

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10936-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

COLIN MICHAEL ARTHUR BISHOP

Respondent

Before:

Mr R. Nicholas (in the chair)

Mr I. R. Woolfe

Mr M. C. Baughan

Date of Hearing: 4th September 2012

Appearances

Jayne Willetts, solicitor of Jayne Willetts & Co Solicitors, Cornwall House, 31 Lionel Street, Birmingham B3 1AP for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegation against the Respondent was:
 - 1.1 By acting for a client in the sale of a property in breach of a Proceeds of Crime Act Restraint Order dated 3 September 2009, the Respondent acted in breach of Rule 1.02 and Rule 1.06 of the Solicitors Code of Conduct 2007 ("SCC"). It was also alleged the Respondent had acted dishonestly.

Documents

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

Applicant:

- Application dated 23 February 2012 together with attached Rule 5 Statement and all exhibits;
- Applicant's Schedule of Costs dated 23 August 2012.

Respondent:

- Letter dated 2 August 2012 from the Respondent to the Tribunal;
- Letter dated 30 August 2012 from the Respondent to the Tribunal together with all enclosures.

Preliminary Matters

3. The Respondent's letter of 2 August 2012 to the Tribunal confirmed that although the Respondent did not admit the allegation, he did not intend to appear at the hearing. His second letter of 30 August 2012 was in relation to the Applicant's costs. In the circumstances, the Tribunal was satisfied that the Respondent had been properly served with notice of the hearing and that he had voluntarily absented himself. The Tribunal granted leave to the Applicant to proceed in the Respondent's absence.

Factual Background

4. The Respondent, born on 19 October 1947, was admitted as a solicitor on 15 December 1976. The Respondent formerly practised in partnership as B & G Solicitors ("the firm") until 30 June 2010 when the partnership was dissolved, after which he practised on his own account until 30 September 2010 when the firm ceased trading. The Respondent did not hold a current practising certificate.
5. The SRA commenced an inspection of the Respondent's firm and produced a report dated 8 August 2011. A review of the client ledgers revealed the Respondent and his firm had acted for RG in a significant number of property transactions between 15 March 2005 and 7 May 2009.
6. On 3 September 2009 Her Honour Judge Tapping made a Restraint Order pursuant to the Proceeds of Crime Act 1982 ("the Restraint Order") against RG in that name, and

in the name of nine aliases he used, at the Harrow Crown Court. Paragraph 3 of the Restraint Order prohibited RG from disposing of or dealing with his assets. Paragraph 4 of the Order provided that the Order covered assets whether solely or jointly owned and assets which RG had the power to dispose of as if they were his own including where a third party held or controlled the asset in accordance with RG's instructions.

7. Paragraphs 13 to 16 of the Restraint Order were directed at "Parties Other Than The Defendant". Paragraph 13 stated:

"13. It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned or fined. He/she is also at risk of prosecution for a money laundering offence."

8. The Restraint Order was also endorsed with a Penal Notice which was enforceable against RG and also against third parties. In particular the Penal Notice stated:

"Any other person who knows of this order and does anything which helps or permits [RG] (the Defendant) to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized."

9. On 23 November 2009 Detective Constable Vigor ("DC Vigor") of the Metropolitan Police obtained a Production Order ("the 1st Production Order") against B & G Solicitors which required the firm to produce to the police all files relating to the purchase of 29 C Road on behalf of RG.
10. On 24 November 2009 DC Vigor with Detective Constable Hale ("DC Hale") attended at the firm's offices and met the Respondent. At that meeting DC Vigor explained that RG had been identified as the Respondent's client and that he had been charged with criminal offences. DC Vigor served a copy of the 1st Production Order on the Respondent and also explained that a Restraint Order had been made in relation to RG's assets. The Respondent delivered up documentation to DC Vigor in compliance with the 1st Production Order.
11. On his return to the office DC Vigor faxed a copy of the Restraint Order to the Respondent and also asked the Respondent for further information about eight other properties. A fax delivery receipt confirmed delivery to the firm's fax number that day. The following day on 25 November 2009 the Respondent replied by fax to DC Vigor acknowledging receipt of DC Vigor's fax and providing the information requested. The Respondent's faxed letterhead contained the same fax number to which DC Vigor had faxed the Restraint Order the day before.
12. In early July 2010 DC Vigor became aware RG was attempting to dispose of a property known as HL. On 9 July 2010 DC Vigor obtained a second Production Order ("the 2nd Production Order") against B & G Solicitors which required the firm to produce to the police all files relating to the sale of HL on behalf of RG. DC Vigor attended the firm on 12 July 2010 and personally served the 2nd Production Order on the Respondent.

