

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11179-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

TIMOTHY ROBERT BRUCE JOYNER

Respondent

Before:

Mr A. G. Gibson (in the chair)

Miss T. Cullen

Mr M. G. Taylor CBE DL

Date of Hearing: 21 November 2013

Appearances

Andrew Bullock, 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 Allegation against the Respondent was:
 - 1.1 The Respondent, contrary to Principle 6 of the SRA Principles 2011, was on 4 January 2013 convicted of two counts of fraud by abuse of position, contrary to section 4 of the Fraud Act 2006.

Documents

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

Applicant:

- Application dated 14 August 2013 together with attached Rule 5 Statement and exhibits
- Letter dated 1 November 2013 from the Applicant to the Respondent
- Email dated 18 October 2013 from the Applicant to the Tribunal
- Applicant's Schedule of Costs dated 18 November 2013
- Applicant's letter dated 18 November 2013 to the Respondent

Respondent:

- Letter dated 9 October 2013 from the Respondent to the Tribunal
- Letter dated 5 November 2013 from the Respondent to the Tribunal

Decision to Proceed in the Respondent's Absence

3. The Respondent had applied for an adjournment in letters to the Tribunal dated 9 October 2013 and 5 November 2013. The application to adjourn had been refused by the Tribunal on 13 November 2013 on the basis that these proceedings concerned a conviction resulting in the Respondent's imprisonment and it was therefore in the public interest that the matter should proceed forthwith. Mr Bullock for the Applicant submitted the Respondent was clearly aware of today's hearing but he had not applied to the Prison Governor for a production order which would have allowed him to attend the hearing.
4. In his letter dated 9 October 2013 the Respondent stated he was due to be released from prison on 25 March 2014 and requested the hearing be postponed until after this date. The Tribunal had written to the Respondent on 1 November 2013 asking him to confirm whether he had applied to the Prison Governor for a production order which would grant him permission to be released (in custody) to attend this hearing. The Respondent in his letter of 5 November 2013 stated he had not applied for such an order and he considered the Prison Service would not wish to finance the costs of paying for an escorted production to the Tribunal, nor did he have the funds to pay for transportation himself. He also indicated that he believed only a Court could order production of a prisoner held in custody. He accepted the Tribunal did not have the power to do so. The Respondent also stated that it was no longer possible for him to

apply for a Special Purpose Licence as this provision had been removed from 1 November 2013.

5. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. This was a case involving a conviction of two counts of fraud which was a very serious matter. The Respondent had not applied to the Prison Governor for permission to attend today's hearing. He had indicated in his letter of 9 October 2013 that he believed it was likely he would be struck off the Roll notwithstanding any mitigation or further representation he may wish to enter at any future hearing. He had failed to indicate to the Tribunal in either of his letters dated 9 October 2013 or 5 November 2013 the nature of his representations even though he had accepted in his letter of 9 October 2013 that it may be appropriate for him simply to respond by statement and request determination in his absence. The Tribunal had not received any statement or further correspondence from him despite refusing his application for an adjournment on 13 November 2013. The Respondent was clearly aware of today's hearing and had chosen not to apply to the prison governor for permission to attend today's hearing. Taking into account the seriousness of this case, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence, and that matters should be concluded without any further delay.

Factual Background

6. The Respondent, born on 8 June 1963, was admitted as a solicitor on 2 January 2003. At the material time the Respondent practised as an assistant solicitor at Eldridges, 36 St James' Street, Newport, Isle of Wight, PO30 1LF.
7. On 4 January 2013, in the South East Hampshire Magistrates Court, the Respondent was convicted of two counts of fraud by abuse of position. On 25 January 2013, in the Portsmouth Crown Court the Respondent was sentenced to 28 months imprisonment on each count to run concurrently.

