

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11136-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MANOJ KUMAR AGGARWAL

Respondent

Before:

Miss J. Devonish (in the chair)

Mr. A. Ghosh

Mr. R. Slack

Date of Hearing: 25 February 2014

Appearances

Paul Gott QC, instructed by Robin Havard, solicitor of Morgan Cole LLP of Morgan Cole LLP, Bradley Court, Park Place, Cardiff, CF10 3DP for the Applicant

The Respondent appeared and was represented by Richard Clayton QC.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 The Respondent made statements, both written and oral, to third parties, knowing them to be untrue in breach of Rules 1(a), 1(c), and 1(d) of the Solicitors' Practice Rules 1990 or, where such conduct related to a period after 1 July 2007, Rules 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007.
 - 1.2 [Withdrawn].
 - 1.3 [Withdrawn].
 - 1.4 The Respondent made statements in documents submitted to the Court in the course of proceedings which he knew to be untrue and which were designed to mislead the Court and the other parties to the action in breach of Rules 1.01, 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.
 - 1.5 [Withdrawn].
 - 1.6 In respect of allegations 1.1 and 1.4, it was alleged the Respondent had acted dishonestly.

The Respondent admitted allegations 1.1, 1.4 and 1.6.

Documents

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

Applicant:

- Application dated 1 March 2013 together with attached Rule 5 Statement and all exhibits
- Skeleton Argument of the Applicant dated 24 February 2014
- Email dated 21 February 2014 from Mr Havard to the Respondent's solicitors
- Chronology
- Statement of Terms of Agreement dated 25 February 2014

Respondent:

- Letter dated 7 October 2013 from the Respondent's solicitors to the Tribunal attaching various letters confirming the Respondent's medical conditions
- Letter dated 23 November 2013 from the Respondent's solicitors to the Tribunal

- Letter dated 7 January 2014 from the Respondent's solicitors to the Tribunal
- Letter dated 12 February 2014 from the Respondent's solicitors to the Tribunal attaching an application to strike out part of the Applicant's case
- Skeleton Argument on behalf of the Respondent dated 14 February 2014
- Email dated 20 February 2014 from the Respondent's solicitors to Mr Havard

Application to Withdraw Allegations 1.2, 1.3 and 1.5

3. Mr Gott QC, on behalf of the Applicant, informed the Tribunal that Terms of Agreement had been reached with the Respondent as a result of which the Respondent had made admissions to allegations 1.1, 1.4 and 1.6 on the basis that allegations 1.2, 1.3 and 1.5 were withdrawn. The Respondent's admissions included admitting to acting dishonestly in relation to allegations 1.1 and 1.4. This was the most serious allegation. The Respondent had also agreed that his admissions of dishonesty did not fall within the exceptional category of dishonest conduct in respect of which an order striking the Respondent from the Roll was not appropriate. Therefore, in the interests of keeping costs to a minimum, the Applicant sought leave from the Tribunal to withdraw allegations 1.2, 1.3 and 1.5. Mr Clayton QC, on behalf of the Respondent, confirmed this was the agreed position between the parties.
4. The Tribunal having considered the handwritten Terms of Agreement reached between the parties on 25 February 2014 was satisfied that in view of the admissions made, which included admissions of dishonesty, it was appropriate, proportionate and in the public interest to grant the application to withdraw allegations 1.2, 1.3 and 1.5. Accordingly, the Tribunal granted leave to the Applicant to withdraw allegations 1.2, 1.3 and 1.5.

Factual Background

5. The Respondent, born on 18 March 1969, was admitted to the Roll on 2 January 2003.
6. At the material time, from September 2004 to mid 2008, the Respondent practised in partnership as Akther & Darby Solicitors at Corporate House, 65 Bradford Street, Walsall, WS1 3QD ("the firm").

Allegations 1.1 and 1.6

7. On 19 September 2004, the Respondent applied to Capital Home Loans Limited ("CHL") for mortgage advances in respect of Flats 5 and 6, 11 OL Road. The firm was instructed to act on behalf of CHL. On 29 November 2004, CHL released mortgage advances to the firm for each flat in the sum of £96,160 respectively. Flat 5 was assigned mortgage a/c number 9*****606. Flat 6 was assigned mortgage a/c no 9*****610.
8. In April 2005 the Respondent contacted CHL indicating his wish to redeem both mortgages with CHL. On 19 September 2005 redemption statements were sent to the

firm which showed different redemption figures for each of the mortgage accounts for Flats 5 and 6.