13. On 12 July 2010 DC Vigor further wrote to the Respondent confirming as follows:
- That he had attended upon the Respondent on 24 November 2009 and had served the 1st Production Order;
 - That he had subsequently faxed a copy of the Restraint Order to the Respondent;
 - That DC Vigor was aware the Respondent was acting for RG in the sale of RG's current residence, HL;
 - That there had been no variation of the Restraint Order;
 - That a 2nd Production Order had been served on the Respondent.

DC Vigor obtained from the Respondent the file relating to the sale of HL.

14. On 17 August 2010 DC Vigor obtained a third Production Order ("the 3rd Production Order") against B & G Solicitors which required the firm to produce to the police all files relating to the sale of HL together with details of funds transferred to Miss A and subsequently used in the attempted purchase of HL.
15. On 18 August 2010 DC Vigor with Detective Sergeant Aldridge ("DS Aldridge") attended the firm's office and met the Respondent. At that meeting DC Vigor explained that he believed RG was attempting to dispose of his assets in breach of the Restraint Order. The Respondent stated he had no knowledge of the Restraint Order. However during that meeting, when the Respondent was reviewing the file relating to RG, a copy of the Restraint Order was clearly visible to DC Vigor in the file.
16. The SRA's Forensic Investigation Officer ("FIO") obtained a copy of the file relating to HL from the police and concluded the Respondent had acted in breach of the Restraint Order dated 3 September 2009 by acting for RG in two abortive sales of the property based on the following:
- On 9 February 2010 the property was in the sole name of RM, an alias of RG;
 - RG had appointed as his Attorney Ms Y-S ("the Attorney") by deed dated 5 January 2009;
 - The Respondent had sent a Terms of Business letter to the Attorney on 12 January 2010 confirming instructions for his firm to act in the sale of HL;
 - There was an abortive sale of HL to Mr AT for a price of £425,000 as per a draft contract in the name of RG and correspondence dated 4 February 2010 with the purchaser's solicitors;
 - The Respondent corresponded direct with RG regarding the sale of the property in an email dated 25 March 2010;

- There was a second abortive sale of HL to Mr MD at a price of £380,000 as per a draft contract dated 24 June 2010 in the name of RG, and a Memorandum of Exchange of Contracts indicating exchange of contracts took place on 23 June 2010 with the authorised person for the seller stated as the Respondent. A further letter from the purchaser's solicitors dated 24 June 2010 stated they would not be in a position to forward completion funds. A Notice to Complete was subsequently served on 9 July 2010;
 - The property remained in the sole name of RG as at 14 June 2011 according to the Land Registry Official Copies;
 - The balance of the purchase monies for the second abortive sale were being provided by Miss A to the purchaser MD as per a signed but undated Declaration of Trust;
 - The Respondent raised an invoice against RG on 25 June 2010 for £861.13 plus VAT as recorded on the client ledger for HL.
17. The FIO conducted an interview with the Respondent on 16 June 2011. The Respondent's responses were recorded. During the interview the Respondent admitted he had been made aware of the Restraint Order by DC Vigor at the end of 2009 but that he had never seen or been served with a copy of the Order. In a letter dated 24 August 2011 to the SRA the Respondent stated he had been unaware of the Restraint Order and that he did not receive a copy by fax.

Witnesses

18. The following witnesses gave evidence:
- Detective Constable Stephen Vigor;
 - Detective Sergeant Jason Aldridge;
 - Gary Page (Forensic Investigation Officer with the SRA).

Findings of Fact and Law

19. The Tribunal had considered carefully all the documents provided, the evidence given and the submissions of the Applicant. The Respondent had not appeared or been represented but the Tribunal had taken into account his letter of 2 August 2012. The Tribunal confirmed that the allegation had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering the allegation.
20. **Allegation 1.1: By acting for a client in the sale of a property in breach of a Proceeds of Crime Act Restraint Order dated 3 September 2009, the Respondent acted in breach of Rule 1.02 and Rule 1.06 of the Solicitors Code of Conduct 2007 ("SCC"). It was also alleged the Respondent had acted dishonestly.**
- 20.1 The Tribunal had heard evidence from DC Vigor confirming he had a meeting with the Respondent on 24 November 2009 when the Respondent was provided with a

copy of the 1st Production Order and had been specifically informed by DC Vigor that a Restraint Order was in place in relation to RG. DC Vigor also confirmed that he had not taken a copy of the Restraint Order with him when he visited the Respondent that day but that he had faxed it to the Respondent on his return to his office the same day. DC Vigor had subsequently received a letter from the Respondent dated 25 November 2009 which acknowledged receipt of his fax and provided the additional information which DC Vigor had requested.

