

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10992-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MICHAEL ALEXANDER REID

Respondent

Before:

Mrs J. Martineau (in the chair)

Mr P. Housego

Mr R. Slack

Date of Hearing: 13 November 2013

Appearances

Mark Barnett, solicitor of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were:
 - 1.1. The Respondent failed and/or delayed in delivery of an accountants' report for the period from 5 May 2008 to 15 December 2008 due to be delivered to the Solicitors Regulation Authority ("SRA") on or before 15 June 2009 contrary to Section 34 of the Solicitors Act 1974 (as amended) and Rule 35 of the Solicitors' Accounts Rules 1998 (as amended) ("SAR").
 - 1.2. The Respondent failed to comply with an expectation of an Adjudicator dated 5 September 2011 as to the filing of his accountants' report for the period ending 5 December 2008 and contrary to Rule 20.05 of the Solicitors Code of Conduct ("SCC").
 - 1.3. The Respondent failed to deal in an open, prompt and cooperative way with the SRA contrary to Rule 20.05 of the SCC.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant which included:
 - Application dated 10 May 2012 together with attached Rule 5 Statement and all exhibits
 - Statement of Robert Keith Stowell dated 15 April 2013 together with exhibits
 - Accountant's Report Form for Reid Sinclair & Co dated 15 December 2008
 - Extracts from the South London Press dated 23 August 2013 and the Law Society Gazette dated 2 September 2013
 - Statement of Costs dated 12 November 2013

The Respondent had not submitted any documents.

Application to Proceed in the Respondent's absence

3. The Applicant confirmed the Respondent had not engaged with these proceedings at all and nothing had been heard from him. Pursuant to the Tribunal's order dated 14 August 2013, substituted service of proceedings had taken place. An advertisement with details of today's hearing had been placed in the Law Society Gazette on 2 September 2013, and in a newspaper local to the Respondent's last known address on 23 August 2013. There had still been no communication from the Respondent. The Applicant submitted the matter should proceed in the Respondent's absence.
4. The Tribunal had considered carefully all the documents provided and the submissions of the Applicant. The Respondent had been served with notice of

today's hearing by way of substituted service after extensive unsuccessful attempts had been made to trace him using an enquiry agent. The Tribunal was satisfied there had been proper service of the proceedings. There had been no contact from the Respondent at all. In the circumstances, the Tribunal was satisfied that it was in the public interest to proceed in the Respondent's absence, as it appeared unlikely he would engage in these proceedings at all.

Factual Background

5. The Respondent was born on 14 May 1953 and admitted as a solicitor on 15 April 1986. At all relevant times the Respondent practised as a sole practitioner under the style of Reid Sinclair & Co at 12-16 Blenheim Grove, Peckham, London, SE15 4QL ("the firm"). The firm closed on 15 December 2008.
6. The SRA wrote to the Respondent on 28 September 2009 notifying him that the SRA expected a possible final report covering the period 5 May 2008 to 15 December 2008 by 15 December 2009. This date was given in error as the actual date the final report was due was 15 June 2009. The correct date was clarified in a later letter from the SRA to the Respondent dated 14 July 2010.
7. In the letter dated 29 September 2009 the Respondent was informed that if client money was still held after 15 December 2008, the reporting period could be extended. He was asked to confirm the position but he did not reply to the letter. Further letters were sent to him on 6 November 2009 and again on 14 July 2010 but there was no response.
8. The SRA wrote to the Respondent on 13 May 2011 requesting an explanation as to why the accountants' report had not been delivered but there was no response. A further letter was sent to him on 24 June 2011 requesting a reply within seven days. Again there was no response.
9. An Adjudicator considered the matter on 5 September 2011 and found the Respondent had breached Rule 35(1) of the SAR. The Adjudicator resolved as follows:

"I therefore EXPECT Mr M A Reid to deliver the accountants report for Reid Sinclair & Co for the period ended 15 December 2008 within 28 days of the date of the letter notifying him of this decision, together with an explanation for the late delivery, failing which I DIRECT that the conduct of Mr M A Reid is referred, without further notice to the Solicitors Disciplinary Tribunal."
10. A copy of the Adjudicator's decision was sent to the Respondent on 8 September 2011 however, the Respondent failed to reply or comply with that decision.

