

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10741-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JULIAN HOLT

Respondent

Before:

Mrs K Todner (in the chair)

Mr M Sibley

Mr D E Marlow

Date of Hearing: 13th October 2011

Appearances

Sara Dickerson, Barrister of the Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch, B98 0TD for the Applicant.

There was no appearance by the Respondent and he was not represented.

JUDGMENT

Allegations

1. The allegation against the Respondent was that:
 - 1.1 In the course of his employment he made arrangements with an introducer of work to the solicitor's practice and with a medical agency providing medical reports on the firm's clients so that he personally benefited from the payments without the knowledge of his employer,

Documents

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

Applicant:

- Application and Rule 8 Statement dated 19 April 2011;
- Exhibit "SD1";
- Schedule of Costs dated 16 August 2011.

Respondent:

- The Respondent did not submit any documents.

Preliminary Matter

3. In response to a question from the Tribunal, Ms Dickerson confirmed that there had been no communication from the Respondent. Ms Dickerson confirmed that the Respondent had been served and that neither the Applicant nor the Tribunal had received any documents returned which had been sent to the Respondent.
4. The Tribunal was satisfied that the Respondent had been served with notice of the hearing and decided to proceed in the Respondent's absence.

Factual Background

5. The Respondent was born on 11 May 1974.
6. Lawyers At Work ("the firm") was an incorporated law firm based in Yeovil that dealt solely with personal injury matters. The Directors were Mr Peter Bayliss and Mr Graham Hughes. The Respondent commenced employment with the firm on 6 March 2003. The Respondent became manager of the firm's Industrial Disease Team in early 2006. A key part of the Respondent's role was to liaise with the firm's introducers of new business.
7. Information by fax had been received by the Applicant from Mr Bayliss on 20 July 2009 regarding the Respondent. An investigation was authorised by the Applicant to commence on 15 September 2009 at the firm's office address in Yeovil.

8. Mr Bayliss informed the Investigation Officer (“IO”) that he was aware that the Respondent had made arrangements with an introducer of work to the practice, Expedite Services Ltd (“Expedite”) and a medical agency, Medical Reports Ltd (“MRL”) so that the Respondent personally benefited from the payments made by the firm to the introducer and the medical agency. This had been done without the knowledge or consent of the directors of the firm.
9. A contract between the firm and the Managing Director of Expedite, Mr Tahir Satia had been signed on 16 October 2007. The agreement was for Expedite to supply personal injury referrals and investigative work at an agreed fee of £650 plus VAT per case/client.
10. Mr Bayliss had provided a copy of an email dated 3 October 2008 from the Respondent to Mr Tahir Satia. In the email the Respondent had stated:

“Perhaps we could look at a new deal whereby we can team up on the following basis.

At present you are getting £680 after my payment is deducted for each of your cases.

My suggestion would be:

1. Keep the referral fee at £750.00 per case of which I will receive the amount agreed previously, this would mean that we are continuing on the same basis in relation to the actual price of the claim and you are no worse off.
2. In relation to the audio I think that I will be able to get an increased amount for the audio to what the flat fee is now and I would propose that once Mary has had her fee paid for the day the balance between the payment made to Mary and that paid by the firms [sic] is split between us on a 50:50 basis. I again think this is fair.

I am not sure of how much work you think you would be able to generate but I think that I could easily place 60 cases a month, obviously this is a much larger amount of work than you currently place and we would need to discuss how much work you realistically think you could source.”

11. A further email sent by the Respondent to Mr Tahir Satia stated:

“...As agreed I will deal with you direct in relation to my bit which will be the £60.00 on the referral and half of the money made on the audio, they are not aware of my bit and do not need to know about it, I merely said we were looking at handing over the lead to them.”
12. A printout of the ledger account which showed the payment of referral fees to Expedite was given to the IO. Payments to Expedite had commenced on 4 January 2008 in two parts; the first £475.00 and the second £175.00 which totalled £650.00 as was stated in the contract between the firm and Expedite.

13. The ledger account had shown that payments to Expedite increased to £575.00 from 23 June 2008 and from that date to 5 December 2008, 44 payments had been made of that amount. The sum paid to Expedite in excess of the sum agreed in the contract totalled £4,400.
14. The IO had written to Expedite by letter dated 16 September 2009 and had asked for a copy of the agreement with the Respondent which related to the payments to the Respondent and details of any payments which had actually been made to the Respondent. No reply had been received and a further letter dated 6 October 2009 had been sent to Expedite.
15. A reply was received from Expedite dated 21 October 2009 which stated:

“Further to your letter, there is no record of any dealings and payments made”.

It was not evident who in Expedite had sent the letter. The IO wrote to Mr Tahir Satia by letter dated 19 November 2009 and asked for an explanation. No reply was received from Mr Satia.
16. The Respondent had made arrangements for personal payments with MRL. Mr Bayliss had provided the IO with a copy email dated 2 December 2008 from the Respondent to Mr Mark Hyde, Director of MRL. The email stated:

