

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11228-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

BIBIANA MARTIAL

Respondent

Before:

Mr L. N. Gilford (in the chair)

Mr A. Ghosh

Mr M. G. Taylor CBE DL

Date of Hearing: 22 May 2014

Appearances

Mr Andrew Bullock, Senior Legal Advisor, employed by the Solicitors Regulation Authority at 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, Bibiana Martial, were that:-
 - 1.1. In breach of Rules 1.04 and 1.05 of the Solicitors Code of Conduct 2007 she:
 - i) failed to take any action on a client's matter between July 2008 and December 2009; and
 - ii) failed to comply with an Unless Order of the Court, in consequence of which the client's claim was struck out; and
 - iii) failed to notify the client that the claim had been struck out.
 - 1.2 She breached Principles 4 and 6 of the SRA Principles 2011 and failed to achieve any or all of Outcomes O (1.1), O (1.2), O (1.5), O (1.16) and O (3.4) of the SRA Code of Conduct 2011 by:
 - i) failing to comply with an Order of the London Central Employment Tribunal dated 16 April 2012 as a consequence of which the client's claim was struck out; and by
 - ii) failing to notify the client that the claim had been struck out; and by
 - iii) continuing to act when there was a risk that her own interests and those of her employer would conflict with the interests of the client.
 - 1.3 In breach of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007, Principles 2 and 6 of the SRA Principles 2011, and Outcomes O (5.1), O (5.3) and O (5.6) of the SRA Code of Conduct 2011 she:
 - i) backdated letters to the Court and to the Tribunal; and
 - ii) deliberately misled the Court and the Tribunal.
 - 1.4 The Respondent failed to co-operate with her regulator, the SRA, in an open and timely manner, contrary to Principle 7 of the SRA Principles 2011.
 - 1.5 Allegation 1.3 was advanced on the basis that the Respondent's conduct was dishonest, but it was not necessary to establish dishonesty to prove the allegation.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included:

Applicant:

- Application dated 7 March 2014;
- Rule 5 Statement dated 7 March 2014, together with Exhibit AHJW1;

- Supplemental Bundle consisting of 92 pages;
- Email to the Tribunal from Mr Alistair Willcox, Legal Adviser at the SRA, dated 28 April 2014 attaching copies of four further documents by way of disclosure;
- Certificate of Readiness of the Applicant dated 17 April 2014;
- Schedule of Costs of the Applicant dated 19 May 2014;
- HM Land Registry Property Register for a property owned by the Respondent in London SW17.

Respondent:

- Email dated 21 May 2014 from the Respondent to the SRA, indicating that the Respondent would not be attending the substantive hearing.

Tribunal:

- Standard Directions dated 11 March 2014;
- Memorandum of Case Management Hearing dated 13 May 2014.

Preliminary Matter (1)

3. Mr Bullock referred to the email dated 21 May 2014 from the Respondent. In that email she had indicated that she was unable to attend the “meeting” due to a prearranged hospital appointment. She went on to say that:

“after extensive deliberations I have arrived at the difficult decision that the meeting should go ahead in my absence as my current family situation looks unlikely to change immediately to allow me the time to address and formulate a response to the points raised in the documents from my former employer. I will therefore have to accept the sanction imposed by the panel and await hearing from you.”

4. In Mr Bullock’s submission it was clear from the contents of the email that the Respondent had voluntarily decided to absent herself in the full knowledge that the hearing was to take place today. He therefore invited the Tribunal to proceed in the Respondent’s absence.

The Tribunal’s Decision on Preliminary Matter (1)

5. The Tribunal had taken careful consideration of the email dated 21 May 2014 and Mr Bullock’s submissions. The Tribunal was satisfied that the Respondent was aware of the hearing today and had taken the decision to absent herself. The Tribunal had applied the principles in R v Hayward, Jones and Purvis [2001] EWCA Crim 168 and would hear the matter today in the absence of the Respondent.

Preliminary Matter (2)

6. Mr Bullock said that in addition to the Exhibit Bundle there was a Supplemental Bundle before the Tribunal. The contents of this Supplemental Bundle had been disclosed to the Respondent and lodged with the Tribunal. The Supplemental Bundle consisted of clearer copies of black and white screen shots, which the Tribunal had already given its permission for the Applicant to file and serve upon the Respondent and correspondence which filled in some gaps in the Exhibit Bundle. In reviewing the documentation it had appeared to the Applicant that there was this further material which was likely to be helpful to the Tribunal, in particular the minutes of the investigatory meeting held on 28 June 2012, the minutes of a telephone conference held on 1 August 2012 and the Judgment of the London Central Employment Tribunal dated 2 August 2012.
7. Mr Bullock asked for leave to adduce all of the documents at the hearing.

