

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10963-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

PHILIP ANDREW STEWART DAVIES

First Respondent

and

NICHOLAS JOHN JONES

Second Respondent

Before:

Miss N. Lucking (in the chair)

Mr P. Housego

Mr M. C. Baughan

Date of Hearing: 28 October 2013

Appearances

David Barton, Solicitor Advocate, of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX, by telephone for the Applicant.

The First Respondent did not appear and was not represented.

Andrew Thomas QC, Counsel, of Lincoln House Chambers, Tower 12, The Avenue North, Spinningfields, 18-22 Bridge Street, Manchester M3 3BZ (instructed by Martin Cunningham Fraud Law Solicitors, P.O. Box 395, Stockport SK3 8WZ), for the Second Respondent.

MEMORANDUM OF CASE MANAGEMENT HEARING IN RELATION TO THE FIRST RESPONDENT

JUDGMENT IN RELATION TO THE SECOND RESPONDENT

1. Mr Barton was unable to attend at the Tribunal for the Case Management Hearing due to adverse weather conditions which caused widespread cancellation of trains. He made his application via speakerphone in the presence of the Tribunal, Mr Thomas for the Second Respondent, and the Clerk to the hearing.

Application Against The Second Respondent

2. A Case Management Hearing took place on 24 July 2012, resulting in a Memorandum of Case Management dated 27 July 2012. The Rule 5 Statement was dated 21 March 2012 and was issued on or about 30 April 2012. Mr Barton applied for permission from the Tribunal to file a Supplementary Statement against the Second Respondent alone under Rule 7(2) of the Solicitors (Disciplinary Proceedings) Rules 2007. That application was not opposed by Mr Thomas on behalf of the Second Respondent.
3. The single allegation against the Second Respondent in the Rule 7 Supplementary Statement was that he breached Principles 1, 2 and 6 of the Solicitors Regulation Authority Principles 2011 as a consequence of his conviction at Mold Crown Court on 7 June 2013 of Conspiracy to Defraud, for which he was sentenced on 6 September 2013 to 4 years imprisonment, with 46 days on tag to count towards the sentence. Evidence of the conviction was provided by a "Certificate of Conviction (Trial)" dated 20 September 2013 issued by Mold Crown Court under number T20117073 and signed by an Officer of the Crown Court.
4. Mr Thomas explained the Second Respondent's position in relation to the criminal proceedings against him. As stated in the Rule 7 Supplementary Statement, the Second Respondent was convicted of a single count of Conspiracy to Defraud relating to an allegation of fraud on mortgage lenders who were his clients. The Second Respondent has filed application for permission to appeal against that conviction, which is at the paper application stage. It is likely to be some months before a decision is reached on that application. If the application is refused, the Second Respondent is entitled to an oral hearing before the Court of Appeal Criminal Division, the outcome of which will not be known for months, or possibly even years.
5. Mr Thomas confirmed that the Second Respondent did not oppose the substantive Application sought by the Applicant, namely a direction under Section 47(2)(g) of the Solicitors Act 1974 (as amended) prohibiting the restoration of the Second Respondent's name to the Roll of Solicitors except by order of the Tribunal, based on the evidence of the Certificate of his Conviction. In the event of a successful appeal against Conviction, the form of order sought by the Applicant would not prevent the Second Respondent from coming back to the Tribunal at that stage. The Second Respondent supported and encouraged the Applicant via Mr Barton to proceed on the Certificate of Conviction and proposed that the allegations contained within the Rule 5 Statement should lie on the file. Mr Barton confirmed that this was how the Applicant wished to proceed. It was therefore agreed that the Tribunal should make an Order in the terms sought by the Applicant as set out at paragraph 1 of the Rule 5 Statement based on the evidence of the Certificate of Conviction and with the consent of the Applicant and the Second Respondent.
6. In relation to costs, Mr Thomas informed the Tribunal that the Second Respondent had been subject to a Restraint Order for over 5 years. He had very little money left,

and what was left would undoubtedly be taken up by Confiscation Proceedings which were currently postponed. Mr Barton confirmed to the Tribunal that he was not making an application for costs at this hearing.

