The Second Respondent appealed to the High Court (Administrative Court) against the Tribunal's Costs Order. He discontinued his appeal, which was dismissed with costs in favour of the Solicitors Regulation Authority by His Honour Judge Worster (sitting as a Judge of the High Court) on 18 November 2014. Spiropoulos v Solicitors Regulation Authority [2014] EWHC 3888 (Admin)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10815-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANDREW OBINNA KALU ONYEARU, First Respondent

and

CHARLES OBINNA ODIACHI SPIROPOULOS Second Respondent

Before:

Mr J. P. Davies (in the chair)
Mr L. N. Gilford
Mr M. C. Baughan

Date of Hearing: 1 November 2013

(Adjourned in respect of the Second Respondent only from 24th October and 25th October 2012)

Appearances

Robin Havard, Solicitor of Morgan Cole LLP, Bradley Court, Park Place, Cardiff, CF10 3DP for the Applicant

The First Respondent did not appear and was not represented

The Second Respondent did not appear and was not represented

JUDGMENT

Allegations

1. In a Rule 7 Statement dated 26 July 2012, the allegation against the Second Respondent, Charles Obinna Odiachi Spiropoulos, was that:

1.1 On 3 February 2012, he was convicted of an offence of conspiring to dishonestly make false representation to make gain for self/another or cause loss/expose to risk, for which he was subsequently sentenced to a term of imprisonment of 33 months, contrary to Principles 2 and 6 of the SRA Principles 2011.

In the circumstances, and as a consequence of the conduct giving rise to the conviction, it was alleged that the Second Respondent had acted in a dishonest manner.

2. This matter originally involved two Respondents; the allegations against the First Respondent and Second Respondent contained in a Rule 5 Statement dated 31 August 2011 were disposed of at a substantive hearing on 24 and 25 October 2012 and a sanction was imposed and costs awarded to the Applicant in respect of each Respondent. At the request of the Second Respondent, a discrete allegation brought against him alone in a Rule 7 Statement dated 26 July 2012 and referred to in the judgment published following the earlier hearing as allegation 2.1 (in this judgment referred to as allegation 1) was adjourned pending the outcome of his appeal against conviction.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 7 Statement dated 26 July 2012
- Applicant's Supplementary Bundle of Documents
- Order determining the Second Respondent's leave to appeal against conviction made by the Court of Appeal Criminal Division dated 26 June 2013
- E-mail from Mr Havard to the Tribunal office dated 27 June 2013
- Office copy entries relating to the Second Respondent's residence dated 31 October 2013
- Schedule of costs

Second Respondent

- Letter from the Second Respondent to the Clerk to the Tribunal dated 28 October 2013
- Letter from the Second Respondent to Mr Havard dated 31 October 2013 with attached Personal Financial Statement of the same date

The Tribunal also had sight of its earlier judgment dated 30 November 2012 in respect of the matters contained in the Rule 5 Statement.

Preliminary Matters

4. The Second Respondent was not present at the hearing but his unsigned letter dated 28 October 2013 was before the Tribunal. He expressed regret that he would be unable to attend the hearing on 1 November 2013 as a close family member was unwell and had to be in hospital on the day. He continued as follows:

> "I should be grateful if my non-attendance is not construed as discourtesy to the Tribunal.
>
> I am conscious of the fact that given my lack of success in relation to my appeal against conviction at the Court of Appeal, it is more than certain that the Tribunal will make an order that my name be struck off the Roll…"