The Tribunal's Decision on Preliminary Matter (2)

8. The Tribunal would permit the Applicant to refer to the documentation in the Supplemental Bundle as it had been seen by the Respondent and was relevant to the proceedings.

Preliminary Matter (3)

9. Mr Bullock told the Tribunal that the usual Statutory Notices relating to exhibit bundle AHJW1 had been served on the Respondent on 12 May 2014; no Counter Notices had been filed. He acknowledged that the Civil Evidence Act Notice served on 13 June 2014 was out of time but in his submission that affected the weight that the Tribunal should give to the evidence rather than its admissibility; the Tribunal was entitled to proceed on the basis that the documents were authentic in the absence of any challenge.

The Tribunal's Decision on Preliminary Matter (3)

10. The Tribunal would allow the Applicant to proceed but would have to consider the weight to give to any of the relevant documentation in its decision.

Factual Background

11. The Respondent was born on 3 February 1961 and admitted as a solicitor on 15 October 1996.
12. At all material times, from 1 January 2003 to 2 August 2012, the Respondent practised as a solicitor at Battersea Law Centre, which is a trading style of South West London Law Centres ("SWLLC"), at 125 Bolingbroke Grove, London, SW11 1DA.
13. SWLLC wrote initially to the SRA on 8 October 2012, indicating that on 2 August 2012 the Respondent had been dismissed from her position as a solicitor due to her conduct of a case (that of Ms "R") and voicing concerns about her fitness to practise. A second letter followed on 19 April 2013, enclosing a number of documents further

to an investigation which had been undertaken into the Respondent's conduct of the case of Ms "B".

The case of Ms R

14. The Respondent had conduct of a civil litigation matter on behalf of Ms R.
15. The proceedings in the case of Ms R were struck out at the Central London County Court on the 26 July 2010, due to a failure on the Respondent's part to comply with an Order of the Court dated 22 June 2010. The Order indicated that an Allocation Questionnaire was to be returned to the Court on or before the 2 July 2010.
16. Ms R made a complaint to SWLLC about the handling of her case and the file was reviewed by a senior solicitor.
17. The investigation into the Respondent's actions conducted by SWLLC revealed that, prior to the case of Ms R being struck out, the Respondent had not undertaken any work on the case between July 2008 and December 2009.
18. It was also discovered that letters found on the Respondent's file did not bear their creation date, noted upon SWLLC's computer system, but an earlier date.
19. The following letters were involved:
 - a) A letter dated 17 May 2010, shown on the computer system as having been created on the 3 October 2011, to Ms "AG" the Defendant in the proceedings, informing her that the Respondent's instructions were "to proceed to the Trial of this matter."
 - b) A letter dated 13 October 2010, shown on the computer system as having been created on the 6 October 2011, to the Manager of the Central London County Court, enclosing a completed Allocation Questionnaire and an allocation fee in the sum of £200.
 - c) A letter dated 12 December 2010, shown on the computer system as having been created on the 31 October 2011, to the Central London County Court, requesting an update about a hearing date.
 - d) A letter dated 12 January 2011, shown on the computer system as having been created on the 31 October 2011, to the Central London County Court, requesting an update about a hearing date.
 - e) A letter dated 15 February 2011, shown on the computer system as having been created on the 31 October 2011, asking the Court for an explanation as to "the lengthy and yet unexplained delay in providing...a hearing date...".
 - f) A letter dated 15 April 2011, shown on the computer system as having been created on the 31 October 2011, asking the Court for an explanation as to delay and requesting information about a hearing date.

