

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10947-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NOSA KINGS ERHUNMWUNSEE

Respondent

Before:

Mr J. P. Davies (in the chair)

Mrs K. Thompson

Mr M. R. Hallam

Date of Hearing: 11th October 2012

Appearances

Ms Jayne Willetts, Solicitor Advocate, Jayne Willetts & Co, Cornwall House, 31 Lionel Street, Birmingham B3 1AP for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Nosa Kings Erhunmwunsee on behalf of the Solicitors Regulation Authority were that:
 - 1.1 He made an inaccurate representation to the Solicitors Regulation Authority that Mr Shahid Iftikhar was a member of NKE Solicitors LLP in breach of Rule 1.02 and Rule 1.06 of the Solicitors' Code of Conduct 2007 ("the 2007 Code").

Dishonesty was alleged in relation to this allegation but it was not necessary to prove dishonesty for the allegation to be made out.
 - 1.2 He made an inaccurate representation to Companies House that Mr Shahid Iftikhar was a member of NKE Solicitors LLP in breach of Rule 1.02 and 1.06 of the 2007 Code.

Dishonesty was alleged in relation to this allegation but it was not necessary to prove dishonesty for the allegation to be made out.
 - 1.3 He made an inaccurate representation to Companies House that Mrs Jacqueline Muhammad was a member of NKE Solicitors LLP in breach of Rule 1.02 and Rule 1.06 of the 2007 Code.

Dishonesty was alleged in relation to this allegation but it was not necessary to prove dishonesty for the allegation to be made out.
 - 1.4 He misled Mr Iftikhar and Mrs Muhammad as to the purpose of signing Companies House forms and in the case of Mr Iftikhar an SRA form in breach of Rule 1.02 and Rule 1.06 of the 2007 Code.

Dishonesty was alleged in relation to this allegation but it was not necessary to prove dishonesty for the allegation to be made out.
 - 1.5 He practised as the sole member of NKE LLP in breach of Rule 14(2) of the Solicitors' Code of Conduct 2007.
 - 1.6 He made a withdrawal in cash from client account in breach of Rule 23(3) of the Solicitors' Accounts Rules 1998.

Documents

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

Applicant:

- Application dated 6 March 2012;
- Rule 5 Statement dated 6 March 2012 and exhibit "JBW1";
- Extract from "Facebook";
- Schedule of Costs dated 5 October 2012.

Respondent:

- None.

Preliminary Matter (1)

3. Ms Willetts reminded the Tribunal that an order had been made on 23 March 2012 for substituted service of the application and any other documentation. She confirmed that notification of the hearing had been sent to the Respondent at two addresses in Nigeria in accordance with the order and these had been returned marked “unclaimed for”. She said that service had also been attempted at the Respondent’s London address where his estranged wife was still living and a recent search at the Land Registry had established that the Respondent remained a joint owner of the property. Ms Willetts explained that Mrs Erhunmwunsee had agreed to inform her if the Respondent attended at the property or if she obtained any information as to his whereabouts but nothing further had been heard from her.
4. The Tribunal was told that the Respondent had also been served with notice of the hearing date by way of a message that had been placed on his “Facebook” account. Ms Willetts stated that the Respondent had accessed his account as activity on it had been noted in September 2012. She submitted that all reasonable steps had been taken to bring this matter to the Respondent’s attention and, in view of the activity on the Respondent’s “Facebook” account, the Tribunal could be sure that the Respondent had received notice of the hearing date. She said that the Respondent had not engaged in the proceedings at all and she asked the Tribunal to proceed in the Respondent’s absence.
5. In answer to questions from the Tribunal, Ms Willetts confirmed that enquiries had been made in relation to two addresses which had been identified within the documentation filed in these proceedings. She said that the enquiries had revealed that the Respondent did not reside at either address. She confirmed that attempts had also been made to contact the Respondent on his mobile telephone by leaving a message but he had not replied. Ms Willetts explained that she had also contacted the Nigerian Bar in order to obtain information as to the Respondent’s whereabouts but this had proved fruitless as their records were not up to date.
6. Having considered the submissions made by Ms Willetts, on behalf of the Applicant, the Tribunal was satisfied that the existence of these proceedings and notification of the hearing date had been served on the Respondent and in accordance with Rule 16 (2) of The Solicitors (Disciplinary Proceedings) Rules 2007 (“SDPR”) decided to proceed in the Respondent’s absence, notwithstanding that he had failed to attend at the hearing.

