

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10708-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ASHED AHMED MUKHTAR

Respondent

Before:

Miss T Cullen (in the chair)

Mr S Tinkler

Mr S Marquez

Date of Hearing: 5th December 2011

Appearances

Geoffrey Hudson, Solicitor of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London, EC2V 8AR for the Applicant.

Philip McGhee, Counsel, QEB Hollis Whiteman, 1 – 2 Laurence Pountney Hill, London EC4R 0EU instructed by the Bar Pro Bono Unit for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent were that he:-
 - 1.1. Had occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice in the ways set out in Section 43 (1)(A) of the Solicitors Act 1974.
 - 1.2. More particularly had acted in breach of 1.02 of the Solicitors Code of Conduct 2007 ("SCC") by failing to act with integrity and in breach of Rule 1.06 of the SCC by behaving in a way that was likely to diminish the trust the public places in the solicitors' profession in that he:-
 - (i) caused a vulnerable client of his employer to transfer £2,000 into his personal bank account;
 - (ii) delayed repaying the £2,000 in question once his employers discovered the source of the money;
 - (iii) contrary to instructions from his employers, contacted his client whilst an investigation into the transfer of money was taking place.

The case was put against the Respondent with regard to allegation 1.2 (i) that he had been dishonest, or in the alternative, reckless. The issue of dishonesty would be a matter for the Tribunal to decide. However dishonesty was not an essential ingredient of allegation 1.2 (i) and it would be open to the Tribunal to find that allegation proved if dishonesty itself could not be proved. Additionally, the Tribunal could make an Order under Section 43(1)(A) of the Solicitors Act 1984 even if a finding of dishonesty had not been made against the Respondent.

Documents

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

Applicant:

- Application dated 10 February 2011;
- Rule 8 Statement dated 10 February 2011 with exhibit GRFH1;
- Statement of MC and exhibit MC1;
- Statement of AH and exhibit AH1;
- CD of interview at Ralli's offices 15 April 2009;
- Chronology;
- Written submissions dated 1 December 2011;
- Schedule of Costs 24 November 2011.

Respondent:

- Statement dated 24 May 2011;
- Statement and Undertaking 5 December 2011;
- Statement of Means 5 December 2011 with attached documentation;

Preliminary Matters

3. Mr Hudson, on behalf of the Applicant, referred the Tribunal to his written submissions. He told the Tribunal that there had been discussions between the parties. The submissions set out the background to the matter and confirmed that the Respondent was prepared to consent to an Order being made against him in the terms sought by the Applicant.
4. Mr Hudson told the Tribunal that the submissions recorded that, whilst the Respondent was prepared to admit all the allegations against him including the allegation that he had acted recklessly in causing the client in question (Mr A) to transfer £2,000 into his personal account, he was not prepared to admit that he had acted dishonestly in that respect. The Tribunal was told that since the proceedings had been issued, Mr A had died on 22 February 2011 and the Applicant accepted that in the absence of the Respondent's ability to cross examine Mr A, it would be more difficult for dishonesty to be proved.
- 5.. The Tribunal was told by Mr Hudson that there had been concerns on the part of the Applicant that should the Respondent seek to have the section 43 order quashed or varied at a later stage, the Tribunal hearing that application would have to proceed on the basis that the Respondent's actions had not been dishonest. As the Respondent was prepared to provide a written undertaking that he would not apply at any time in the future to have the Section 43 Order quashed or varied, the Applicant's concerns in this regard had been met. Mr Hudson submitted that the public interest would be protected by the making of what would, in effect, be a permanent Section 43 Order and stated that he would be inviting the Tribunal to make an Order on the basis of the Respondent's signed admissions and undertaking. In view of the agreement that had been reached, he stated that it was no longer necessary for the Tribunal to decide whether the Respondent had been dishonest.

Factual Background

6. The Respondent was born in 1984. At the material time, he was employed as a clerk at the firm of Ralli Solicitors, 16-17 Ralli Courts, West Riverside, Manchester M3 5FT ("the firm"). The Respondent commenced employment at the firm in September 2008 in the Personal Injury Department. At the direction of Ms H who was a partner of the firm and a personal injury solicitor, the Respondent assisted in the case of Mr A in relation to his claim for a work place accident.
7. From about 10 June 2008, Mr A received a number of interim payments from the firm on account of damages payable to him in respect of his claim for a work place incident, including, on 22 December 2008, a cheque for £10,000.

8. The cheque for £10,000 was dealt with as follows:-

£8,000 was paid into Mr A's account at the Halifax and £2,000 was paid into the Respondent's account which was also at the Halifax. The £2,000 remained in the Respondent's account until 21 February 2009.

9. On 8 April 2009, solicitors assisting Mr A on a pro bono basis, complained to the firm that the Respondent had personally received from Mr A the sum of £2,000 to which he was not entitled. At a preliminary investigation meeting held on the same day, the Respondent admitted to his employers that £2,000 had been paid into his account. The Respondent was told by his employers not to have any communications with Mr A pending investigation into the matter. This instruction was reinforced in a letter to the Respondent from his employers on 14 April 2009 when they suspended him from employment pending the investigation. Contrary to those instructions, there was contact with Mr A. The £2,000 was not repaid by the Respondent until 23 April 2009.