- g) A letter dated 3 August 2011, shown on the computer system as having been created on the 2 October 2011, complaining to the Court and enclosing correspondence.
 - h) A letter dated 6 August 2011, shown on the computer system as having been created on the 2 October 2011, updating Ms R as to costs and funding from the Legal Services Commission.
 - i) A letter dated 25 August 2011, shown on the computer system as having been created on the 2 October 2011, to the Court requesting an update.
 - j) A letter dated 26 October 2011, shown on the computer system as having been created on the 31 October 2011, to the Court, requesting an update and stating that the Respondent remained concerned about the matter despite previous requests.
 - k) A letter dated 15 February 2012, shown on the computer system as having been created on the 25 June 2012, to Ms R indicating the present position regarding costs.
 - l) A letter dated 14 March 2012, shown on the computer system as having been created on the 25 June 2012, to the Court asking for information "...as to when matters referred to will be addressed as we continue to be pressed by our client for details of a hearing date."
 - m) A letter dated 30 March 2012, shown on the computer system as having been created on the 25 June 2012, to the Court, referring to previous correspondence and asking for an urgent explanation as to "the delay on this matter."
 - n) A letter dated 19 April 2012, shown on the computer system as having been created on the 25 June 2012, to the Court, asking for an urgent response and an update as to "the current status" of Ms R's claim.
 - o) A letter dated 30 May 2012, shown on the computer system as having been created on the 25 June 2012, to the Court, asking for "details of a listing" and an explanation as to "lengthy delay."
20. A letter dated 9 March 2012 to the Battersea Law Centre from the Central London County Court indicated that that Court did not receive some of the letters found on the Respondent's file.
21. An investigatory meeting was held with the Respondent by the Chief Executive of SWLLC on 28 June 2012, following which she was suspended from her employment. The Respondent's attendance was then requested at a disciplinary hearing on the 1 August 2012 to offer an explanation in respect of the matter. In that meeting the Respondent said that the letters had been created on the dates printed upon them and that she could think of no explanation as to why the computer records specified different dates. The outcome of the disciplinary process was that the Respondent was dismissed for gross misconduct. The Respondent was informed of the decision in a letter from her employer of the 2 August 2012.

The case of Ms B

22. Ms B was the Claimant in an Employment Tribunal matter and the Respondent had conduct of her claim.
23. The Respondent failed to provide the London Central Employment Tribunal with copies of Ms B's medical records by the 13 March 2012, in accordance with an Order of the Tribunal dated the 31 January 2012. Consequently, the solicitors for the Respondent to the employment claim wrote to the Tribunal to advise of the Claimant's non-compliance and requested an Unless Order.
24. Ms B's claim was subsequently struck out and the Respondent applied to the Tribunal for a Review Hearing on her behalf in a letter dated the 23 May 2012. In that letter she said that she had corresponded with Ms B's General Practitioner regarding the disclosure of medical evidence.
25. It was discovered, by reference to SWLLC's computer system, that letters found on the Respondent's file did not bear their creation date but an earlier date. The following correspondence was involved:
 - a) An authority dated 11 February 2012, from the client to release her medical records, shown on the computer system as having been created on 23 May 2012.
 - b) A letter dated 2 March 2012 to Ms B's General Practitioner chasing a medical report, shown on the computer system as having been created on 23 May 2012.
 - c) A letter dated 19 March 2012 to Ms B's General Practitioner enclosing copy correspondence purportedly already sent and chasing a medical report, shown on the computer system as having been created on 23 May 2012.
 - d) A letter dated 23 March 2012 to Ms B's General Practitioner requesting a medical report as a matter of urgency, shown on the computer system as having been created on 23 May 2012.
 - e) A letter dated 3 April 2012 to Ms B's General Practitioner requesting a medical report as a matter of urgency, shown on the computer system as having been created on 23 May 2012.
 - f) A letter dated 12 April 2012, to Ms B's General Practitioner requesting an update on the medical report, shown on the computer system as having been created on 23 May 2012.
 - g) A letter dated 26 April 2012, to Ms B's General Practitioner indicating that the provision of the medical report was "extremely urgent", shown on the computer system as having been created on 23 May 2012.
 - h) A letter dated 30 April 2012, to Ms B's General Practitioner chasing the medical report and indicating that an extension had been granted, shown on the computer system as having been created on 23 May 2012.

- i) A letter dated 1 May 2012, to Ms B's General Practitioner enclosing the client's impact statement, shown on the computer system as having been created on 23 May 2012.

SRA Correspondence

- 26. The SRA wrote to the Respondent on the 10 June 2013 and 5 September 2013 asking her for an explanation. There was no response to either of the letters.

Witnesses

- 27. None

Findings of Fact and Law

- 28. The Tribunal had due regard to the Respondent's right to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Applicant was required to prove the allegations beyond reasonable doubt.

