with this and, although the Tribunal saw this as something of a technical failure to deal with all the points raised by the Authority, this allegation was proved.

19. **Allegation 1.3. He failed to register his client’s legal title to a property in which he acted for the purchaser and therefore failed to act in the best interests of his client, contrary to Rule 1.04 of the Solicitors Code of Conduct 2007.**

Allegation 1.4. By failing to register his client’s interest in the property, he failed to provide a good standard of service to his client, contrary to Rule 1.05 of the Solicitors Code of Conduct 2007.

- 19.1 These allegations related to a conveyancing transaction, in which the Respondent had failed to register his client, after completion had taken place, as the new proprietor of a property the client had purchased. The Tribunal noted completion took place on 18 November 2009 and yet, on 5 April 2011, which was over 16 months later, the new purchaser’s name had still not been registered on the Register of Title at the Land

Registry. In all the circumstances, the Tribunal was satisfied both of these allegations were proved.

20. **Allegation 1.5. He failed to respond to letters from the SRA dated 25 January 2011 and 17 February 2011 and therefore failed to deal with the SRA in an open, prompt and cooperative way, contrary to Rule 20.05 of the Solicitors Code of Conduct 2007.**
- 20.1 The SRA had written to the Respondent regarding his failure to register his client as the new proprietor of a property after completion on two occasions. The Tribunal had been referred to letters from the SRA to the Respondent dated 25 January 2011 and 17 February 2011. The Respondent had not replied to either of these letters. In the absence of any explanation from the Respondent, the Tribunal found this allegation proved.

Previous Disciplinary Matters

21. The Respondent had appeared before the Tribunal on two previous occasions on 25 October 2007 and 17 December 2009.

Sanction

22. The Tribunal had considered carefully the documents provided. The Respondent had not made any submissions to the Tribunal nor had he provided any documents other than those sent to the Applicant on 2 August 2011.
23. The Tribunal was concerned that although individually, the five allegations were not the most serious, the Respondent's course of conduct overall was serious. He had failed to cooperate with the SRA on a number of occasions, he had failed to comply with an Adjudicator's decision, and there was also concern about the position of a conveyancing matter.
24. What particularly concerned the Tribunal was that this was the Respondent's third appearance before the Tribunal and the course of conduct displayed by the Respondent, and his failure to engage with these proceedings, showed a complete disregard by the Respondent to work within the regulatory regime that all solicitors must comply with. The Tribunal noted that when the Respondent had previously appeared before the Tribunal on 17 December 2009, he had admitted a failure to deal with the SRA in an open, prompt and cooperative manner, as well as a failure to pay Counsel's fees. It appeared the Respondent had not learnt his lesson and his position today was exacerbated as a result of his two previous appearances and the repetitive pattern of his behaviour.
25. The Tribunal noted the Respondent's letter of 2 August 2011 provided details of his medical difficulties, however the medical report attached was dated 28 July 2011, and was not up to date. The Tribunal had not been provided with any updated prognosis or diagnosis. In the absence of these, the Tribunal was unable to draw any conclusions. The Respondent had indicated in his letter that he was in the process of closing down his practice and he intended to retire from law.

26. The Respondent's behaviour had brought the profession into disrepute and he had caused at least one member of the public to suffer as a result of his conduct. His failure to cooperate with the SRA prevented the Authority from carrying out its regulatory function which was necessary to ensure the protection of the public. The Tribunal considered this as being a serious case particularly having regard to the Respondent's two previous appearances before this Tribunal and the findings it had made on those occasions. In all the circumstances and having considered the range of sanctions the Tribunal could impose, decided the appropriate Order was that the Respondent be suspended for an indefinite period. If the Respondent was to make an application to lift that suspension in the future, the Tribunal would expect him to be able to show that he had complied with the Adjudicator's decision dated 23 August 2010.

Costs

27. The Applicant requested an Order for his costs and provided the Tribunal with a Schedule of Costs confirming the costs came to a total of £6,924. The Schedule of Costs had been served on the Respondent on 17 January 2012 and the Tribunal had been provided with proof of delivery. The Applicant reminded the Tribunal that the costs had increased as a result of the Respondent not engaging in the process. The Tribunal were also reminded that a substantive hearing had been due to take place in May 2011 which was adjourned the day before the hearing. The matter had been further complicated by the Respondent's medical problems and the fact that two directions hearings had taken place. The Applicant confirmed that the costs of the SRA had not been claimed as the Respondent had not been notified of those in advance. Details of those costs had only been sent by the SRA to the Applicant by email yesterday.
28. The Tribunal had considered the Schedule of Costs carefully and took the view that they were on the high side. Accordingly, the Tribunal assessed the costs at £5,500 based on the brief breakdown provided. The Tribunal was mindful of the case of *SRA v Davis and McGlinchey* [2011] EWHC 232 (Admin) and noted that, although the Respondent had provided some information concerning his finances in his letter of 2 August 2011, he had not provided the Tribunal with any evidence of his current income, expenditure, capital or assets in relation to his ability to pay any costs. In the circumstances, the Tribunal had no way of assessing the Respondent's ability to pay those costs.
29. The Tribunal was also mindful of the cases of *Frank Emilian D'Souza v The Law Society* [2009] EWHC 2193 (Admin) and *William Arthur Merrick v The Law Society* [2007] EWHC 2997 (Admin). Whilst the Respondent had been deprived of his livelihood, the Tribunal noted he was relatively young and, in the absence of updated medical evidence to confirm otherwise, it may be possible for him to be able to obtain employment in other fields. In the absence of any submissions from the Respondent, the Tribunal ordered the Respondent to pay the Applicant's costs in the sum of £5,500.

Statement of Full Order

30. The Tribunal Ordered that the Respondent, Nathaniel Bertrand Felton, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 31st day of January 2012 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,500.00.

Dated this 12th day of March 2012

On behalf of the Tribunal

A N Spooner
Chairman