

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11221-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

AJAYI OMOTAYO SEUN

Respondent

Before:

Mr R. Hegarty (in the chair)

Mr. J. A. Astle

Mrs L. McMahon-Hathway

Date of Hearing: 4 December 2014

Appearances

Inderjit Johal, Counsel 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 allegations against the Respondent, made on behalf the Solicitors Regulation Authority were that by virtue of his conviction upon indictment of Conspiracy to obtain money transfers by deception and failing to surrender to custody at an appointed time in breach of a Bail Act Order:
 - 1.1 He breached Principle 1 of the SRA Principles 2011 which requires that he uphold the rule of law and the proper administration of justice; and/or
 - 1.2 He breached Principle 2 of the SRA Principles 2011 which requires that he act with integrity; and/or
 - 1.3 He breached Principle 6 of the SRA Principles 2011 which requires him to behave in a way that maintains the trust the public places in him and in the provision of legal services.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 30 January 2014 week exhibit JD 1
- Statement of Robert Keith Stowell dated 21 July 2014
- Applicant's statement of costs for hearing on 4 December 2014 dated 26 November 2014

Respondent

- None

Preliminary issues

3. The Respondent was not present at the hearing. A Case Management Hearing ("CMH") had taken place on 2 September 2014. At that hearing, the Tribunal confirmed that there had been good service of the proceedings and directed that if the Respondent did not file and serve an answer to the Rule 5 Statement by no later than 4 p.m. on 16 September 2014 then no evidence (either oral or in writing) should be adduced by him at the substantive hearing of the application. Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"), provided:

"If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

Before the substantive hearing commenced, the Tribunal asked to be provided with a copy of the statement of Mr Stowell, the process server dated 21 July 2014 which had been before the Tribunal on 2 September 2014 describing how he had effected

personal service of a letter addressed to the Respondent from the Tribunal, together with the Form of Application, the Applicant's Statement, the SDPR, the Tribunal's Practice Direction No. 6 and the Standard Directions issued by the Clerk. Standard Direction No 1 gave the date and time of the substantive hearing as 4 December 2014 at 10 a.m. and recited the Tribunal's address. The Tribunal noted that the memorandum of the CMH on 2 December 2014 contained an error in that it recited the date of the substantive hearing as 5 rather than 4 December 2014 but the Tribunal did not consider that this undermined the good service which had already been effected. The Tribunal bore in mind in reaching a decision as to whether to proceed in the absence of the Respondent, the criteria set out in the cases of R v Hayward, Jones and Purvis [2001] QB 862, CA in which Lord Bingham said that "the discretion to commence a trial in the absence of the Defendant should be exercised with the utmost care and caution". The cases set out the criteria to be considered in arriving at the decision. The Tribunal considered that the Respondent had waived his right to be present at the trial by deliberately and voluntarily absented himself from the hearing when he had the means to know when and where it was to take place and the Tribunal determined that it would exercise its power under Rule 16(2) and proceed to hear the application.

4. For the Applicant, Mr Johal asked permission of the Tribunal to correct errors in the Rule 5 Statement at paragraphs 5 and 6 where the year 2013 had been typed in mistake for 2012. The Tribunal gave permission for these amendments to be made, noting that before it was a copy of the Certificate of conviction reciting the correct dates.

Factual Background

5. The Respondent was born in 1965 and admitted as a solicitor in 2001. His name remained on the Roll of Solicitors. The Respondent did not currently hold a practising certificate.
6. The Respondent was previously a partner at Doves Solicitors LLP in London. The practice closed on 30 September 2011.
7. On 21 March 2012, the Respondent was convicted, upon his own confession (on the first day of the hearing), at Ipswich Crown Court of conspiracy to obtain money transfers by deception and a failure to surrender to custody at an appointed time in breach of a Bail Act Order.
8. On 30 August 2012, the Respondent received a sentence of four years imprisonment with a sentence of three months imprisonment (to run concurrently) for the failure to surrender to custody.
9. In his sentencing remarks, His Honour Judge Goodin stated:

"This was, on any construction, a massive fraud on lending institutions principally: also involving occasionally the deception of borrowers. When I say massive fraud, I am referring, of course, to many millions of pounds; £5½ million at any rate... through the accounts of your firm, Doves, alone.

It involved the creation of entirely fictitious, fraudulent identities for purported borrowers, the creation of forged documentation, passports, driving licences and other documents to support that fictitious identity by means of which the lending institutions were deceived. On other occasions - and we heard from some of them - legitimate, perhaps starry eyed and optimistic borrowers were deceived as to their borrowing capacity by the inflation, unknown to them, of their income or their prospects in the documentation and the application submitted to the lending institution. Individuals were hurt, stung badly, lending institutions were well, as I have said, massively defrauded...”