Witnesses

10. None.

Findings of Fact and Law

11. **Allegation 1.1. Had occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice in the ways set out in Section 43 (1)(A) of the Solicitors Act 1974.**

Allegation 1.2. More particularly had acted in breach of 1.02 of the Solicitors Code of Conduct 2007 ("SCC") by failing to act with integrity and in breach of Rule 1.06 of the SCC by behaving in a way that was likely to diminish the trust the public places in the solicitors' profession in that he:-

- (i) caused a vulnerable client of his employer to transfer £2,000 into his personal bank account;**
- (ii) delayed repaying the £2,000 in question once his employers discovered the source of the money;**
- (iii) contrary to instructions from his employers, contacted his client whilst an investigation into the transfer of money was taking place.**

- 11.1 The Respondent had admitted:-

- recklessly giving a vulnerable client his personal bank details with the result that monies that should have been paid into the client's own account found themselves into his own account;
- failing to repay those monies once his employers had discovered their source;

- being in contact with the vulnerable client pending investigation despite clear instructions not to do so.

11.2 The Respondent accepted that these matters made it necessary in the public interest for there to be an Order made in the terms of Section 43 regulating his future activities and he consented to such an Order being made. He had also provided a written undertaking not to apply at any time in the future to have the Section 43 Order quashed or varied.

11.3 On the basis of the Respondent's admissions and the agreement that had been reached between the parties, the Tribunal was satisfied that the allegations had been substantiated against the Respondent. The Tribunal did not need to decide the issue of dishonesty.

Previous Disciplinary Matters

12. None.

Mitigation

13. None.

Sanction

14. On the basis of the matters agreed between the parties and the admissions made by the Respondent, the Tribunal considered that it was in the public interest for a Section 43 Order to be made against the Respondent and so ordered. The Tribunal noted that the Respondent had given an undertaking that he would not at any time in the future make an application to the Tribunal for the variation or quashing of such an Order.

Costs

15. The Applicant's claim for costs was £11,207.37. Mr Hudson told the Tribunal that these costs included the Solicitors Regulation Authority's ("SRA") own internal fees. He stated that the proceedings had been properly brought and this was evidenced by the fact that the Respondent had consented to the making of a Section 43 Order. He asked the Tribunal to make a summary assessment of costs.

16. Mr Hudson commented on the Respondent's statement of means which made reference to a student loan. He told the Tribunal that proof of the loan had not yet been provided. In addition, the statement of means indicated that copies of recent bank statements would be provided but these had not been forthcoming. The statements that were provided to the Tribunal showed a small balance in the relevant accounts at the current time, but did not show how the previous large balances had been dispersed, and also appeared to show a number of movements in and out of reasonably significant amounts of money, some of which involved transfers to overseas bank accounts.

17. In addition, Mr Hudson referred the Tribunal to comments made by the Respondent during the disciplinary hearing at the firm's offices when the Respondent had stated

that he had over £20,000 in savings. At the same meeting, the Respondent had also mentioned that he had a Halifax ISA account. He had referred to receiving income from two houses, the fact that he had acquired quite a lot of money previously whilst working as an insurance broker and underwriter and to having investments in bonds. Mr Hudson told the Tribunal that none of these matters had been mentioned in the Respondent's statement of means.

18. Mr McGhee, on behalf of the Respondent, told the Tribunal that the Respondent was in receipt of Job Seeker's Allowance. He lived at home with his mother and assisted with bills and living expenses and he had no savings to speak of save for the small balances in his bank accounts which totalled just over £560. Mr McGhee stated that the Respondent had no other assets or sources of income.
19. The Tribunal was told by Mr McGhee that the Respondent had no legal entitlement to either of the properties that he had mentioned during interview with his employers. One of the properties was owned by his mother in Pakistan and the other was owned by his sister and he and his mother lived there rent free. Mr McGhee explained that the Respondent had been keen to give the impression to his employers that he had sufficient means and so would not have needed to take any money from a client. At the time of the interview the Respondent had £20,000 in an ISA account. Mr McGhee told the Tribunal that this money had been subsequently disbursed on fees for the Respondent's legal practice course and to discharge a career development loan. In addition the Respondent had discharged a personal loan taken out by his mother which had been used to fund his studies. The Respondent did not have any documentation to confirm the ownership of the properties but said this could be supplied if necessary, nor did he have any evidence of the existence of the loans mentioned, or that his previous savings had been used to repay those loans.
20. Mr McGhee told the Tribunal that the Respondent understood that he may have to make some contribution towards the Applicant's costs but he submitted that any costs order should not be punitive and would need to take into account the Respondent's ability to pay. He reminded the Tribunal that the Respondent had limited income and no capital assets. Mr McGhee invited the Tribunal to postpone making a decision on costs if necessary to allow the Respondent to obtain documentation in relation to the two properties. He told the Tribunal that the Respondent did not feel able to challenge any particular item in the Applicant's costs schedule.
21. The Tribunal considered that the proceedings had been properly brought and the Applicant's costs were reasonable. The Tribunal noted the lack of challenge to the amount of the costs. The Tribunal considered that it was for the Respondent to have provided evidence as to his lack of means and were concerned at the lack of documentation relating to the Respondent's income and capital following the comments that he had made to his employers at the disciplinary hearing. Given the lack of evidence in relation to the properties and the disposal of the ISA account, the Tribunal considered it appropriate to order that the Respondent pay the Applicant's costs fixed in the sum of £11,207.37.

Statement of Full Order

22. Upon the Respondent undertaking to the Tribunal and to the Solicitors Regulation Authority that he will not at any time in the future make an application to the Tribunal for the variation or quashing of this Order, the Tribunal Ordered that as from 5th December 2011 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Ashed Ahmed Mukhtar;

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Ashed Ahmed Mukhtar;

(iii) no recognised body shall employ or remunerate the said Ashed Ahmed Mukhtar;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Ashed Ahmed Mukhtar in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Ashed Ahmed Mukhtar to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Ashed Ahmed Mukhtar to have an interest in the body;

And the Tribunal further Ordered that the said Ashed Ahmed Mukhtar do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,207.37.

Dated this 12 day of January 2012

On behalf of the Tribunal

T Cullen
Chairman