- 29. **Allegation 1.1 - In breach of Rules 1.04 and 1.05 of the Solicitors Code of Conduct 2007 she:**

- i) **failed to take any action on a client's matter between July 2008 and December 2009; and**
- ii) **failed to comply with an Unless Order of the Court, in consequence of which the client's claim was struck out; and**
- iii) **failed to notify the client that the claim had been struck out.**

Allegation 1.2 - She breached Principles 4 and 6 of the SRA Principles 2011 and failed to achieve any or all of Outcomes O(1.1), O(1.2), O(1.5), O(1.16) and O(3.4) of the SRA Code of Conduct 2011 by:

- i) **failing to comply with an Order of the London Central Employment Tribunal dated 16 April 2012 as a consequence of which the client's claim was struck out; and by**
- ii) **failing to notify the client that the claim had been struck out; and by**
- iii) **continuing to act when there was a risk that her own interests and those of her employer would conflict with the interests of the client.**

Allegation 1.3 - In breach of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007, Principles 2 and 6 of the SRA Principles 2011, and Outcomes O(5.1), O(5.3) and O(5.6) of the SRA Code of Conduct 2011 she:

- i) **backdated letters to the Court and to the Tribunal; and**
- ii) **deliberately misled the Court and the Tribunal.**

- 29.1 The Tribunal treated each of the allegations as having been denied by the Respondent.
- 29.2 Mr Bullock took the Tribunal through AHJW1. It could be seen that three matters had led to the Respondent's dismissal from her employment with SWLCC.
- 29.3 The first of these matters was the late filing of the allocation questionnaire in the case of Ms R and her subsequent failure to notify Ms R or SWLCC's insurers that Ms R's claim had been struck out as a result. The Respondent herself had accepted that the allocation questionnaire had been submitted late and it was also correct to say that she had accepted that the insurers had not been notified. In Mr Bullock's submission, by allowing Ms R's claim to be struck out, the Respondent had manifestly failed to act in Ms R's best interest.
- 29.4 The second matter was that documents had been created on the file of Ms R after the event. There was however no evidence that the documents had gone any further than the file or that the Court had been misled in consequence.
- 29.5 SWLCC had examined the documents on the physical file against those held on their computer. It had been established that between 2 October 2011 and 25 June 2012 the Respondent had created fifteen letters to the clients, the defendant and the court which bore a date earlier than the date upon which they had been created. Mr Bullock took the Tribunal to the appropriate screenshots to demonstrate his contention; in particular at page 51 of the Supplemental Bundle it could be seen that the author of this particular letter was the Respondent. The Respondent had said that the letters had been created on the dates shown upon them but had given no explanation for the discrepancy in the computer records. In Mr Bullock's submission the reason that the Respondent had given no explanation as to that discrepancy was that what she was saying was untrue; it was she who had backdated the letters. It followed that she was without integrity and had diminished the trust that the public could place in her.
- 29.6 The third reason that the Respondent had been dismissed from her employment was that there was no activity recorded on the file relating to Ms R between July 2008 and December 2009, neither was there any explanation for that lack of activity. The Respondent's explanation was that she had had no recollection as to why there would have been no activity on the file between those dates, save for some disruption in 2009 when SWLCC moved office locations. In Mr Bullock's submission there was no reason for such a delay and this again reflected upon the Respondent's integrity and the trust that the public could place in her.
- 29.7 The Respondent's failings and actions in the case of Ms B had been discovered after her dismissal. In that case Ms B's claim had also been struck out and the Respondent did not inform Ms B of the position but made an application to reinstate the claim without having obtained instructions. In Mr Bullock's submission it was in Ms B's interests that she make an informed decision to reinstate the case and at that point there was a potential conflict of interests between Ms B and SWLCC.
- 29.8 It could again be seen from the evidence before the Tribunal that letters had also been created and backdated by the Respondent upon Ms B's file, for instance that at page 53 of AHJW1 was dated 30 April 2012, yet data from the computer system data at page 54 showed that the letter had been created on 23 May 2012, after the expiry of

the Employment Tribunal's deadline. Some of these letters had been used in the application to reinstate Ms B's claim at the Employment Tribunal.

29.9 The Tribunal was satisfied as to the authenticity of the documentation before it. The Tribunal had paid close attention to Mr Bullock's submissions and all of the documentation before it, including the explanations of the Respondent in her the investigatory meeting on 28 June 2012 and the disciplinary hearing on 1 August 2012. The Tribunal found each of the allegations to have been proved beyond reasonable doubt on the facts and documentation before it, which documentation spoke for itself.

30. **Allegation 1.4 - The Respondent failed to co-operate with her regulator, the SRA, in an open and timely manner, contrary to Principle 7 of the SRA Principles 2011.**

30.1 The Tribunal treated this allegation as having been denied by the Respondent.

30.2 Mr Bullock said that it could be seen from the documentation before the Tribunal that the SRA had written to the Respondent on two occasions to ask for her explanation and had received no response.

