

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11078-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MICHAEL EDWARD RIGG

Respondent

Before:

Mr S. Tinkler (in the chair)

Mrs J. Martineau

Mr S. Howe

Date of Hearing: 21st March 2013

Appearances

Mark Barnett, Solicitor employed by the 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 allegation against the Respondent, Michael Edward Rigg, on behalf of the Solicitors Regulation Authority, was that contrary to all, alternatively any, of Principles 1, 2 and/or 6 of the SRA Principles 2011 he was, on 23 February 2012, convicted of fraud by abuse of position, and on 23 March 2012 sentenced to 26 months imprisonment.

Documents

2. The Tribunal reviewed all the documents including:

Applicant:

- Rule 5 Statement dated 23 October 2012 with exhibit
- Letter from Mr Barnett to the Respondent dated 5 March 2012
- Email from Mr Barnett to the Respondent dated 13 March 2013 timed at 18.02
- Email from Mr Barnett to the Respondent dated 15 March 2013 timed at 16.19
- Schedule of costs dated 15 March 2013

Respondent:

- Email from the Respondent to Mr Barnett dated 13 March 2013 timed at 12.02
- Email from the Respondent to Mr Barnett dated 14 March 2013 timed at 12.50
- Email from the Respondent to Mr Barnett dated 19 March 2013 timed at 10.31
- Email from the Respondent to Mr Barnett dated 19 March 2013 timed at 10.33

Preliminary Issue

3. Mr Barnett reminded the Tribunal of a recent series of emails involving himself, the Respondent and the Tribunal. Mr Barnett had been concerned that there might be an issue about service of the proceedings and the required notice period under The Solicitors (Disciplinary Proceedings) Rules 2007 when he had learned that the Respondent was no longer in prison. However in an email of 14 March 2013 to Mr Barnett, the Respondent had said:

“I am quite happy for the proceedings to go ahead next week, and confirm I have received full paperwork and received the correct period of notice.

I confirm I shall not be attending but will e mail and forward a letter to you and the Tribunal, both of which should be with you on Monday morning.”

The Respondent sent the promised further email on 19 March 2013 timed at 1031 setting out what he wanted the Tribunal to have in mind when determining the application. The Tribunal noted that the Respondent was subject to a Home Detention Order. It was satisfied that notice of the hearing was served on the Respondent in

accordance with the Rules and decided to exercise its discretion under Rule 16(2) to hear and determine the application notwithstanding that the Respondent had failed to attend in person and was not represented at the hearing.

Factual background

4. The Respondent was born in 1951 and admitted in 1977. His name remained on the Roll of Solicitors.
5. At times relevant to the facts on which the conviction was based, the Respondent practised as a Consultant at Morrish Solicitors LLP (“the firm”) in Leeds. The Respondent resigned from the firm on 11 July 2011.
6. On 23 February 2012, in the Crown Court at Leeds, the Respondent pleaded guilty to and was convicted of three counts of fraud by abuse of position, contrary to Section 4 Fraud Act 2006. On 23 March 2012, the Respondent was sentenced to 26 months imprisonment. A copy of the Certificate of Conviction was before the Tribunal.
7. In his sentencing remarks, His Honour Judge T Khan QC stated:

“Michael Rigg, you are 60 years of age, and I have to sentence you for three offences of fraud. In my judgment, only an immediate and substantial prison sentence can properly reflect the seriousness of what you did. It seems to me that what you did was so serious in terms of the offending, that no other way of dealing with you is appropriate.

The offending was against a vulnerable victim, and in these circumstances it is difficult to imagine somebody being more vulnerable and in need of protection. You were in a position of great responsibility and trust towards Mrs [R], and it has been conceded on your behalf that the offending that you committed was in gross breach of that trust that was placed in you.

The offending was committed over a substantial period of time. You persistently stole money belonging to your victim over three years. Your occupation as a solicitor would have left you in no doubt at all that what you were engaging in was serious dishonesty, and over the three-year period you stole a large amount of money belonging to your victim. I accept, because it is not challenged, that you have paid back virtually all of the money that you stole. I can take that into account, and I do, but it is of limited relevance to the gravity of the conduct that I have to assess.

I take into account in your favour the significant mitigation that Mr Foley has advanced on your behalf. You are a man of impeccable good character, and I have had the benefit of reading a large number of testimonials from people who have known you both in a personal and professional capacity, and consistently the references that I have read speak of your good personal qualities, and those who have been clients talk about your professional ability as a solicitor. You have done charitable work, and that is something that clearly reflects well upon you.

You pleaded guilty in circumstances which persuade me that you are entitled to the maximum credit that is appropriate, and I therefore intend to reduce the custodial sentence by one third.

It is clear from what I have read that this offending has resulted in you losing your career. I accept the submission that a great deal of shame has been put upon you, and felt by you, as a result of what you did, and what you admitted to having done. I have read about your fragile health, and I take that into account. In particular, I accept that for somebody in your position with your fragile health, custody will be more difficult to cope with.

...

In my judgment, the seriousness of your offending brings it within the second category of the Sentencing Guidelines Council guidance for sentence in fraud cases...

Taking all of those matters into account that I am required to consider, it seems to me... that the least sentence that I can pass in your case is one of 26 months immediate imprisonment, and that sentence will be concurrent on each of three counts..."