Preliminary Matter (2)

7. Ms Willetts made an application under Rule 11(4)(c) of the SDPR for permission to amend two typographical errors contained within the Rule 5 Statement, to which the Tribunal consented.

Factual Background

8. The Respondent was born on 21 October 1959 and was a Registered Foreign Lawyer. His name remained on the Register. At all material times, the Respondent was a member of NKE Solicitors LLP of Unit A11, Hatcham Mews Business Centre, Hatcham Park Mews, London SE14 5QA (“the firm”).

Background facts

9. An inspection was commenced at the firm on 21 January 2010 which resulted in the preparation of a Forensic Investigation Report dated 26 May 2010. (“the FI Report”)
10. The firm was incorporated as a limited liability partnership (“LLP”) on 9 March 2009 and was dissolved on 25 January 2011.
11. The Respondent was appointed a member of the firm on 9 March 2009 and remained as the sole member after the resignation of the other members.
12. Rule 14 of the Solicitors’ Code of Conduct 2007 (“the 2007 Code”) required that an LLP had to obtain approval of recognition from the Solicitors Regulation Authority (“SRA”) before it commenced practising. Rule 14(2) of the 2007 Code provided that at all times at least one manager of a recognised body, such as an LLP, must be a solicitor with a current practising certificate or a Registered European Lawyer.
13. The firm wrote to the SRA on 1 April 2009 and confirmed that an LLP had been set up with effect from 1 April 2009. The firm wrote again on 3 April 2009 stating that the LLP had not commenced practising as at 1 April 2009.
14. On 9 April 2009, the SRA informed the firm that it was in breach of Rule 14 of the 2007 Code if it practised without prior approval from the SRA. The firm was advised that it must complete a Form RB2 in order to obtain recognition from the SRA.
15. The firm responded on 16 April 2009 and repeated that it had not traded from 1 April 2009 and confirmed that it would be submitting a Form RB2 shortly.
16. On 2 June 2009, the Respondent registered Mr Shahid Iftikhar, a solicitor admitted on 15 March 2006, as a member of the firm and completed a Companies House form to this effect.
17. On 4 June 2009, the SRA received a Form RB2 from the Respondent. Mr Iftikhar was listed as being a member of the firm. In an email dated 16 June 2009, the Respondent confirmed that Mr Iftikhar had joined the firm.
18. On 15 June 2009, Mr Iftikhar commenced work for AMR Solicitors (“AMR”) and AMR wrote to the SRA on 7 December 2009 confirming the commencement date for Mr Iftikhar’s employment.

19. On 18 June 2009, the Respondent informed the SRA that he intended to commence trading on 22 June 2009 and asked for the practice to be converted into an LLP as at that date.
20. On 24 June 2009, Mr Iftikhar notified the SRA of his employment with AMR. The SRA responded on 3 July 2009 and asked Mr Iftikhar to confirm whether his position at the firm or at AMR was his main practising address. On 6 July 2009, Mr Iftikhar sent an email to the SRA stating that he had never been a partner or member at the firm and said that he was shocked and horrified that his name had been registered as a member.
21. On 22 July 2009, the Respondent registered Mrs Jacqueline Muhammad, a solicitor admitted on 15 February 2000, as a member of the firm and completed a Companies House form to this effect.
22. In a letter dated 18 January 2010, the Respondent informed the Investigation Officer "the IO" that the firm had commenced trading in August 2009 and had closed on 31 October 2009.