Witnesses

11. No witnesses gave evidence.

Findings of Fact and Law

12. The Tribunal had carefully considered all the documents provided, and the submissions of the Applicant. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.
13. **Allegation 1.1: The Respondent failed and/or delayed in delivery of an accountants' report for the period from 5 May 2008 to 15 December 2008 due to be delivered to the Solicitors Regulation Authority ("SRA") on or before 15 June 2009 contrary to Section 34 of the Solicitors Act 1974 (as amended) and Rule 35 of the Solicitors' Accounts Rules 1998 (as amended) ("SAR").**
 - 13.1 The Applicant provided the Tribunal with a copy of the last accountants' report filed by the Respondent dated 15 December 2008 for the period 5 May 2007 to 4 May 2008. That report, which was a qualified report, confirmed the Respondent's firm was holding £51,131.48 in client account some eight months prior to the closure of the firm. It was not known whether the Respondent was holding this money at the time his firm closed. He had a continuing obligation to file a final accountants' report. The Applicant confirmed the Respondent's firm had been closed down voluntarily and there had been no issues of concern. The Applicant was not aware of any complaints or claims from clients and the Respondent may well have returned client monies. This had been a routine closure.
 - 13.2 The Tribunal was satisfied that the Respondent had failed to deliver an accountants' report for his firm for the period 5 May 2008 to 15 December 2008, as no such report had been received at all by the SRA. The Tribunal was satisfied allegation 1.1 was proved.
14. **Allegation 1.2: The Respondent failed to comply with an expectation of an Adjudicator dated 5 September 2011 as to the filing of his accountants' report for the period ending 5 December 2008 and contrary to Rule 20.05 of the Solicitors Code of Conduct ("SCC").**
 - 14.1 There appeared to be a slight error in the date given in this allegation. The Adjudicator's decision referred to the date of 15 December 2008 not 5 December 2008. Nevertheless, the accountants' report for either of these periods ending 5 or 15 December 2008 was still outstanding. It had clearly not been filed within 28 days of the letter dated 8 September 2011 from the SRA to the Respondent attaching a copy of the Adjudicator's decision. The Tribunal was therefore satisfied that the Respondent had failed to comply with the Adjudicator's expectation. The Tribunal found allegation 1.2 proved.
15. **Allegation 1.3: The Respondent failed to deal in an open, prompt and cooperative way with the SRA contrary to Rule 20.05 of the SCC.**
 - 15.1 The Tribunal had been referred to a number of letters sent to the Respondent by the SRA which required a response. These were dated 28 September 2009, 6 November 2009, 14 July 2010, 13 May 2011, 24 June 2011 and 8 September 2011. The

Respondent had failed to reply to any of those letters and the Tribunal was therefore satisfied that allegation 1.3 was proved.

Previous Disciplinary Matters

16. The Respondent had appeared before the Tribunal on two occasions previously, first on 21 February 2008 and then again on 20 December 2010.

Sanction

17. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also had due regard to the 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.
18. There was no evidence of any improper use of client funds. However, this was the Respondent's third referral to the Tribunal. He had appeared previously in February 2008 on which occasion he had admitted, amongst other matters, a failure to respond promptly and substantively to correspondence from the SRA, and a failure to comply with a decision of an SRA Adjudicator. On 20 December 2010 one of the allegations found proved against the Respondent was his failure to deal with communications from the SRA properly. There was clearly a pattern of behaviour in failing to engage with the regulator, which was a very serious matter.
19. The provision of accountants' reports was a fundamental requirement which enabled the regulator to carry out its regulatory function in the interests of the public and ensure there was no risk to client funds. The Respondent's total lack of engagement with these proceedings had compounded his failures and was an aggravating feature. The accountants' report for the period 5 May 2008 to 15 December 2008 was still outstanding and this was not acceptable conduct, particularly as the position relating to client funds when the firm closed was not known. A failure to comply with such regulatory obligations put the public at risk. In this case, particularly as this was the Respondent's third referral to the Tribunal, the Tribunal considered the appropriate sanction was an indefinite suspension. Before the suspension would be lifted, the Tribunal expected the Respondent to:
 - File all outstanding accountants' reports to include an Cease to Hold Report, or alternatively to obtain a waiver from the requirement to file such a report; and
 - To provide a satisfactory explanation as to why the Respondent had not engaged with his regulator; and
 - Provide full details setting out his intentions in relation to any future legal practise.

Costs

20. The Applicant requested an Order for his costs in the total sum of £4,170.20. The Tribunal had considered carefully the matter of costs and noted the disbursements were unusually high although this appeared to have been caused by the need to try to

locate the Respondent. The Tribunal was of the view that the hotel expenses were unnecessary and the travel expenses claimed were high. The Tribunal considered the overall costs were high and therefore assessed them in the total sum of £3,775. The Respondent was ordered to pay this amount.

21. The Tribunal had regard for the case of *SRA v Davis and McGlinchey* [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

“If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive.”

22. In this case the Respondent had not engaged with the Tribunal at all and therefore the Tribunal did not have any information or evidence of his current income, expenditure, capital or assets. In the absence of these, it was difficult for the Tribunal to take a view of his financial circumstances.

Statement of Full Order

23. The Tribunal ORDERED that the Respondent, MICHAEL ALEXANDER REID, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 13th day of November 2013 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,775.00.

DATED this 10th day of January 2014

On behalf of the Tribunal

J. Martineau
Chairman