

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10956-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

KEVIN JAMES STEELE

Respondent

Before:

Ms A. Banks (in the chair)

Miss J. Devonish

Mr S. Howe

Date of Hearing: 2nd August 2012

Appearances

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

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Kevin James Steele, on behalf of the Solicitors Regulation Authority were that:-
 - 1.1 He acted in breach of Rules 1.01, 1.02, 1.03, 1.05, 1.06, and 10.05 of the Solicitors' Code of Conduct 2007 in that he:
 - 1.1.1 conspired to use false instruments;
 - 1.1.2 conspired to commit fraud by false representation; and
 - 1.1.3 dishonestly made false representations when dealing with the affairs of a client in such a way that would inevitably expose his firm to the risk of loss.

For the avoidance of doubt it is alleged that the Respondent acted dishonestly in respect of the above allegations and that he was aware that by the ordinary standards of reasonable and honest people he was acting dishonestly.

Documents

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

Applicant:

- Application dated 16 March 2012;
- Rule 5 Statement dated 16 March 2012 and exhibit "KEW1";
- Schedule of Costs dated 1 August 2012.

Respondent:

- Undated letter from the Respondent.

Preliminary Matter

3. The Respondent was not in attendance at the hearing and was not represented. The Tribunal had been provided with a copy of the Respondent's undated letter to the Applicant which had been received on 6 July 2012. In that letter, the Respondent had stated that he would not be attending at the substantive hearing and he could not afford representation.
4. The Tribunal was satisfied that the Respondent had been served with notice of the hearing as he had referred to the hearing in his letter. In accordance with Rule 16(2) of The Solicitors (Disciplinary Proceedings) Rules 2007 (SDPR), the Tribunal decided to hear and determine the application notwithstanding that the Respondent was not in attendance at the hearing and was not represented.

Factual Background

5. The Respondent was born on 9 June 1960 and admitted as a solicitor on 15 January 1990. His name remained on the Roll of Solicitors but he no longer held a practising certificate. At the material time, the Respondent was practising in partnership at Mishcon de Reya from Summit House, 12 Red Lion Square, London WC1R 4QD (“the firm”). The Respondent was expelled from the partnership on 19 September 2008.
6. On 23 June 2010, an inspection of the books of account and other records of the firm was commenced by Rachel Whatmore, a Forensic Investigation Officer (“FIO”) with the Solicitors Regulation Authority (“SRA”). The inspection resulted in the preparation of a Forensic Investigation Report dated 14 February 2011 (“the FI report”). The FIO was not able to interview the Respondent prior to preparing the report because the Respondent’s solicitor had asked for any interview to be delayed until after the Respondent’s criminal trial to avoid the risk of prejudicing the criminal proceedings.
7. On 5 December 2011, the Respondent was convicted upon indictment at Southwark Crown Court of:-
 - conspiracy to use false instruments;
 - conspiracy to commit fraud by false representation; and
 - dishonestly making false representations to make gain for himself/another or cause loss to other/expose other to risk.

He was sentenced to five and a half years imprisonment.

Fraudulent Loan Transaction

8. The Respondent’s convictions arose, in part, from his involvement in the procurement by his client, MS, of a bank loan by fraudulent means.
9. In or around July 2008, the Respondent was instructed by MS to act for B Ltd (“B”) in the purchase of a hotel and surrounding land in Turkey (“the hotel”). B was understood to have been owned/controlled by MS.
10. EFG Private Bank Ltd (“EFG”) provided a loan facility of €22 million to MS on the basis that he was the ultimate beneficial owner of approximately £76 million on deposit in two bank accounts with Bank Julius Baer, Guernsey (“BJB”). Under the terms of the loan agreement, the two bank accounts (“the BJB accounts”) would be held under the control of two partners at the firm by means of irrevocable powers of attorney. Those partners would undertake to pay EFG from the funds in the BJB accounts should MS default on the terms of the facility agreement.
11. It was understood that on 21 August 2008, EFG transferred around €10 million to Turkey for the purchase of the hotel and around €9.3 million to the firm’s client

account to be used for the development of the hotel and surrounding land in accordance with the terms of the loan agreement.