Mr Shahid Iftikhar

23. Mr Iftikhar stated that he had attended for interview with the Respondent at the offices of the firm on 2 June 2009. He confirmed that he had signed two documents at the Respondent's request.
24. The two documents which were signed by Mr Iftikhar were a Companies House form to register him as a member of the firm and a SRA Form RB2 which was an application for SRA approval of a new limited liability partnership.
25. In a letter dated 7 December 2009, Mr Iftikhar confirmed that he had not taken up a position of employment or partnership with the firm. He stated that he was advised by the Respondent that the forms would only be submitted to Companies House if he took up the post with the firm which he had not. He confirmed that there had been discussions about him joining the firm as a part time immigration consultant but not about him becoming a member or partner. He said that he had been told by the Respondent that he needed to sign the two documents as every person in any capacity connected to an LLP had to be registered at Companies House. Mr Iftikhar provided a further detailed explanation in a letter dated 20 August 2010.

Mrs Jacqueline Muhammad

26. In an email dated 3 December 2009, Mrs Muhammad confirmed that she had never met a Mr Iftikhar and that she was surprised to note that she had been referred to as a manager of the firm.
27. In a further email dated 8 December 2009, she stated that at no time had she understood that she was a partner with the firm and nor had she agreed to be. She said that she had been appointed as a part time solicitor working three days per week following an interview on 16 July 2009. She said that she had signed a form at the

Respondent's request. She explained that the Respondent had told her that she needed to register as a member in order to work at the firm. The form was a Companies House form which was lodged with Companies House by the Respondent on 22 July 2009 before Mrs Muhammad started work for the firm on 11 August 2009. Her last day of employment with the firm was 1 October 2009.

28. In an email dated 9 February 2010, Mrs Muhammad stated that she was unaware that the Respondent had named her as a member of the LLP until she was advised of this by the SRA in December 2009.
29. On 10 December 2009, a cash withdrawal was made from the firm's client account and was shown in the firm's cash book as a transfer of fees regarding an "SK". The client ledger also showed that the amount was in respect of the firm's fees. The entry was shown as a cash withdrawal on the client account bank statement as at 15 December 2009.
30. A copy of the FI Report was sent to the Respondent at his home address on 9 August 2010 seeking his explanation and comment. There was no reply.
31. On 17 August 2010, a further letter was sent to the Respondent at his business address, as the letter dated 9 August 2010 had been returned marked "wrong address".
32. On 6 December 2010, the SRA wrote to the Respondent again and advised him of the consequences of a failure to reply. There was no response.

Witnesses

33. None.

Findings of Fact and Law

34. The Tribunal determined all the allegations to its usual standard of proof, that is beyond reasonable doubt.
35. **Allegation 1.1: He made an inaccurate representation to the Solicitors Regulation Authority that Mr Shahid Iftikhar was a member of NKE Solicitors LLP in breach of Rule 1.02 and Rule 1.06 of the Solicitors' Code of Conduct 2007 ("the 2007 Code").**

Dishonesty was alleged in relation to this allegation but it was not necessary to prove dishonesty for the allegation to be made out.

Allegation 1.2: He made an inaccurate representation to Companies House that Mr Shahid Iftikhar was a member of NKE Solicitors LLP in breach of Rule 1.02 and 1.06 of the 2007 Code.

Dishonesty was alleged in relation to this allegation but it was not necessary to prove dishonesty for the allegation to be made out.

Allegation 1.3: He made an inaccurate representation to Companies House that Mrs Jacqueline Muhammad was a member of NKE Solicitors LLP in breach of Rule 1.02 and Rule 1.06 of the 2007 Code.

Dishonesty was alleged in relation to this allegation but it was not necessary to prove dishonesty for the allegation to be made out.