10. On 18 September 2012, the Respondent wrote to the Applicant’s Information Services Department to advise that he had pleaded guilty to an offence of conspiracy to obtain money transfers by deception and had been sentenced to four years imprisonment. The Respondent also sought advice on continuing to practise after his release from prison.
11. On 16 August 2013, the Applicant wrote to the Respondent asking him for an explanation of his conduct.
12. On 24 August 2013, the Respondent wrote to the Applicant stating that given the issues raised he required more time to respond. No response had however been received by the Applicant.
13. On 4 September 2013, a caseworker of the Applicant referred the matter to one of the Applicant’s Authorised Officers, to consider whether it was appropriate to authorise disciplinary proceedings against the Respondent. On 19 September 2013 that officer, satisfied that the public interest and evidential test had been met, decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

14. There were no witnesses.

Findings of Fact and Law

15. 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.
16. **Allegation 1 The allegations against the Respondent, made on behalf the Solicitors Regulation Authority were that by virtue of his conviction upon indictment of Conspiracy to obtain money transfers by deception and failing to surrender to custody at an appointed time in breach of a Bail Act Order:**
 - 1.1 **He breached Principle 1 of the SRA Principles 2011 which requires that he uphold the rule of law and the proper administration of justice; and/or**
 - 1.2 **He breached Principle 2 of the SRA Principles 2011 which requires that he act with integrity; and/or**

1.3 He breached Principle 6 of the SRA Principles 2011 which requires him to behave in a way that maintains the trust the public places in him and in the provision of legal services.

- 16.1 For the Applicant, Mr Johal informed the Tribunal that the Respondent had not practised since 2011. He drew the attention of the Tribunal to the fact that a letter had been sent to the Respondent under Rule 13(6) of the SDPR by way of written notice requesting the Respondent to agree that the documents in the matter might be admitted as evidence. No response had been received and Mr Johal invited Tribunal to proceed on the basis that the Respondent did not challenge the authenticity or accuracy of the document in the Rule 5 Statement bundle. He also reminded the Tribunal that the Respondent had admitted both the offences with which he had been charged. The offence for which he had received a sentence of four years imprisonment related to a large scale mortgage fraud which involved other individuals and took place over a number of years. Mr Johal referred to the use of bogus mortgage applications, the use of fraudulent identities and identity documents and the deception of legitimate borrowers as to their borrowing capacity. It was accepted that the Respondent was not the mastermind but he acted for fictitious third parties and his client account was used to receive the mortgage monies. Mr Johal referred the Tribunal to the sentencing remarks of His Honour Judge Goodin in which he said: “You, Ajayi Seun, were a key player in this conspiracy... You, as I say, were a solicitor. That qualification was crucial to the success of the fraud generally and specifically to your part of it...” The Judge also referred to the Respondent as “a dishonest solicitor” and stated “you have disgraced your profession, brought it into disrepute...” Mr Johal also referred the Tribunal to other documents in the bundle which referred to media coverage relating to the charges against the Respondent and his conviction. The documents included a report from the Guardian newspaper and the East Anglian Daily Times. Mr Johal submitted that the Respondent’s conviction for an offence of dishonesty demonstrated that he had acted as alleged, including acting without integrity and in a way that undermined the trust the public placed in him and in the provision of legal services.
- 16.2 The Tribunal considered the submissions for the Applicant and the evidence. Rule 15(2) of the SDPR provided that:

“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 found allegations 1.1, 1.2, and 1.3 proved to the required standard on the evidence.

Previous Disciplinary Matters

17. In case number 10031-2008, the Respondent admitted allegations that by not disclosing material facts to his lender clients he failed to act in his lender clients’ best interests contrary to Practice Rule 1(c) of the Solicitors Practice Rules 1990; that he

had failed to comply with the instructions of his lender clients; and had acted for the purchaser and the lender in breach of Practice Rule 6(3) of the Solicitors Practice Rules 1990. The Tribunal made no order against the Respondent save that he pay costs in the sum of £15,000.

Mitigation

18. The Respondent was not present and no mitigation had been made for him.

Sanction

19. The Tribunal had regard to its Guidance Note on Sanctions. The most serious misconduct involved dishonesty whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. The Respondent had been convicted of involvement in a major fraud in which he had been described as a “key player” and before that he had failed to answer to bail an offence of which he had also been convicted. He had served a term of imprisonment. A very large amount of money some £5.5m had passed through the Respondent’s client account in the course of the fraudulent and dishonest activity and a significant amount of harm had been caused to lenders and to those borrowers who had been duped. The Tribunal found no exceptional circumstances and determined that for the protection of the public and the maintenance of the reputation of the profession the Respondent should be struck off.

Costs

20. For the Applicant, Mr Johal applied for costs in the amount of £3,986.10. He accepted that the costs were rather high for a case based upon a criminal conviction but submitted that given the lack of engagement by the Respondent, the additional costs were justified. It had been necessary to commission an enquiry agent because the Respondent had failed to collect papers served upon him and to attend two case management hearings. Mr Johal accepted that the time required for the hearing had been less than that estimated in the schedule of costs at four hours and he also pointed out that his travel expenses should be reduced by 50% because he had also attended the Tribunal for a case management hearing in another matter. The Tribunal undertook a summary assessment of the costs claimed and awarded fixed costs of £3,000 to the Applicant. In respect of what amount the Respondent should be required to pay, the Tribunal had regard to the fact that by striking him off it was removing his livelihood but he had been made aware of the need to provide information about his financial circumstances if he wished those circumstances to be taken into account and he had failed to do so. Accordingly the Tribunal made an immediately enforceable order for costs against the Respondent.

Statement of Full Order

21. The Tribunal Ordered that the Respondent Ajayi Omotayo Seun, 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 £3,000.00.

Dated this 12th day of January 2015
On behalf of the Tribunal

R. Hegarty
Chairman