“I have phoned Mike today and discussed with him the position concerning the medical reports and have agreed with him as follows, the initial £50.00 will be payable to me...”
17. The IO wrote to MRL by letter dated 16 September 2009 and requested further information. MRL’s reply dated 1 October 2009 enclosed an invoice received from Assist Claims Ltd (“ACL”) dated 8 April 2009 for £1,900; a document entitled Appendix 1 explained MRL’s standard fee for each report; Appendix 2 - costing examples (net of VAT) which used the agreement with the Respondent and Appendix 3 costing examples which used MRL’s standard mark-up fee.
18. The invoice from ACL had been cashed on 29 April 2009 as was evidenced by an email from Ms Jane Cardall, Accounts Department at MRL, to Mark Hyde who forwarded the email to the Avon & Somerset Police on 30 June 2009.
19. The IO had carried out a Companies Search for ACL and had found that the Respondent appeared to own/control this company from 25 November 2008 together with a Mrs Holt.
20. Mr Bayliss explained that the Directors of the firm had decided in 2009 to close down the Industrial Disease Team. This gave rise to redundancy which affected the Respondent and another Manager of a different team. The Respondent had been informed of the decision on Wednesday 29 April 2009 and the next day he had been offered an alternative role in another team.
21. The Respondent had wished to take some time to think about his decision and it was agreed that a meeting would be held after the bank holiday weekend on Tuesday 5

May 2009. On Friday 1 May 2009 Mr Bayliss had received information that the Respondent had approached a company and suggested that he should be paid a fee based on the number of new cases he accepted from them in his capacity as an employee of the firm.

22. On 5 May 2009 at the previously arranged meeting, the Respondent had informed Mr Bayliss that he would not be accepting the alternative offer of employment. Mr Bayliss had questioned the Respondent regarding the information he had received on 1 May which resulted in the Respondent leaving the firm that day.
23. Upon investigation, Mr Bayliss had discovered that the Respondent had been into the firm's offices on the bank holiday Sunday and had deleted almost all of his files and emails.
24. The Respondent was sent a letter dated 22 March 2010 from Casework, Investigations and Operations for the Applicant which had enclosed the Forensic Investigation Report and which had requested an explanation of various allegations. A failure to reply letter was sent to the Respondent dated 9 April 2010. An unsigned reply from the Respondent was received dated 19 April 2010.
25. A further letter dated 22 April 2010 was sent to the Respondent and a reply requested in relation to two specific issues. No reply had been received.
26. The matter had been considered by an Adjudicator of the Applicant on 1 October 2010 who had referred the conduct of the Respondent to the Tribunal. A letter dated 20 January 2011 had been sent to the Respondent regarding his referral to the Tribunal.

Witnesses

27. None.

Findings of Fact and Law

28. **Allegation 1.1: In the course of his employment he made arrangements with an introducer of work to the solicitors' practice and with a medical agency providing medical reports on the firm's clients so that he personally benefited from the payments without the knowledge of his employer.**
- 28.1 It was submitted on behalf of the Applicant that the facts showed and supported that in the course of the Respondent's employment, he had made arrangements with an introducer of work to the firm, namely Expedite and with a medical agency namely MRL, providing medical reports on the firm's clients so that the Respondent personally had benefited from the payments without the knowledge of his employer.
- 28.2 Ms Dickerson referred the Tribunal to the letter from Mr Bayliss, Director of the firm, dated 20 July 2009 which detailed how the facts came to light regarding the Respondent's conduct.

- 28.3 Ms Dickerson referred the Tribunal to an unsigned and undated reply from the Respondent to the Applicant, in which the Respondent had stated:

“All agreements and fees were discussed with Peter Bayliss or Nick Mehlig.”

Ms Dickerson submitted that Mr Bayliss had rebutted the Respondent’s explanations for his conduct and referred the Tribunal to an email from Mr Bayliss to the Applicant dated 26 August 2010 in which Mr Bayliss had stated:

“I have noted in particular the contents of Mr Holt’s undated letter sent to you in April (AP81-85) which I had not seen previously. Without my responding line by line, my general observation is that it is a poor attempt at an explanation for his dishonest conduct. Many of the points he has made are not consistent with the evidence...”

It is also significant that Mr Holt has offered no explanation at all as to why he came into the office on a bank holiday weekend and attempted to delete all of his emails and files...

It is very clear from the contemporaneous evidence that he was attempting to line his own pocket - and indeed was successful with MRL - at the expense of my firm and our clients.”

- 28.4 Ms Dickerson submitted that a s.43 Order was a regulatory provision intended to afford safeguards and control. It was not punitive in nature but supported the fundamental principle of maintaining the reputation of the profession upon which the profession and the public relied.
- 28.5 After hearing Ms Dickerson’s submissions and having read the papers, the Tribunal found all aspects of the allegation to have been proved.

Previous Disciplinary Matters

29. None.

Mitigation

30. None.

Sanction

31. The Tribunal noted that the Respondent had not engaged with the proceedings and had not attended before the Tribunal at the substantive hearing in order to provide any explanation or mitigation for his conduct.
32. The Tribunal decided that an order under s.43(2) of the Solicitors Act 1974 (as amended) should be made.
33. The Tribunal made clear that a s.43 Order was not intended to be punitive in nature; it was a regulatory rather than a disciplinary Order.

Costs

34. Ms Dickerson on behalf of the Applicant sought an order for costs in the sum of £3,033. Ms Dickerson informed the Tribunal that she had served notice on the Respondent of the costs sought and no reply had been received. The Tribunal determined that an Order for costs fixed in the amount of £3,033 should be made.

Statement of Full Order

35. The Tribunal ORDERED that as from 13th day of October 2011 except in accordance with Law Society permission:-
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Julian Holt of 1 Bulls Lane, Lyewater, Crewkerne, Somerset, TA18 8BD;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Julian Holt;
 - (iii) no recognised body shall employ or remunerate the said Julian Holt;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Julian Holt in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Julian Holt to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Julian Holt to have an interest in the body;

And the Tribunal further Ordered that the said Julian Holt do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,033.00.

Dated this 4th day of November 2011
On behalf of the Tribunal

Mrs K Todner
Chairman