- 20.2 DC Vigor confirmed he had seen the same person on three separate occasions when visiting the firm and on each occasion that person had introduced himself as the Respondent. The 2nd Production Order dated 9 July 2010 had been personally served by DC Vigor on the Respondent on 12 July 2010. A letter dated 12 July 2010 had also been written and given by DC Vigor to the Respondent on the same day. That letter stated DC Vigor had faxed a copy of the Restraint Order to the Respondent on 24 November 2009. DC Vigor confirmed the Respondent had read this letter in front of him and had not raised any question or objection to what it said.
- 20.3 DC Vigor confirmed that he had visited the Respondent on 18 August 2010 and had personally served the 3rd Production Order on the Respondent. At that time, when the Respondent provided DC Vigor with the relevant file, a copy of the Restraint Order was on the file. DC Vigor had removed the copy of the Restraint Order in front of the Respondent. DC Vigor said the Respondent was “a bit sheepish” when this happened. DC Vigor had confirmed there had been no variation to the Restraint Order.
- 20.4 The Tribunal heard evidence from DS Aldridge who confirmed he had attended the Respondent's office on 18 August 2010 with DC Vigor and that the person they had spoken to had identified himself as the Respondent. A copy of the Restraint Order was on the file the Respondent gave to them. DS Aldridge saw the copy of the Restraint Order himself. DS Aldridge remembered the attendance clearly as it was unusual for him to visit solicitors, and particularly unusual to serve a Restraint Order on a solicitor, as usually solicitors would contact the police if anything suspicious was going on.
- 20.5 Gary Page, the Forensic Investigation Officer, also gave evidence to the Tribunal. He confirmed he had interviewed the Respondent on 16 June 2011 and that during the course of that interview the Respondent had stated he had been made aware of the Restraint Order in 2009 but that he had never seen the Restraint Order. Mr Page had been recording the Respondent's responses to his questions in writing contemporaneously. Mr Page had not seen a copy of the Restraint Order on any of the files he looked at, but he had been provided with the files by the police.
- 20.6 In his letter of 2 August 2012 the Respondent stated he was unaware of the terms of the Restraint Order at the time his firm acted in the proposed sale of HL. He also stated that he was not the author of the letter to DC Vigor dated 25 November 2009, and that letter did not contain his signature. The Respondent stated he did not personally receive a copy of the Restraint Order on 24 November 2009. The Respondent stated the police officers had failed to enter a Restriction at the Land Registry to record that a Restraint Order was in place and thereby prevent sale of the property.

- 20.7 The Respondent had not appeared before the Tribunal to challenge any of the evidence given by the witnesses or to give evidence or make submissions himself. He had simply stated in his letter that he had “decided not to mount any form of Defence”, that he had no wish to remain on the Roll of Solicitors or to be subjected to “the continuing burden of regulation” by the SRA.
- 20.8 The Tribunal had considered the Respondent’s responses to Mr Page’s questions during his interview. The Respondent had been asked the following questions:
- “6. Please confirm that you were made aware of a Proceeds of Crime Act (POCA) restraining order by DC Vigor from the Metropolitan Police Service (MPS)
7. When where [sic] you first made aware of this restraint order” ...
- “11. ...Why did you proceed with the attempted sale of this property on two occasions in what appears to be contravention of this POCA restraining order?”

In response, the Respondent had replied:

- “6 + 7. No I wasn’t. Was made aware by one by DC Vigor in the back end of 2009”; and
- “11. Simply because I didn’t know about it”.

These answers did not appear to be consistent and the Tribunal noted the interview notes had not been signed by the Respondent.