Mr Havard informed the Tribunal that he had had no discussions with the Second Respondent about his attendance at the hearing, but there had been some e-mail exchanges. He drew attention to the fact that the letter dated 28 October 2013 was expressed to have been sent by Special Delivery. The letter was the first contact which Mr Havard had had with the Second Respondent since the hearing in October 2012 and this indirectly. Mr Havard informed the Tribunal that he had written to the Second Respondent on 29 October 2013 informing him that the Applicant wished to proceed at this hearing and that if the matter reached the stage where a costs order was appropriate, Mr Havard would invite the Tribunal to make a costs order against the Second Respondent and pointed out that the Second Respondent might wish to produce evidence of his means by reference to the case of The Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin). The Second Respondent had responded to the effect that he was a man of no means. Mr Havard had replied attaching a template "Personal Financial Statement" which the Applicant used when looking to investigate whether someone was in a position to make payment. The Tribunal noted that with his letter of 31 October 2013 to Mr Havard, the Second Respondent had attached a partially completed template. The Tribunal noted that the Second Respondent had not made an application to adjourn the hearing and that in his letter to the Clerk to the Tribunal of 28 October 2013, the Second Respondent had stated that he did not intend to appear for the reasons stated. The Second Respondent had had notice of the date of the hearing for some time. Mr Havard invited the Tribunal to proceed in the absence of the Second Respondent, relying on several authorities including that of R v Hayward, Jones and Purvis [2001] QB862, CA where Rose LJ had stated:

> "1. A defendant has, in general, a right to be present at his trial and a right to be legally represented.
>
> 2. Those rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing, or having the means of knowledge as to, when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him…"

The Tribunal noted that the Second Respondent had not appeared at the October 2012 trial of the Rule 5 allegations but at that time he was believed to have been incarcerated. It was believed that he had since been released or completed his sentence. The Tribunal considered that it had a clear statement from the Second Respondent that he did not intend to appear. It considered that he had been properly served with notice of the proceedings under the Solicitors (Disciplinary Proceedings) Rules 2007 and exercised its discretion under Rule 16(2) to hear and determine the application notwithstanding that the Second Respondent had failed to attend in person and was not represented at the hearing.

5. The Tribunal then considered whether the Second Respondent had admitted the allegation. In his letter of 28 October 2013, the Second Respondent stated:

> "…I wish to place on record that I maintain my innocence and, also, that the matter has, on legal advice, been referred to the Criminal Cases Review Commission…
>
> In the event that the CCRC refers my case to appeal and that appeal is successful, I should think it reasonable to expect that the Tribunal would make an order restoring my name to the Roll with the same degree of publicity that the striking off order was made…"

6. In his letter of 31 October 2013, the Second Respondent stated:

> "For what it is worth, I reiterate the fact that my matter has been referred to the Criminal Cases Review Commission and in the event that it agrees that there was miscarriage of justice in my case, it is my expectation that any comments/consequence of this allegation of dishonesty will be rectified in light of any such findings by the CCRC and the Court of Appeal."

The Tribunal considered that the statement in the 28 October 2013 letter was the closest that the Second Respondent came to accepting the allegation but it did not constitute an admission. In the light of these statements, the Tribunal treated the allegation as denied.

Factual Background

7. The Second Respondent was born in 1963 and admitted in 2000. At the material time, the First and Second Respondents were practising in partnership under the style of Andrews Solicitors ("the firm").

8. On 26 July 2010, an investigation was commenced by Mr Sean Grehan an Investigation Officer ("IO") of the Applicant at the offices of the firm and this led to the preparation of a Forensic Investigation (FI) Report dated 1 September 2010. The investigation led to the institution of these proceedings against both Respondents on 31 August 2011.

9. The firm ceased trading on 1 October 2010.

10. The Second Respondent was made bankrupt on 15 April 2011.

11. The additional allegation against the Second Respondent only, was the subject of a Rule 7 Statement dated 26 July 2012 and was based on the Second Respondent's conviction on indictment as set out in the allegation.

12. The Second Respondent was tried in the Crown Court at Southwark together with six other defendants. The trial commenced on 1 November 2011.

13. Information regarding the factual background to the Second Respondent's conviction was set out in the transcripts of the sentencing hearings which took place in March 2012. They showed as follows:

- On 3 February 2012, a jury unanimously found the Second Respondent, together with two other Defendants guilty of conspiracy to commit fraud by false representation. Three Defendants were found guilty, and one defendant pleaded guilty, to an offence of conspiracy to commit a money laundering offence.