Allegation 1.4: He misled Mr Iftikhar and Mrs Muhammad as to the purpose of signing Companies House forms and in the case of Mr Iftikhar an SRA form in breach of Rule 1.02 and Rule 1.06 of the 2007 Code.

Dishonesty was alleged in relation to this allegation but it was not necessary to prove dishonesty for the allegation to be made out.

Allegation 1.5: He practised as the sole member of NKE LLP in breach of Rule 14(2) of the Solicitors' Code of Conduct 2007.

- 35.1 Ms Willetts told the Tribunal that the Respondent had notified the SRA that he intended to set up an LLP with effect from 1 April 2009. She explained that he had received a response from the SRA notifying him that he had to obtain approval in order to do so but nothing further had been heard from him and he had not submitted any application for approval. She said that the Respondent had then completed a Companies House form which registered Mr Shahid Iftikhar as a member of the LLP. Ms Willetts told the Tribunal that, by completing the Companies House form, the Respondent had made a false representation as Mr Iftikhar was not a member of the firm. She said that the Respondent had then gone on to complete and submit a Form RB2 to the SRA, stating that Mr Iftikhar was a member of the firm in order to obtain approval for the LLP. This had been followed up with an email from the Respondent dated 16 June 2009 in which he had confirmed again that Mr Iftikhar had become a member of the firm. Ms Willetts told the Tribunal that, in fact, Mr Iftikhar had started work for AMR, a separate firm of solicitors the day before. She said that Mr Iftikhar had notified the SRA of his employment with AMR on 24 June 2009 and, it was during his subsequent correspondence with the SRA that Mr Iftikhar had first become aware of his apparent connection with the firm.
- 35.2 Ms Willetts stated that although Mr Iftikhar had attended for interview with the Respondent, he had never actually worked at the firm. She explained that during the interview, Mr Iftikhar had signed two documents at the Respondent's request. She told the Tribunal that these documents were a Companies House form to register Mr Iftikhar as a member of the firm and the SRA form required to obtain approval for the LLP. Ms Willetts said that Mr Iftikhar had told the SRA that the Respondent had advised him that the forms would only be submitted to Companies House if he took up the post with the firm which he had not. He had conceded that, with hindsight, perhaps he should have been more vigilant about signing the forms but said that he had only done so because he had placed his trust in a fellow professional.

- 35.3 Ms Willetts told the Tribunal that the Respondent had also registered Mrs Jacqueline Muhammad as a member of the firm although it appeared that Mrs Muhammad had only signed the Companies House form. Ms Willetts referred the Tribunal to Mrs Muhammad's email to the SRA dated 3 December 2009 in which she had expressed her surprise at having been referred to as a "manager" at the practice. In the email, Mrs Muhammad had stated that she had only ever worked at the firm as an employed solicitor and she had never agreed to become a member or partner. In addition, she had confirmed that she had not met Mr Iftikhar.
- 35.4 Ms Willetts said that the Respondent had made false representations to the SRA by submitting the completed Form RB2 which stated that Mr Iftikhar was a member of the firm and by confirming this in a subsequent email. She told the Tribunal that the Respondent had also made inaccurate representations to Companies House by completing the Companies House forms registering Mr Iftikhar and Mrs Muhammad as members of the firm. In addition, he had misled Mr Iftikhar and Mrs Muhammad as to the purpose of signing formal documentation.
- 35.5 The Tribunal was told that the firm needed recognition and approval from the SRA before it could start trading. Ms Willetts said that, as the Respondent was a Registered Foreign Lawyer, he was unable to practise alone and he needed to have at least one solicitor with a current practising certificate or a Registered European Lawyer to practise with him at all times. In answer to a question from the Tribunal, Ms Willetts stated that the other individuals who had been named by the Respondent in his correspondence with the SRA had never been members of the firm. She stated that only Mr Iftikhar had been named as a member of the firm and as he had never actually been a member, the Respondent had, effectively, practised alone when he was not permitted to do so.
- 35.6 Ms Willetts alleged that the Respondent had acted dishonestly in making inaccurate representations to Companies House and to the SRA and in misleading Mr Iftikhar and Mrs Muhammad as to the purpose of signing formal documentation. She referred the Tribunal to the "combined test" for dishonesty set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 and stated that, on an objective basis, the Respondent's actions would be regarded as dishonest by the ordinary standards of reasonable and honest people. She claimed that, viewed subjectively, the Respondent had also been aware that his conduct was dishonest.
- 35.7 Ms Willetts asserted that there was a clear and obvious motive for the Respondent to have made misrepresentations to the SRA and Companies House and to have misled fellow professionals as he had been unable to practise on his own and needed another solicitor to join the firm. Ms Willetts claimed that, on the evidence, the Respondent had made a conscious decision to misrepresent the position to both Mr Iftikhar and Mrs Muhammad in order to obtain SRA approval. She pointed out that Mr Iftikhar and Mrs Muhammad had given the same version of events to the SRA and they were independent of each other. She suggested that the Tribunal should be able to rely on their evidence. Ms Willetts said that the Respondent had not provided any explanation as to his conduct and she submitted that the Tribunal should have no difficulty in deciding that the Respondent had acted dishonestly.

