

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11017-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NEALE SIMMONS

Respondent

Before:

Mr A. N. Spooner (in the chair)

Ms A. Banks

Lady Bonham Carter

Date of Hearing: 11th December 2012

Appearances

Andrew Bullock, Barrister of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent appeared and was represented by Dominic Webber of Counsel.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 The Respondent, by virtue of his conviction:
 - (1) Acted without integrity in breach of Rule 1.02 of the Solicitors' Code of Conduct 2007 and
 - (2) Behaved in a way that was likely to diminish the trust the public placed in him or in the legal profession in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007.

The Respondent admitted the allegation.

Documents

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

Applicant:

- Application dated 19 June 2012 together with attached Rule 5 Statement and all exhibits
- Costs Schedule dated 4 December 2012

Respondent:

- Letter dated 20 June 2012 from Dr Byrne to B & Co Ltd
- CAF Review Form dated 13 June 2011
- Statement from Hertfordshire County Council dated 6 June 2011
- Letter from Dr Wilson dated 14 June 2011

Factual Background

3. The Respondent, born on 8 May 1963, was admitted to the Roll of Solicitors on 1 February 1988.
4. In the Crown Court at St Albans on 2 June 2011 the Respondent was tried and convicted upon indictment of two counts of doing acts tending and intending to pervert the course of public justice and was sentenced to a suspended sentence of four weeks imprisonment for twelve months on each count and was further ordered to undertake unpaid work of 50 hours to be completed before 30 June 2012, and disqualified from driving for 28 days.

5. A Certificate of Conviction from St Albans Crown Court dated 30 December 2011 was before the Tribunal.

Witnesses

6. No witnesses gave evidence.

Findings of Fact and Law

7. The Tribunal had carefully considered all the documents provided and the submissions of both parties. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal 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.

8. **Allegation 1.1: The Respondent, by virtue of his conviction:**

- (1) **Acted without integrity in breach of Rule 1.02 of the Solicitors' Code of Conduct 2007 and**
- (2) **Behaved in a way that was likely to diminish the trust the public placed in him or in the legal profession in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007.**

- 8.1 The Applicant relied upon a Certificate of Conviction from St Albans Crown Court dated 30 December 2011 as conclusive proof of the offence in question. The Respondent admitted the allegation and accordingly, the Tribunal found the allegation proved.

Previous Disciplinary Matters

9. None.

Mitigation

10. Mr Webber on behalf of the Respondent confirmed the Respondent accepted full responsibility but stressed that no client had been involved and there had been no breach of trust. The Respondent had previously had a clean driving licence and would have received a fine and probably 6 penalty points if he had not tried to avoid prosecution. He had produced a letter in relation to a speeding incident giving details of a number of possible drivers, and accepted he had made an error of judgment without foreseeing the harm that could have ensued. The Respondent accepted there had been a complete departure from the integrity, probity and trustworthiness expected from a solicitor.
11. The Tribunal was reminded that the episode had been of a short duration and that the Respondent's lack of judgment was due to his difficult personal circumstances at the time. Details of these circumstances were provided to the Tribunal and the Tribunal was also referred to the documents provided. The Respondent had been declared

bankrupt in 2007. He was suffering from depression. He was living in rented accommodation and receiving state benefits. Today was the end of a catastrophic period for him and he wanted a dignified end to a very humiliating process.

Sanction

12. The Tribunal had considered carefully the Respondent's submissions and the documents provided. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
13. The Tribunal took into account the sentencing remarks of His Honour Judge Griffiths who had stated:

“ - in this day and age, with so many of these speed camera matters which have to rely upon everybody, at least, trying to tell the truth,

The Tribunal was also mindful that the role of a solicitor was to promote justice not pervert it. The Tribunal had taken into account the Respondent's mitigation but also had to look at the serious set of circumstances which had led to the conviction.

14. The Tribunal considered the case of Bolton v The Law Society [1994] CA and the comments of Sir Thomas Bingham MR who had stated:

“It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... 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 by the Solicitors Disciplinary Tribunal... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case but it may well.”

15. The Respondent's conduct had caused a great deal of damage to the reputation of the profession. His behaviour had undermined the whole principle of the profession which was to act with integrity as an officer of the court and to promote the course of justice. In such circumstances, the Tribunal was satisfied that the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

16. Mr Bullock, on behalf of the Applicant, requested an Order for his costs in the total sum of £1,889.00. He provided the Tribunal with a Costs Schedule which contained a breakdown of those costs. Mr Webber, on behalf of the Respondent, confirmed the costs were agreed. However, the Respondent would have problems paying the costs although accepted he had not brought any documentation with him today to confirm his financial position. In such circumstances, the Respondent would discuss payment terms with the Authority. Mr Bullock confirmed that if the Respondent was able to

make some payment, that should be acceptable, and the SRA would take a humane approach to the recovery of costs.

17. The Tribunal had considered carefully the matter of costs and noted these were agreed. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £1,889.00. In relation to enforcement of those costs, the Tribunal had particular 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.”

18. In this case the Respondent had not provided any documentary evidence of his income, expenditure, capital or assets and therefore it was difficult for the Tribunal to take a view of his financial circumstances. The Tribunal was also mindful of 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. However, in this case, the Respondent had indicated he would be prepared to try and agree terms for the payment of the costs, which Mr Bullock indicated should be acceptable. The Tribunal trusted the Authority would take into account the Respondent's finances and would only seek to enforce the Order for costs where there was some prospect of recovery.

Statement of Full Order

19. The Tribunal Ordered that the Respondent, Neale Simmons, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £1,889.00.

Dated this 21st day of January 2013
On behalf of the Tribunal


A. N. Spooner
Chairman

Findings filed with
The Law Society on

24 JAN 2013