- The offences covered a period from sometime in 2007 until at least 10 October 2010 (although the Second Respondent was only involved for part of 2010). The conspiracies were presented by the Crown as complementary aspects of the same criminal activity. At the heart of both conspiracies was a gang of serious criminals, all of whom pleaded guilty and were sentenced at a later date.

- These criminals sought out unoccupied residential properties whose owners, for one reason or another, were not, for the time being keeping a watch over them. Typically, this would be due to the owner being elderly or infirm and living in residential care or where the owner had recently died so that the property was undergoing probate, or had not yet come into possession of any beneficiary.

- Once suitable properties were identified for this purpose, the criminals would pass themselves or their associates off as the true owners and sell the properties to unsuspecting third parties. In order to achieve a quick sale, a price below the market value of the property would be agreed, often with property dealers and developers seizing the opportunity to make a quick profit on an immediate resale, a practice known as "flipping".

- The gains for the central conspirators were very large indeed, potentially in the region of several millions of pounds over the two or three years during which this activity was shown to have been going on.

- Although it was not possible to discover every single property involved, nine specific properties were identified. Of these nine properties, five were actually sold by the fraudsters. The sale of the others had to be aborted for one reason or another. The proceeds of sale in respect of known and completed transactions were in the region of £1.2 million. The total market value of all the properties known or believed to have been the subject of the conspiracy was estimated at £4,748,000.

- The Crown contended that the Second Respondent carried out the conveyancing for the bulk of the properties in the full knowledge that they were fraudulent sales.

- The Second Respondent completed the conveyancing in respect of four properties: 61 G Road, 34 GL Avenue, 66 D Road and 7 T Road.

- The Judge highlighted the involvement of the Second Respondent in two other transactions, namely 90 R Hill and 66 M Road.

- As part of the sale process, signatures on the Land Registry documentation were forged to give the transaction a veneer of authenticity.

- The monies from the sales were released to the fraudsters' solicitors, often the Second Respondent.

- The Crown pointed to an aggravating feature of the fraud as being the usage by the conspirators of forged documentation, not only forged Title Deeds but also forged United Kingdom passports.

- In the case of the Second Respondent, the Crown identified what it claimed to be a gross breach of trust as an admitted solicitor of the Supreme Court.

14. The Second Respondent was sentenced by His Honour Judge Grieve at a hearing in the Crown Court at Southwark on Tuesday, 6 March 2012. The Judge's comments in relation to the Second Respondent included:

> "Charles Spiropoulos, you also maintain your innocence, but again, in your case I have to sentence on the basis that the jury unanimously convicted you of knowing participation in this plot to defraud.
>
> Your role was to act as the conveyancing solicitor for the fraudsters and you brought about four successful transfers in the process. In your case, the evidence suggests that your involvement ran from the early part of 2010 until 7 June 2010, when the discovery of fraud in connection with 7 T Road in Streatham rendered you a liability to the conspiracy for the future. In all likelihood, you were recruited to the conspiracy by… or his associates. There is precious little clear evidence of the reward which you derived for your efforts, over and above the fees paid to your firm. I can only assume that the conspirators made it worth your while to take the risks which you did.
>
> All I can say is that your solicitors' firm, Andrews & Co, were in dire financial straits by 2010, and that provided you with a clear financial motive. Your role was crucial in presenting a wholly respectable front for carrying out the conveyancing, and as a channel for the receipt and onward transfer of the proceeds of the fraud.
>
> While I accept that you too were exploited and corrupted by others at the centre of the conspiracy, the breach of trust in your case was very grave. I take into account in your favour your good character and the very positive character references which I have been given and have read, including from your long term business partner and from your wife. I appreciate the real difficulties which she will suffer in your absence…. I have no doubt these offences were out of character and that your career, as a result, is ruined.

> In my view, the appropriate starting point in your case is also four and a half years imprisonment. The breach of trust your case was particularly grave, but there is also copious mitigation of a personal and compassionate nature, so the sentence upon you is one of four years imprisonment."