Case Management Hearing In Relation To The First Respondent

7. The Clerk to the hearing asked for clarification in relation to the service of documents on the First Respondent. Mr Barton confirmed that he had an e-mail address for the First Respondent in 2012 which was daviespas@aol.com. To the best of Mr Barton's knowledge after making enquiries with those acting for the Second Respondent, the First Respondent remained in Thailand. A Division of the Tribunal had previously granted permission for the proceedings to be served on the Second Respondent by means of substituted service at that e-mail address, which was completed on 9 May 2012. Mr Barton asked for a "read receipt" without success. With an eye on economy, Mr Barton proposed to ask the Tribunal for a date to be fixed for the hearing of the substantive Application against the First Respondent and permission to serve notification of the date at that e-mail address.
8. At a Case Management Hearing on 18 July 2013, the Tribunal had given consideration to requiring the Applicant to advertise the date fixed for the substantive hearing in a newspaper in Thailand. On this occasion the Chairman explored that possibility with Mr Barton in greater detail. Mr Barton confirmed that further enquiries had been confined to asking the Second Respondent's solicitors whether their client knew the First Respondent's current whereabouts. Those solicitors believed that the First Respondent had no interest in the criminal proceedings and thought it unlikely that he would return to the United Kingdom. Mr Barton did not know whether there is a national newspaper in Thailand or how much an advertisement in such a paper, if it exists, might cost. Mr Barton therefore sought an order for substituted service on the First Respondent at the e-mail address in paragraph 7 above.
9. Mr Barton was asked by the Tribunal whether his e-mail(s) to the First Respondent had been returned "undelivered". Mr Barton said that the e-mails had not been returned. That e-mail address used by the First Respondent in earlier correspondence with the Solicitors Regulation Authority had been inputted correctly by Mr Barton, but over a year had passed since Mr Barton had used the address. The proceedings and supporting documents sent to the First Respondent in May 2012 had not been returned undelivered but the "read receipt" requested by Mr Barton had not been provided by the e-mail address.
10. On checking the correspondence file, the Clerk identified that an e-mail had been sent by the Tribunal to the e-mail address quoted at paragraph 7 on 20 September 2013 and had been rejected by the e-mail service provider with the message that the e-mail address entered could not be found. It was possible that this was a temporary problem with the e-mail service provider. Mr Barton sent a further e-mail to the address whilst the hearing continued and obtained a delivery receipt closely followed by another message from the e-mail service provider that the e-mail address could not be found.

11. Mr Thomas volunteered the information that it was the understanding of two witnesses at the criminal proceedings, the First Respondents ex-wife and his brother-in-law, that the First Respondent was still in Thailand.
12. Mr Barton and the Tribunal were concerned that the First Respondent should be given an opportunity to participate fully in the proceedings. There was discussion as to whether proceedings should be advertised in a newspaper in the United Kingdom as well as an English-language newspaper in Thailand. The Clerk confirmed that all Respondents have a duty to keep the Applicant and the Tribunal informed of their whereabouts and the Tribunal's obligation was limited to delivering documents to the last known place of business or abode of the person to be served. The Tribunal was however aware that the First Respondent was not at his last known address in the United Kingdom. Mr Thomas helpfully confirmed that the First Respondent had practised for the whole of his professional life in North Wales and was a North Wales resident. The local newspaper for that area was the North Wales Daily Post.

Statement of Full Order – Second Respondent Only

13. **BY CONSENT OF THE PARTIES, THE TRIBUNAL HEREBY ORDERS AS FOLLOWS:**
 1. The Tribunal GIVES PERMISSION to the Applicant to file a Supplementary Statement dated 11 October 2013 (certified by a Solicitor Member as showing a case to answer on 15 October 2013) against the Second Respondent under Rule 7(2) of the Solicitors (Disciplinary Proceedings) Rules 2007. The Supplementary Statement was deemed served on the Second Respondent via his Counsel on 28 October 2013;
 2. The Tribunal MAKES A DIRECTION under Section 47(2)(g) of the Solicitors Act 1974 (as amended) prohibiting the restoration of the name of the Second Respondent, Nicholas John Jones c/o Martin Cunningham Fraud Law Solicitors, P.O. Box 395, Stockport SK3 8WZ to the Roll of Solicitors except by Order of the Tribunal;
 3. The Tribunal ORDERS that the allegations contained in a Rule 5 Statement dated 21 March 2012 issued on behalf of the Applicant lie on the file;
 4. The Applicant having made no application for costs against the Second Respondent, no order for costs is made against him by the Tribunal.

Directions of the Tribunal - First Respondent Only

14. The Tribunal made a direction that the date for the substantive hearing in respect of the Application relating to the First Respondent should be fixed with a time estimate of half a day;
15. Once the substantive hearing date has been fixed following liaison between the Tribunal's Listing Manager and Mr Barton, Mr Barton should give notice of the date to the First Respondent by means of advertisement in an English-language newspaper

in Thailand and an advertisement in the North Wales Daily Post, which was in the area of the First Respondent's last known address.

Dated this 29th day of October 2013
On behalf of the Tribunal

N. Lucking
Chairman

Clerk's note to Listing and Document Manager: Please note the requirement for a further case management hearing after 1 October 2013.