Witnesses

8. No witnesses gave evidence.

Findings of Fact and Law

9. The Tribunal had carefully considered all the documents provided and the submissions of the Applicant. The Tribunal confirmed that the allegation had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering the allegation.
10. **Allegation 1.1: The Respondent, contrary to Principle 6 of the SRA Principles 2011, was on 4 January 2013 convicted of two counts of fraud by abuse of position, contrary to section 4 of the Fraud Act 2006.**
 - 10.1 The Tribunal had been provided with a Certificate of Conviction from the Crown Court at Portsmouth dated 23 April 2013. This confirmed the Respondent had been convicted on 4 January 2013 in the South East Hampshire Magistrates Court of two

counts of fraud by abuse of position. The certificate also confirmed the Respondent had been sentenced to 28 months imprisonment on each count to run concurrently. Principle 6 of the SRA Principles 2011 stated solicitors were required to behave in a way that maintained the trust the public placed in them and in the provision of legal services. By virtue of the conviction, the Respondent had behaved in a way that did not maintain such trust. Accordingly, the Tribunal was satisfied the allegation was proved.

Previous Disciplinary Matters

11. None.

Sanction

12. The Tribunal had considered carefully the Respondent's letters dated 9 October 2013 and 5 November 2013. 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.
13. The Respondent had provided little mitigation in either of his letters, save that in his letter of 9 October 2013 he stated that the circumstances surrounding the matter were not dealt with adequately or at all by his then acting solicitors/Counsel at the Sentencing Hearing on 25 January 2013.
14. The Respondent had been convicted of two counts of fraud which were very serious matters indeed. The Tribunal noted the sentencing remarks of Mr Recorder Davies QC who had stated:

“The Court of Appeal have observed that in cases of theft from an employer by an employee in a position of trust, it is so often that that employee was hitherto a person of good character..... there has to be confidence in the system and solicitors operate with lay clients on the basis of a confidential relationship. Part of that relationship relates to client funds, which may be held by the solicitors firm. Again that relies on a trust. You were in a position of trust within that system and you abused that position of trust. There was a degree of planning for this offence and that is an aggravating feature. Planning because you had made and delivered your own receipts and VAT invoices and the way in which you carefully structured a situation to cover your own criminal activity. There is a further aggravating feature here and that is that the offending was carried out over a significant period of time..... We are dealing here with a fraud of £27,570 over nearly a five-year period, against that background of confidence and trust that has to be there. In addition, damage must have been occasioned to the reputation of your erstwhile employers Eldridges.”

15. The Tribunal had been referred to the case of SRA v Sharma [2010] EWHL 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”

The Tribunal was satisfied that there were no exceptional circumstances in this case.

16. It was clear to the Tribunal from the sentencing remarks, and from fact of the Respondent's convictions of fraud, that the Respondent had abused his position of trust in that he had defrauded his employers and members of the public of a substantial amount of money over a lengthy period of time. This was disgraceful misconduct at the highest level incompatible with the obligations of a solicitor and the Respondent was clearly a risk to the public. He had caused a great deal of damage to the reputation of the profession. The Tribunal was satisfied that the appropriate sanction was to strike the Respondent off the Roll of Solicitors and so ordered.

Costs

17. The Applicant requested an Order for his costs in the total sum of £1,560. He provided the Tribunal with a breakdown of those costs. The Respondent in his letter of 9 October 2013 had provided the Tribunal with some information concerning his means. He had referred to a Confiscation Order hearing on 7 June 2013 when the full extent of his available assets was determined and appropriated into the Order. The Respondent did not have any means and anticipated that on his release from custody he would be unemployed with no entitlement to state benefits.
18. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £1,560. In relation to enforcement of those costs, the Tribunal noted the Respondent's representations. The Tribunal was 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 the Applicant's costs. The Tribunal was satisfied that due to the Respondent's financial circumstances it was appropriate that the order for costs should not be enforced without leave of the Tribunal and so ordered.

Statement of Full Order

19. The Tribunal ORDERED that the Respondent, Timothy Robert Bruce Joyner, 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 fixed in the sum of £1,560.00 not to be enforced without leave of the Tribunal.

DATED this 21st day of January 2014

On behalf of the Tribunal

A. G. Gibson
Chairman