12. Before the funds were released, EFG, acting through its solicitors Eversheds, required assurances, including warranties and undertakings, with respect to its security for the loan (i.e. the BJB accounts). The Respondent provided such assurances, as a result of which the loan funds were released.
13. In an e-mail sent to the firm on 18 September 2008, the Chief Operating Officer of BJB stated that:
 - the bank could not “...trace any account open or closed in the name of B”;
 - two letters purporting to be from BJB, which had been provided by the Respondent to Eversheds as proof of the existence of the BJB accounts were forgeries, and;
 - GM, the BJB officer in whose name the forged letters were signed, had no knowledge of B.
14. In the light of the information given by BJB in the e-mail dated 18 September 2008, the following statements and assurance given by the Respondent were shown to have been knowingly false:
 - In a letter dated 14 August 2008 to Eversheds, which enclosed the forged letters purporting to be from BJB, the Respondent stated that “I have spoken to the bank officer who has stated that there are no claims and no occasion for any claims over the deposits”;
 - On 15 August 2008, after Eversheds had noted that their client was “not...willing to take any risks” and had sought further reassurances with respect to the BJB accounts, the Respondent stated in an e-mail that BJB had agreed to “talk [him] through the history of the deposits”;
 - In an e-mail to Eversheds on 18 August 2008, the Respondent stated “As a result of my weekend endeavours I have received satisfactory confirmation that the Borrower [i.e. MS] is the ultimate beneficial owner of the 2 accounts held in the name of B. This comes from discussion with two BJB officers whose identities and background I have had verified by another banking entity”;
 - In a second e-mail to Eversheds on 18 August 2008, the Respondent said “I have been able to enjoy a productive weekend on the banking records and my client’s own recollection/records”;
 - A letter of undertaking signed by the Respondent and three of his partners at the firm dated 20 August 2008 warranted that, amongst other things:

- (i) B held two accounts with BJB, containing a total of £76 million;
 - (ii) the accounts could be operated by the Respondent and Mr B (a fellow partner at the firm) acting jointly and severally under an Enduring Power of Attorney; and
 - (iii) gave an undertaking that if MS was in default of the terms of the loan agreement, the funds in the BJB accounts would be applied towards settling the loan.
15. In his sentencing remarks dated 27 January 2012, HHJ McCreath stated that the Respondent had been dishonestly involved in fraudulently procuring the loan funds and that he had been “lured” into the fraud by “...the dominating nature of MS” and that “To satisfy him [the Respondent was] led to make assertions which [he] knew to be false...”

Client funds improperly applied

16. The Respondent’s conviction also related to the payment by the Respondent of the sum of £1.8 million to solicitors acting for the opposing party in an arbitration which was completely unrelated to MS or B.
17. The outcome of the arbitration was an order that the Respondent’s client pay the successful party the sum of £1.8 million. Those funds were taken by the Respondent from funds provided to MS by EFG.
18. In his sentencing remarks, HHJ McCreath stated that:
- it had been “...seriously unprofessional to move money between clients’ accounts in this way and dishonest too”.
 - the Respondent had “failed to warn [his client] of the very bad outcome of the arbitration” and that instead of discussing this “disaster” with his partners, the Respondent had “...hoped to solve the problem by using a proportion of the proceeds of the fraud [i.e. EFG’s loan to MS]... in order to buy off this problem”.
 - MS had agreed to the Respondent applying a portion of the fraudulently obtained funds for this purpose because “...the position is that both of you knew that they were dishonestly acquired and in that account because of the dishonesty, MS was in no position to argue with you if you were determined to move the money from that account”.
19. The client ledger for MS’s matter showed various other transfers from his client account following receipt of the €9.3 million from EFG on 21 August 2008, which on the face of it appeared to be unrelated to MS’s purchase of the hotel. Insofar as such payments were unrelated to the hotel purchase and redevelopment, they were contrary to the terms of the EFG loan agreement which stated that the purpose of the loan was to assist MS’s Turkish company, “S”, to purchase and redevelop land in Turkey.

20. On 22 August and 17 September 2008, payments of £25,000 and £4,087,060.32 respectively were made to AB & Co Solicitors, who were acting for MS in his divorce proceedings.