- 35.8 The Tribunal found allegations 1.1 to 1.5 substantiated on the facts and documents before it. The Tribunal had been invited to find that the Respondent had acted dishonestly in relation to allegations 1.1 to 1.4. There was an obvious motive for the

Respondent to have made false misrepresentations to both Companies House and the SRA. Based on the evidence of both Mr Iftikhar and Mrs Muhammad, it was clear that the Respondent had made a conscious decision to mislead his fellow professionals and at no stage had he given any explanation as to his conduct. Having regard to the appropriate test for dishonesty established in Twinsectra, the Tribunal was satisfied beyond reasonable doubt that the Respondent had acted dishonestly.

36. **Allegation 1.6: He made a withdrawal in cash from client account in breach of Rule 23(3) of the Solicitors Accounts Rules 1998.**

- 36.1 Ms Willetts told the Tribunal that a cash withdrawal had been made from the firm's client account in relation to the firm's fees. She explained that a withdrawal in favour of a solicitor from a firm's client account should not be made in cash as this was not permitted under the Solicitors' Accounts Rules.

- 36.2 The Tribunal found allegation 1.6 substantiated on the facts and documents before it.

Previous Disciplinary Matters

37. None.

Mitigation

38. None

Sanction

39. The Tribunal had regard to its own Guidance Note on Sanctions when considering the appropriate penalty in this case. All of the allegations had been substantiated against the Respondent and he had also been found to have been dishonest. As the Respondent's misconduct was at the very highest level, it was necessary to protect the public and the reputation of the profession and the Tribunal decided that the appropriate penalty in this case was that the Respondent should be struck off the Register of Foreign Lawyers and it so ordered.

Costs

40. The Applicant's claim for costs was £16,975. Ms Willetts asked the Tribunal to make a summary assessment of costs in that sum. She explained that costs had increased due to the difficulties with service but she had made an adjustment to the costs claimed for the hearing itself as this had taken less time than anticipated. She pointed out that it was for the Respondent to provide evidence of his financial means if he was going to assert that a costs order should not be made against him and he had failed to do so.

41. The Tribunal considered that costs had been properly incurred in this matter and it was appropriate that the Respondent should be ordered to pay those costs. The Tribunal made a summary assessment of costs in the amount claimed and fixed in the sum of £16,975.00.

Statement of Full Order

42. The Tribunal Ordered that the Respondent, Nosa Kings Erhunmwunsee, registered foreign lawyer, be Struck Off the Register of Foreign Lawyers and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,975.00.

Dated this 14th day of November 2012
On behalf of the Tribunal

J. P. Davies
Chairman