- 20.9 The letter dated 25 November 2009 sent by the Respondent's firm to DC Vigor by fax had the Respondent's name at the end of the letter and the signature was not marked “pp” to indicate somebody else had signed it on his behalf. Furthermore, that letter started with the sentence “Thank you for your fax of yesterday”. In addition DC Vigor had served a further letter dated 12 July 2010 on the Respondent and that letter confirmed that DC Vigor had faxed a copy of the Restraint Order to the Respondent and that that Restraint Order had not been varied. The Respondent had not challenged this when handed the letter, which he had read in front of DC Vigor. The Tribunal accepted the evidence given by DC Vigor, DS Aldridge and Mr Page.
- 20.10 The Tribunal was satisfied that the Respondent had been informed by DC Vigor of the Restraint Order on 24 November 2009, and that a copy of the Restraint Order had been faxed to the Respondent's office that same day. Whilst the Respondent alleged he was not the author of the letter dated 25 November 2009 sent from his firm to DC Vigor by fax, the Respondent had failed to provide any explanation as to who might have sent that letter. Furthermore, the first time this issue had been raised was in the Respondent’s letter of 2 August 2012 to the Tribunal. The Tribunal was satisfied that the Respondent had had notice of the Restraint Order and in breach of this, had, in or about February 2010 and June 2010, proceeded to act for RG in the attempted sales of a property. This conduct displayed a lack of integrity and had damaged the reputation of the profession.
- 20.11 An allegation of dishonesty had also been made. The Tribunal had been referred to

the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.

- 20.12 The Tribunal was satisfied that the Respondent had been aware of the Restraint Order and yet had assisted RG in acting in breach of that Order, which was a criminal offence and ultimately would have allowed RG to benefit from the proceeds of crime. The Tribunal was satisfied that this conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Tribunal was also satisfied the Respondent knew about the Restraint Order which clearly stated that it was a contempt of court for any person notified of the order to knowingly assist in or permit breach of that order. Accordingly, the Respondent knew it was illegal to behave in a manner that he had. By denying to DC Vigor on 18 August 2010 that he had been made aware of the Restraint Order when a copy of the Restraint Order was on his file, the Respondent had tried to conceal that he had acted in breach of that order and therefore he knew that by those standards his conduct was dishonest. The Tribunal was satisfied the Respondent had behaved dishonestly and found the allegation proved.

Previous Disciplinary Matters

21. The Respondent had appeared before the Tribunal previously on 17 May 2011.

Sanction

22. The Tribunal had considered carefully the Respondent's letters dated 2 and 30 August 2011. The Tribunal had found the Respondent had acted with a lack of integrity and dishonestly. The Respondent's conduct had caused damage to the reputation of the profession. A solicitor was an officer of the court and as such the Respondent's failure to comply with the Restraint Order issued by Her Honour Judge Tapping in Harrow Crown Court was a serious matter. The Tribunal was mindful of the case of the SRA v Sharma [2010] EWHL 2022 (Admin) in which Coulson J stated:

“Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”

The Tribunal was satisfied that there were no exceptional circumstances and that accordingly the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

23. Ms Willetts on behalf of the Applicant requested an Order for her costs in the total sum of £21,967.17. She provided the Tribunal with a Schedule of Costs which contained a breakdown of those costs. The Respondent in his letter of 30 August 2012 had indicated he had entered into an Individual Voluntary Arrangement (“IVA”) and provided documentation in support. In his earlier letter of 2 August 2012 the

Respondent stated he had no funds to be able to pay any costs. Ms Willetts confirmed the Respondent still owed the Applicant the sum of £14,109.19 in costs which related to the costs of the previous appearance on 17 May 2011. These costs did not appear to have been included in the IVA. Ms Willetts invited the Tribunal to put the Applicant in the same position as other creditors so that the Applicant could discuss the matter of payment of costs with the Supervisor of the IVA. Ms Willetts submitted that if the Tribunal made an order that the costs were not to be enforced without leave of the Tribunal, then the onus was placed on the Applicant to obtain evidence that the Respondent's financial position had changed. She submitted the Respondent had no obligation to provide updated financial details to the SRA. In this case, the Respondent had stated he did not intend to practise and therefore would not be regulated by the SRA in the future. If the Tribunal did not prevent enforcement of the costs by the SRA, then the SRA would be able to issue proceedings, if necessary, without obtaining leave from the Tribunal, and the Respondent might offer financial information to explain his position to prevent such an application being made.

24. The Tribunal considered the costs claimed and was of the view that these were high. Accordingly, the Tribunal assessed the Applicant's costs in the sum of £15,000. The Tribunal also considered the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs. The Respondent was already in financial difficulties, having entered into an IVA. As a result of the Tribunal's Order, the Respondent had now been deprived of his livelihood and his ability to earn a living. He was 64 years old and it was likely that he would not be able to obtain alternative employment elsewhere. In the circumstances, the Tribunal Ordered that the Order for costs was not to be enforced without leave of the Tribunal.

Statement of Full Order

25. The Tribunal Ordered that the Respondent, Colin Michael Arthur Bishop, 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 £15,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 9th day of October 2012

On behalf of the Tribunal

R. Nicholas
Chairman