

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10766-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JULIO PEREZ

Respondent

Before:

Mr R B Bamford (in the chair)

Miss T Cullen

Mr S Howe

Date of Hearing: 21st February 2012

Appearances

Katrina Wingfield, solicitor of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 He has occasioned or been 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) of the Solicitors Act 1974;
 - 1.2 More particularly, the Respondent during 2008 and 2009, whilst employed by M LLP and using the firm's email system, sent numerous emails, the content of which was of a racist, sexist and wholly inappropriate nature, to work colleagues and to his girlfriend outside the firm.

Documents

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

Applicant:

- Application dated 13 June 2011
- Rule 8 Statement and exhibit bundle "KEW1" dated 13 June 2011
- Further bundle "KEW2"
- Costs Schedule dated 20 February 2012

Respondent:

- None.

Preliminary Matter

3. Ms Wingfield said that on 6 September 2011, the Tribunal had ordered substituted service on the Respondent. As a result, Ms Wingfield said that she had advertised these proceedings and the substantive hearing date in the Law Society Gazette, a newspaper local to the Respondent's last known address and the Philippine Daily Inquirer.
4. Ms Wingfield said that she had followed up with the Enquiry Agent the Respondent's brother's address but that had also proved unsuccessful.
5. The Tribunal was satisfied as to service upon the Respondent and agreed that the substantive hearing could proceed in his absence.

Factual Background

6. The Respondent was born on 6 August 1983. He was an unadmitted person and had been employed as a billing co-ordinator at M LLP for approximately 10 years until his resignation on 3 December 2009, during the course of a disciplinary investigation by his employers.

7. Correspondence had been sent to the Respondent's last known address which had apparently been the address of his former girlfriend. The Applicant had however been informed that the Respondent had left that address and may have gone to the Philippines. It was believed that the Respondent had obtained employment with other solicitors after his resignation but he had failed to provide any details.
8. On 18 December 2009 M LLP had written to the Applicant and made a report pursuant to Rule 20.06 of the Solicitors Code of Conduct ("SCC") in relation to, inter-alia, the Respondent's conduct. Further information had been provided under cover of a letter dated 11 February 2010.
9. On 2 August 2010 a case worker in the Conduct Investigation Unit ("CIU") of the Applicant had written to the Respondent. The letter drew attention to sexist, racist and discriminatory e-mails which had been sent by the Respondent to colleagues.
10. The Respondent telephoned the case worker on 5 August 2010. He then provided a written response, which was received by the Applicant on 20 August 2010 together with references from friends and a work colleague. In his response, the Respondent had dealt with the specific points raised in the case worker's letter to him. He had denied anything racist and had indicated that he himself was of mixed race origin and had an adopted brother who was black. He stated that it had not been his intention "to offend, sexually harass or be racist towards anyone". He accepted that his behaviour had been stupid and stated that he regretted his behaviour.

Witnesses

11. None

Findings of Fact and Law

12. **Allegation 1.1: He has occasioned or been 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) of the Solicitors Act 1974;**

Allegation 1.2: More particularly, the Respondent during 2008 and 2009, whilst employed by M LLP and using the firm's email system, sent numerous emails, the content of which was of a racist, sexist and wholly inappropriate nature, to work colleagues and to his girlfriend outside the firm.

Submissions on behalf of the Applicant

- 12.1 Ms Wingfield referred the Tribunal to the Rule 8 Statement and exhibits upon which she relied. She said that the papers spoke for themselves.
- 12.2 Ms Wingfield said that the Respondent was alleged to have sent, during 2008 and 2009 whilst employed by M LLP and having used the firm's e-mail system, numerous e-mails the content of which had been racist, sexist and wholly inappropriate in nature to work colleagues and to his girlfriend outside the firm.

- 12.3 Ms Wingfield said that the Respondent had written to the Applicant's case worker in August 2010 and had denied anything racist. He had indicated that he himself was of mixed race origin and had an adopted black brother. He had stated that it had not been his intention "to offend, sexually harass or be racist towards anyone". Ms Wingfield said that he had accepted that his behaviour had been stupid and he had stated that he regretted his behaviour.
- 12.4 Ms Wingfield submitted that the documents were clearly obscene and discriminatory, both racially and sexually. She submitted that it was inappropriate for the Respondent to have transmitted them using his employer's IT system, particularly as some bore the firm's banner and some had been sent outside the firm.
- 12.5 Ms Wingfield informed the Tribunal that Section 43 of the Solicitors Act 1974 (as amended) was a regulatory provision, designed to afford safeguards and exercise control when in any given case that was considered appropriate. She submitted that this was not a punishment and should not be viewed as such.

Submissions on behalf of the Respondent

- 12.6 None

The Tribunal's Findings

- 12.7 The Tribunal applied its usual standard of proof namely the higher standard, beyond reasonable doubt.
- 12.8 The Tribunal found the allegations proved on the facts and on the documents.
- 12.9 The Tribunal was satisfied that the Respondent had sent numerous emails, the content of which had been of a racist, sexist and wholly inappropriate nature, to work colleagues and to his girlfriend outside the firm indeed in the interview reported, he appears to have accepted this fact

Previous Disciplinary Matters

13. None.

Mitigation

14. None.

Sanction

15. The Tribunal had found the allegations proved.
16. The Tribunal had considered very carefully all of the evidence before it, including all of the documentation produced and relied upon by the Applicant. It 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.

17. The Tribunal considered that it was a fundamental principle to maintain the reputation of the profession, in the interests of both the profession and the public. The profession's most valuable asset was the collective reputation and confidence which it inspired, not only in respect of solicitors, but also in relation to those they employed, whether qualified or not.
18. In all the circumstances, the Tribunal decided that it was appropriate for a Section 43 Order to be made against the Respondent. The Tribunal made clear that the Section 43 Order was not intended to be punitive in nature; it was a regulatory rather than a disciplinary order. A Section 43 Order did not preclude the Respondent from working for a solicitor, but in order to do so he and any employer would first have to obtain permission in advance from the Applicant.

Costs

19. Ms Wingfield asked the Tribunal to make an order in the amount sought in the schedule of costs of £8,835.
20. The Tribunal summarily assessed the costs and ordered the Respondent to pay costs in the sum of £5,000 inclusive of VAT and disbursements.

Statement of Full Order

21. The Tribunal Ordered that as from 21st day of February 2012 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Julio Perez;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Julio Perez;
 - (iii) no recognised body shall employ or remunerate the said Julio Perez;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Julio Perez in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Julio Perez to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Julio Perez to have an interest in the body;

And the Tribunal further Ordered that the said Julio Perez do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00 inclusive of VAT and disbursements.

Dated this 6th day of March 2012
On behalf of the Tribunal

R B Bamford
Chairman