Witnesses

21. None.

Findings of Fact and Law

22. The Tribunal determined all the allegations to its usual standard of proof, that is beyond reasonable doubt.
23. **Allegation 1.1: He acted in breach of Rules 1.01, 1.02, 1.03, 1.05, 1.06, and 10.05 of the Solicitors' Code of Conduct 2007 in that he:**
- 1.1.1 conspired to use false instruments;**
- 1.1.2 conspired to commit fraud by false representation; and**
- 1.1.3 dishonestly made false representations when dealing with the affairs of a client in such a way that would inevitably expose his firm to the risk of loss.**
- 23.1 Ms Wingfield told the Tribunal that the allegations mirrored the charges for which the Respondent had been convicted. She reminded the Tribunal that under Rule 15(2) of the SDPR, the Tribunal could rely on the Certificate of Conviction as evidence that the Respondent was guilty of those offences. She asked the Tribunal to note that the Respondent had received a fairly lengthy prison sentence.
- 23.2 Miss Wingfield reminded the Tribunal of the factual background surrounding the Respondent's involvement in the procurement of a bank loan by fraudulent means for his client MS. She explained the circumstances surrounding the transaction and told the Tribunal that EFG had transferred money for the purchase and development of the hotel and surrounding land on 21 August 2008 in accordance with the terms of the loan agreement. She reminded the Tribunal that before the funds were released, EFG, acting through its solicitors, had required assurances with respect to its security for the loan. The Respondent had given statements and assurances which had been knowingly false in light of the fact that BJB had been unable to trace any account in the name of B and had stated that the letters which had purported to come from the bank were forgeries.
- 23.3 Ms Wingfield referred the Tribunal of the terms of the undertaking which had been given by the Respondent and three of his partners at the firm. She stated that it was clear that the other partners at the firm had trusted the Respondent and had not been aware of the underlying fraud.
- 23.4 The Tribunal was told that the Respondent's conviction also related to the payment by the Respondent of £1.8 million to solicitors acting for the opposing party in an arbitration where the Respondent had taken the money from funds provided to MS by EFG. Ms Wingfield reminded the Tribunal that the sentencing Judge had considered this to be unprofessional and dishonest. She pointed out that the client ledger for the

MS matter had shown various other transfers from the client account which appeared to be unrelated to his purchase of the hotel. Most notably, these had included the payments made to AB & Co Solicitors.

- 23.5 In summary, Ms Wingfield told the Tribunal that the partners at the firm had been “hoodwinked” by the Respondent whom they had trusted and she asked the Tribunal to take the sentencing Judge’s comments into account. She stated that these were very serious matters and the Respondent’s conduct had brought the profession into disrepute.
- 23.6 The Tribunal found the allegations substantiated on the facts and documents before it. The Tribunal had not simply relied on the Certificate of Conviction in this case and had concluded that the evidence against the Respondent, in its entirety, was overwhelming. In his undated letter, the Respondent had stated that he was not guilty of the charges of which he had been convicted. Although the Tribunal had considered the comments made by the Respondent, it could not “go behind” the fact of the Respondent’s conviction.
- 23.7 The Tribunal had been invited to find that the Respondent had acted dishonestly and it considered the “combined” test for dishonesty as set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 in which Lord Hutton had stated that:

“Before there can be a finding of dishonesty it must be established that the defendant’s conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest”.

Having carefully considered all the evidence, the Tribunal was satisfied beyond reasonable doubt that the Respondent’s conduct had been dishonest by the standards of reasonable and honest people. The Respondent had given false statements and assurances and the Tribunal had no difficulty in concluding that the Respondent had known that what he was doing was dishonest by those same standards.

Previous Disciplinary Matters

24. None.

Mitigation

25. None.

Sanction

26. The Tribunal had found all the allegations substantiated against the Respondent. He had also been found to have been dishonest. The Tribunal was mindful of the observations made in Bolton v The Law Society [1994] 1 WLR 512 in which it had been stated that:

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him...”

In order to protect the public and to maintain the reputation of the profession, the only appropriate sanction in this case was that the Respondent should be struck off the Roll of Solicitors and the Tribunal so ordered.

Costs

27. The Applicant’s claim for costs was £24,304.63. Ms Wingfield told the Tribunal that the Respondent was currently bankrupt but would be automatically discharged in October 2012. He was currently in prison. Ms Wingfield asked the Tribunal to make a Costs Order against the Respondent despite the fact that the SRA may not be able to recover its costs immediately.
28. The Tribunal considered that the costs of the forensic investigation were excessive and made a summary assessment of the Applicant’s costs fixed at £18,000. It was appropriate that the Respondent should be ordered to pay those costs.
29. The Respondent had not provided any evidence as to his means other than to confirm that he was currently bankrupt and the Tribunal noted that the Respondent would be discharged from his bankruptcy fairly shortly. There had been an opportunity for the Respondent to provide detailed documentary evidence as to his means but he had not done so. The Tribunal would therefore leave it to the SRA to investigate the Respondent’s means fully and fairly and without further reference to the Tribunal and it ordered that the Respondent pay the Applicant’s costs fixed in the sum of £18,000.

Statement of Full Order

30. The Tribunal Ordered that the Respondent, Kevin James Steele, 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 £18,000.

Dated this 22nd day of August 2012
On behalf of the Tribunal

Ms A. Banks
Chairman