At a hearing on Wednesday, 14 March 2012, His Honour Judge Grieve saw fit pursuant to Section 155 of the Powers of Criminal Court Sentencing Act 2000, to reduce by a third, the sentences previously imposed by him at the hearing on 6 March 2012. As a result, the Second Respondent's sentence was reduced to a term of imprisonment of two years, nine months.

Witnesses

15. There were no witnesses.

Findings of Fact and Law

16. **In a Rule 7 Statement dated 26 July 2012, the allegation against the Second Respondent, Charles Obinna Odiachi Spiropoulos, was that:**

Allegation 1. On 3 February 2012, he was convicted of an offence of conspiring to dishonestly make false representation to make gain for self/another or cause loss/expose to risk, for which he was subsequently sentenced to a term of imprisonment of 33 months, contrary to Principles 2 and 6 of the SRA Principles 2011.

In the circumstances, and as a consequence of the conduct giving rise to the conviction, it was alleged that the Second Respondent had acted in a dishonest manner.

16.1 The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Second Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

16.2 For the Applicant, Mr Havard relied on the certificate of conviction, a copy of which was before the Tribunal. By virtue of Rule 15(2):

> "A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances."

Mr Havard referred the Tribunal to the Order of the Court of Appeal Criminal Division dated 26 June 2013 which showed that the Second Respondent's applications for leave to appeal against conviction and a Representation Order had been considered and had been refused by the Court of Appeal with the Second Respondent present. The Second Respondent had been convicted upon a unanimous

verdict of an offence of acting in fraudulent conveyances on the basis of certain individuals holding themselves out to be the owners of properties which they were not, having identified the properties on the basis of their being vacant and owned by elderly people in care homes or who had died. Mr Havard referred Tribunal to the circumstances of the fraud. The Respondent's actions had at various stages been described in the Crown Court as in the Judge's sentencing remarks:

> "Your role was crucial in presenting a wholly respectable front for carrying out the conveyancing…"
>
> "The breach of trust in your case was very grave"
>
> "The breach of trust in your case was particularly grave"

Mr Havard also referred the Tribunal to the remarks made by the Judge about the impact of the fraudulent transactions on the owners of properties:

> "The targeted victims of the fraud were the owners, whom it aimed to dispossess of houses, which in many instances had been family homes in which were stored lifetimes of memories, and in some instances, highly prized personal possessions. As I have already remarked, they were likely to be highly vulnerable people, infirm and in old age, or their recently bereaved relatives.
>
> I have seen two victim impact statements which were not read out in court owing to pressure of time, but which give predictably searing accounts of their emotions upon discovering that their homes had, quite literally, been stolen from them. One speaks of, "Shock, confusion, financial ruin and resultant ill-health". In the other, the victim felt as if she had lost her past and her identity, leading to a profound harm, both emotionally and physically. It takes little imagination to realise the shattering trauma that this experience would bring."

Mr Havard was not able to inform the Tribunal about whether there had been any financial consequences for the profession or otherwise (in terms of claims on the Compensation Fund) arising out of the Second Respondent's activities. Mr Havard submitted that the nature of the offence for which the Second Respondent had been convicted was one of dishonesty and submitted that accordingly, the allegation of dishonesty brought against him was made out.

16.3 The Respondent had pleaded not guilty and maintained his innocence in his letters of 28 and 31 October 2013; he also mentioned that his case has been referred to the Criminal Cases Review Commission.

16.4 The Tribunal had regard to the submissions for the Applicant, the evidence including the certificate of conviction and the order of the Court Appeal Criminal Division refusing the Second Respondent's application for leave to appeal against conviction. The Tribunal also had regard to the letters from the Second Respondent dated 28 and 31 October 2013. The Tribunal was satisfied that allegation 1 against the Second Respondent was proved to the required standard. It was also satisfied that there were no exceptional circumstances in respect of the conviction and having regard to Rule

15(2), on the basis of the certificate of conviction and the underlying circumstances the Tribunal found that dishonesty as defined in the two limbed test set out in the case of Twinsectra Ltd v Yardley [2002] UKHL 12 was also proved to the required standard.