9. The redemption figure in respect of Flat 5 was stated in the redemption statement as £97,808.52 as at 19 September 2005 with a daily rate of interest of £15.37 if the mortgage was not redeemed by that date.
10. The redemption figure for Flat 6 was stated in the redemption statement as £97,918.76 as at 30 September 2005 with a daily rate of interest of £15.37 if the mortgage was not redeemed by that date. Redemption took place on 6 October 2005 leading to an accrual of interest of £92.22 making a total of £98,010.98.
11. On 6 October 2005, CHL received a payment in respect of Flat 6 (mortgage a/c no 9*****610) in the sum of £98,010.98. This amount matched the redemption figure contained in the redemption statement relating to Flat 6. CHL sent the firm a Form DS1 stating it related to Flat 6, so that the mortgage in respect of Flat 6 could be removed from the Land Register.
12. On 14 October 2005, in error, CHL sent two letters to the firm which referred to the redemption in respect of Flat 5 instead of Flat 6. These letters were dated after receipt by CHL of the redemption money for Flat 6.
13. In letters from the Respondent to CHL dated 13 December 2006 and 25 June 2007, the Respondent referred to Flat 5 mortgage a/c no 9*****606 when making payments in respect of the mortgage on Flat 5.
14. In or about March 2006, some five months after the mortgage on Flat 6 was redeemed, the Respondent contacted CHL seeking a redemption statement on Flat 6. There was a telephone conversation between CHL and the Respondent when he was informed that the mortgage on Flat 6 had been redeemed.
15. From various conversations and communications between CHL and the Respondent and the Respondent's wife between 27 March 2006 and 15 October 2008, and from copies of correspondence and other documents passing between the Respondent and CHL between 15 June 2006 and 16 October 2008, it was clear the Respondent was aware the mortgage in respect of Flat 5 had not been redeemed.
16. On 15 October 2007 the firm wrote to TLT Solicitors, who had been instructed by CHL, stating the mortgage in respect of Flat 5 had been redeemed and suggesting future correspondence should be with the Respondent direct. At this time the Respondent was still a partner at the firm.
17. On 6 March 2008, Birmingham Midshires released a mortgage advance to the Respondent's wife to enable her to purchase Flat 5, 11 OL Road. That purchase was never completed and the mortgage advance was not registered. The Office Copy entry of the Register of Title for Flat 5 dated 1 February 2012 showed the Respondent remained the registered proprietor of Flat 5 and CHL continued to hold a First Legal Charge dated 29 November 2004 over the property.

18. On 2 March 2011 the Respondent had a meeting with Ms N of RP Solicitors, who had been instructed to act on behalf of Birmingham Midshires, to resolve issues in respect of Flat 5. In advance of that meeting, Ms N had indicated that until such time as the Respondent produced relevant documents relating to the charges with CHL and Birmingham Midshires, it was difficult to see how the meeting could be productive. At the meeting on 2 March 2011 the Respondent produced the letters dated 14 October 2005 sent to him by CHL and maintained the loan in respect of Flat 5 had been repaid in full. Following that meeting Ms N telephoned CHL who confirmed the mortgage on Flat 5 had not been repaid.

Allegations 1.4 and 1.6

19. Birmingham Midshires issued proceedings on 6 May 2011 against the Respondent and his former partner, PA, for the recovery of mortgage advance funds in respect of Flats 4 and 5, 11 OL Road.
20. On 21 June 2011 the Respondent signed and lodged a Defence to the claim containing a Statement of Truth. At paragraph 7.2 of his Defence, the Respondent stated he had redeemed the Charge on Flat 5 in or before October 2005. He further stated he intended to issue a Part 20 Claim against CHL in order to obtain a declaration from the Court that the loan by CHL to the Respondent in respect of Flat 5 had been repaid and that Charge should be discharged and removed from the Register of Title.
21. The Respondent issued a Part 20 Claim in the same action at the High Court dated 7 September 2011 in which he sought a declaration that he had repaid in full the loan made to him by CHL under mortgage account number 9*****606 in relation to Flat 5, that an account be taken and CHL account to the Respondent for any overpayment made by him. This Part 20 Claim contained a Statement of Truth signed by the Respondent's solicitor stating the Respondent believed the facts stated were true. In the Particulars of Claim attached to the Part 20 Claim Form, the Respondent stated he had repaid the loan in full in or before October 2005 and placed reliance on the letters from CHL to the firm dated 14 October 2005.
22. Birmingham Midshires applied for Summary Judgment on 23 January 2012. Both applications came before the court on 10 April 2012 but the Respondent failed to appear. An order was made by the Court for judgment in favour of Birmingham Midshires and the Respondent's Part 20 Claim was struck out.

Witnesses

23. No witnesses gave evidence.

Findings of Fact and Law

24. 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.

25. **Allegation 1.1: The Respondent made statements, both written and oral, to third parties, knowing them to be untrue in breach of Rules 1(a), 1(c), and 1(d) of the Solicitors' Practice Rules 1990 or, where such conduct related to a period after 1 July 2007, Rules 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007.**

Allegation 1.4: The Respondent made statements in documents submitted to the Court in the course of proceedings which he knew to be untrue and which were designed to mislead the Court and the other parties to the action in breach of Rules 1.01, 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.

Allegation 1.6: In respect of allegations 1.1 and 1.4, it was alleged the Respondent had acted dishonestly.