Witnesses

8. There were no witnesses.

Findings of fact and law

9. 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.
- 10. Allegation 1: The allegation against the Respondent, Michael Edward Rigg, on behalf of the Solicitors Regulation Authority, was that contrary to all, alternatively any, of Principles 1, 2 and/or 6 of the SRA Principles 2011 he was, on 23 February 2012, convicted of fraud by abuse of position, and on 23 March 2012 sentenced to 26 months imprisonment.**
- 10.1 For the Applicant, Mr Barnett submitted that the SRA Principles 2011 are mandatory principles which apply to all. Principles 1, 2 and 6 state as follows:

"You must:

1. Uphold the rule of law and the proper administration of justice;
2. Act with integrity;
6. Behave in a way that maintains the trust the public places in you and the provision of legal services."

The Respondent had been convicted of a serious criminal offence involving stealing a large amount of money from an elderly and vulnerable client. In his email of 13 March 2013, the Respondent said:

“I do not wish to contest the allegations, merely to make some sort of apology for what I did, and provide some explanation in mitigation....Please note that I have now fully retired from practice and will never be practising law again.”

Mr Barnett referred the Tribunal to the copy certificate of conviction which was before it and also to the transcript of the trial Judge’s sentencing remarks and upon both of which he relied as proof of the underlying facts and other relevant information. Mr Barnett also asked the Tribunal in the absence of the Respondent to have regard to the points in mitigation summarised by the trial Judge. Mr Barnett submitted that the Respondent had breached all three of Principles 1, 2 and 6 of the SRA Principles 2011 by virtue of the criminal conviction. He further submitted that although this had not been raised in the proceedings that the circumstances in which the Respondent's misconduct had occurred were not exceptional. There had been dishonest abuse of trust and theft of £50,000 belonging to a client.

- 10.2 The Tribunal considered the evidence, the submissions for the Applicant and the submissions of the Respondent in which he said that he did not contest the allegation. By virtue of Rule 15(2) a conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances. The Tribunal was satisfied that it could rely upon the conviction. The Tribunal was also satisfied that the conviction involving as it did theft, dishonesty and fraud constituted a breach of Principle 1 relating to a solicitor’s duty to uphold the rule of law and the proper administration of justice; Principle 2 the duty to act with integrity and Principle 6 the duty to behave in a way that maintains the trust the public places in him or her and the provision of legal services. The Tribunal therefore found allegation 1 proved in all its aspects.

Previous disciplinary matters

11. None

Mitigation

12. In his email dated 19 March 2013, the Respondent stated as follows, omitting the numbering of the email:

“I accept that my conviction is an extremely serious matter, and renders me unfit to be involved further in practice.

I am desperately sorry for what has happened, and the shame I have brought on family, friends and the profession.

I really cannot explain adequately why I did what I did. I did become extremely tired following difficulties in High Street practice and should have taken the opportunity to retire some time ago.”

The Respondent went on to describe the relationship which he had had with Mrs R over 30 years which:

“was really in the nature of mother and son. I was one of only two people who visited her each week, as well as taking her out in the car every month.”

He said that she had wanted him to be the ultimate beneficiary of at least half her estate, wishes which she expressed in the last two wills she made. He continued:

“That said, I recognise the course that I followed in relation to her assets was wholly unacceptable. I have now given up my entitlement under her will. I made immediately repayment in full of all monies to avoid any claim on the firm's professional indemnity insurance or the Solicitors Indemnity Fund. To do this I had to sell my house quickly...”

The Respondent then detailed the efforts he was making to rebuild his life.

Sanction

13. The Tribunal had regard to its own Guidance Notes on Sanction, the submissions for the Applicant, the mitigation submitted by the Respondent and the trial Judge's comments on mitigation. In assessing the seriousness of the Respondent's conduct, the Tribunal had regard to the fact that the Respondent was fully culpable for his misconduct. His actions were apparently planned and he acted in breach of a position of trust. There were a significant number of aggravating factors in the Respondent's conduct in that he had taken advantage of an elderly and vulnerable client deliberately and over a period and in a way that was dishonest and involved the commission of a criminal offence. His misconduct was such that he must have known that he was in material breach of his obligations to protect the public and the reputation of the profession. By way of mitigating factors, the Tribunal had noted that the Respondent had made good the loss that he had caused, he had shown insight into what he had done and had pleaded guilty to the offences. He had not previously been before the Tribunal. The Respondent had also cooperated with the Applicant. A finding that an allegation of dishonesty has been proved, almost invariably leads to striking off, save in exceptional circumstances. The Tribunal did not consider that the circumstances of this case were exceptional. Having regard to the level of seriousness of the Respondent's misconduct which was of the highest, for the protection of the public and the reputation of the profession, the Tribunal considered that he must be struck off the Roll of Solicitors.

Costs

14. For the Applicant, Mr Barnett sought costs in the sum of £1,226.65. He had provided a copy of the costs schedule to the Respondent by email dated 15 March 2013 and had advised him that if he wished his financial circumstances to be taken into account in relation to costs in accordance with the guidance given case of The Solicitors

Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin), he should provide appropriate details of his financial position. The Respondent had replied by email dated 19 March 2013 that he agreed the costs schedule. The Tribunal considered the costs claimed to be reasonable and assessed them in the amount sought. The Respondent had indicated that he had capital from the sale of his house and had not made representations in respect of costs. The Tribunal ordered costs be awarded in the amount sought.

Statement of full order

15. The Tribunal Ordered that the Respondent Michael Edward Rigg, 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 £1,226.65.

Dated this 2nd day of May 2013
On behalf of the Tribunal

S. Tinkler
Chairman