Previous Disciplinary Matters

17. None, save those matters found proved against the Second Respondent at the conclusion of the earlier hearing of the allegations in the Rule 5 Statement for which a fine of £7,000 had been imposed upon him and a joint and several costs order made in the sum of £15,000. In the normal course of Tribunal business the division hearing this matter would not be aware before arriving at its findings of previous disciplinary matters but this was an adjourned hearing and all the matters in the Rule 5 and Rule 7 Statements formed part of one matter, part of which had been adjourned on the Second Respondent's application.

Mitigation

18. The Second Respondent was not present and had not submitted any mitigation save for the references in his letters of 28 and 31 October 2013 to his family circumstances, the fact of the referral of his case to the Criminal Cases Review Commission and his understanding that his case was likely to be dealt with between April and June 2015. The information he provided about his financial position is dealt with under the heading of "Costs" below.

Sanction

19. The Tribunal had regard to its Guidance Note on Sanctions. The Second Respondent had been convicted of an offence of dishonesty involving vulnerable people. The Tribunal did not consider that there were any exceptional circumstances which would justify any sanction other than that the Second Respondent be struck off the Roll of Solicitors.

Costs

20. For the Applicant, Mr Havard applied for costs. He had sent the Applicant's Schedule totalling £4,010.20 to the Second Respondent on 29 October 2013.The costs were restricted to the allegation in the Rule 7 Statement against the Second Respondent only. Mr Havard also pointed out that the costs schedule had estimated a hearing of some three hours and the costs could be reduced on that account. There was discussion about the amount of time allocated in the schedule to preparation and Mr Havard suggested that two rather than three hours might be more appropriate. The Second Respondent had made representations about his financial position by partially completing the template Personal Financial Statement which Mr Havard sent to him in response to the Second Respondent informing Mr Havard that he had no means or income. The Second Respondent referred in his statement to having been made bankrupt and Mr Havard reminded the Tribunal that Mr Beaumont of Counsel who had represented both First and Second Respondents on the last occasion had confirmed that each had been adjudicated bankrupt but discharged by the date of that hearing in October 2012. In his letter of 31 October 2013, the Second Respondent

stated that he had no income, and relied totally on the generosity of family and friends to meet his daily living requirements. He also referred to his interest in a flat in which he resided:

> "… I have put myself down as the owner of… simply because that is what a check at HM Land Registry will show as at the time of writing. The reality is that my interest in the property passed on to my Trustee in Bankruptcy following the making of the order against me. My wife has now bought that interest from the Trustee, but the paperwork to reflect this still needs to be completed."

Mr Havard produced a Land Registry search which had been carried out the previous day which showed that the property appeared to be in the sole name of the Second Respondent but subject to charges and a notice of home rights under the Family Law Act 1996. In his Personal Financial Statement, the Second Respondent included that he owed some £14,000 to an individual who had registered a charge on his house which was shown in the search. The Second Respondent also indicated by "N/K" that he did not know what his wife's income was. The Tribunal took into account the award of costs which it had already made against the Second Respondent at the earlier hearing and the fact that he would not be able to practise as a solicitor in future. It also noted the contents of his Personal Financial Statement which he had partially completed when Mr Havard invited him to provide more information about his means. The Tribunal noted that there was considerable equity in the flat in which the Second Respondent resided and of which he was registered as sole owner and accordingly determined that it was appropriate to make an order for costs against him. The Tribunal summarily assessed costs fixed in the amount of £3,410.

Statement of Full Order

21. The Tribunal ORDERED that the Respondent, CHARLES OBINNA ODIACHI SPIROPOULOS solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,410.00.

Dated this 20th day of November 2013
On behalf of the Tribunal

J. P. Davies
Chairman