- 25.1 The Tribunal had been provided with a statement of Terms of Agreement that had been agreed between the Applicant and the Respondent on 25 February 2014. This stated as follows:

“(1) The Respondent admits that:

- (a) The Respondent has dishonestly made oral statements to third parties knowing them to be untrue in breach of Rules 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007 by trying to persuade Ms [N] that the CHL mortgage (mortgage a/c no [9*****606] over Flat 5, 11 [OL Road] (the “Flat 5 Mortgage”) had been repaid, using a CHL letter dated 14 October 2005 knowing that it referred to Flat 5 in error (Rule 5 Allegations A [1.1] and F [1.6]).
- (b) The Respondent had dishonestly made statements which he knew to be untrue and which were designed to mislead the Court and the other parties to the action in breach of Rules 1.01, 1.02 and 1.06 of the Solicitors' Code of Conduct 2007, being:
 - (A) Paragraph 7.2 of the Respondent's Defence in Case No 1BM90079 in the Birmingham District Registry (“the High Court Action”) dated 21 June 2011.
 - (B) Paragraphs 3 to 5 inclusive of the Respondent's Part 20 Particulars of Claim in the High Court Action also dated 21 June 2011.

(Rule 5 Allegations D [1.4] and F [1.6]).

- (2) The Respondent accepts that these admissions of dishonesty do not fall within the exceptional category of dishonest conduct in respect of which an Order striking the Respondent from the roll is not appropriate.
- (3) The Applicant agrees to withdraw all other allegations in the Rule 5 Statement.

(4) The Respondent agrees to pay the Applicant's costs, subject to a detailed assessment (failing agreement)."

25.2 In view of the Terms of Agreement dated 25 February 2014 reached between the parties, the Tribunal approved that agreement, noted the Respondent's admissions and accordingly found allegations 1.1, 1.4 and 1.6 all proved.

Previous Disciplinary Matters

26. The Respondent had appeared before the Tribunal on one previous occasion on 11 January and 22 March 2011.

Mitigation

27. There was no mitigation advanced on behalf of the Respondent, other than the information contained in the documents before the Tribunal.

Sanction

28. The Tribunal had considered carefully the Respondent's documents and the Terms of Agreement reached between the parties. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

29. The Respondent had accepted he had acted dishonestly in relation to two separate matters. The first matter concerned untrue oral statements made to the representative of a mortgage lender to persuade that representative that an earlier mortgage to another lender had been repaid, when it was clear that it had not. The second matter concerned untrue statements made during the course of High Court proceedings, which again related to repayment of a mortgage which had not been repaid. These were serious matters.

30. The Respondent had appeared before the Tribunal previously in January/March 2011 when a number of allegations had been found proved. These included conducting himself in a manner that was likely to compromise his independence and integrity, conducting himself in a manner which was likely to compromise or impair his duty to act in the best interests of the client, conducting himself in a manner likely to compromise or impair the good repute of the solicitors' profession, conducting himself in a manner which impaired his proper standard of work, failing to be aware of a conflict or potential conflict of interest in property transactions where the firm in which he was a partner acted on his behalf and on behalf of the lender, failing to disclose all relevant information to, or act in the best interests of, a lender client, failing to honour an undertaking in the course of a conveyancing transaction, failing to answer promptly or substantively correspondence from a third party or from the SRA and failing to supervise. On that occasion the Respondent had been suspended from practice as a solicitor for a period of 5 years. The sanction reflected the seriousness of the Respondent's conduct at that time.

31. The Tribunal had now found the Respondent had acted dishonestly on two matters. His conduct had been deliberate, calculated and repeated over a period of time. The

Tribunal was mindful of the case of the SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

“Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”.

32. There was some evidence of the Respondent’s medical conditions in the documents before the Tribunal but most of these documents were simply historic letters from hospitals to the Respondent confirming various appointment dates. There was one letter setting out a number of medical conditions affecting the Respondent but this was a routine review letter from the hospital to the Respondent’s GP and was dated 15 April 2013 so was not recent. In any event, in the Terms of Agreement reached between the parties the Respondent had agreed his admissions of dishonesty did not fall within the exceptional category. In view of this, it was clear to the Tribunal that, in the absence of any exceptional circumstances, the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

33. The parties had agreed in the Terms of Agreement that the Respondent pay the Applicant’s costs, subject to a detailed assessment in the absence of agreement. Accordingly, the Tribunal ordered the Respondent pay the Applicant’s costs to be subject to detailed assessment if not agreed.
34. The Tribunal had not been provided with any information concerning the Respondent’s financial position and no submissions had been made regarding his ability to pay the costs agreed. The Tribunal considered 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 the Applicant’s costs in view of the fact that he would no longer be able to work as a solicitor as a result of the Tribunal’s Order. However, in the absence of any information or evidence in relation to the Respondent’s current income, expenditure, capital or assets it was difficult for the Tribunal to take a view of his financial circumstances.

Statement of Full Order

35. The Tribunal Ordered that the Respondent, Manoj Kumar Aggarwal, 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, such costs to be subject to a detailed assessment if not agreed.

DATED this 26th day of March 2014

On behalf of the Tribunal

J. Devonish
Chairman