30.3 The Tribunal found that it was a matter of fact that there had been no response to either of the SRA's letters and therefore found this allegation to have been proved beyond reasonable doubt on the facts and documents before it.

31. **Allegation 1.5 - Allegation 1.3 was advanced on the basis that the Respondent's conduct was dishonest, but it was not necessary to establish dishonesty to prove the allegation.**

31.1 The Tribunal treated this allegation as having been denied by the Respondent.

31.2 The Respondent's conduct was, in Mr Bullock's submission, plainly and obviously dishonest. Not only were letters backdated upon both files but in Ms B's case they had been used to mislead an Employment Tribunal.

31.3 Mr Bullock said that twenty-four documents had been backdated over a ten month period and these actions by the Respondent were clearly premeditated. She had deliberately laid a false paper trail; this was not a moment of madness but one where some thought and effort must have gone into the enterprise. She had been given the chance to explain her actions at three distinct stages and had not done so, there was no innocent explanation for the discrepancy between the dates on the letters and those on the computer system. In Mr Bullock's submission the Tribunal could be satisfied to the criminal standard that her explanation was not credible.

31.4 The test for dishonesty was the dual one set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12, followed in Bultitude v The Law Society [2004] EWCA Civ 1853 and Bryant & Another v The Law Society [2007] EWHC 3043 (Admin). It was submitted that the Tribunal could, on the evidence, find that the Respondent had acted dishonestly according to the standard of reasonable and honest people (the objective test) and that she realised that by those standards her conduct was dishonest (the subjective test).

- 31.5 Mr Bullock went on to say that the consequences, should the Tribunal make a finding of dishonesty against the Respondent, were set out in the case of SRA v Sharma [2010] EWHC 2022 (Admin), where Coulson J had said that where a solicitor had been found to have been dishonest, then, unless exceptional circumstances could be shown, the normal consequence should be for that solicitor to be struck off the Roll of Solicitors.
- 31.6 The Tribunal had considered the objective test as set out in Twinsectra and was satisfied so that it was sure that the Respondent's conduct in regard to allegation 1.3 was objectively dishonest. In deciding upon the subjective part of the test, as to whether the Respondent had herself realised that by those same standards her conduct was dishonest, the Tribunal had fully considered Mr Bullock submissions and the Respondent's explanations. In the Tribunal's view, the backdating of letter on such a scale and the use of those letters to mislead judicial bodies must have required considerable forethought and planning. The Tribunal was driven to the conclusion that the Respondent must herself have realised that her conduct was dishonest.
- 31.7 The Tribunal was accordingly satisfied beyond reasonable doubt that the actions of the Respondent in backdating the letters to the Court and to the Tribunal and deliberately misleading those bodies was dishonest.

Previous Disciplinary Matters

32. None.

Sanction

33. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
34. This was a serious case where an allegation of dishonesty had been proved against the Respondent. Following SRA v Sharma, the Tribunal could find no exceptional circumstances and accordingly the proportionate penalty in this case, necessary to protect the public and maintain the reputation of the profession, was that of Strike Off.

Costs

35. Mr Bullock referred to the Applicant's Schedule of Costs dated 19 May 2014 and asked for total costs in the sum of £5,983. A copy of the Schedule had been served by email on the Respondent on 19 May 2014, together with a covering letter drawing her attention to the decision in the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin). She had also been provided with a blank Personal Financial Statement for completion so that the Tribunal could take her financial circumstances into account in fixing any sanction and/or costs against her. There had been no response from the Respondent despite the fact that the Standard Directions issued by the Tribunal on 11 March 2014 at paragraph 11 required her to file such a response by 23 April 2014 should she wish her means to be taken into consideration by the Tribunal.

36. The Applicant had made enquiries as to the Respondent's capital position and could demonstrate that she owned a property in London SW17; Mr Bullock provided the Tribunal with a copy of the Land Registry entries in the Register on 29 April 2014.

The Tribunal's Decision on Costs

37. The Tribunal observed that the Schedule of Costs had been served on the Respondent less than five working days before the substantive hearing, contrary to paragraph 13 of the Standard Directions. However, it acknowledged that some notice had been given to the Respondent and that a detailed assessment of costs would only be likely to add to the Respondent's financial burden.
38. The Tribunal would make a summary assessment of costs in the sum of £4,000 pounds. The sum of £1,942 was deducted from that shown on the Costs Schedule to reflect duplication of effort between Mr Bullock and Mr Willcox, the shorter than anticipated hearing and the fact that Mr Bullock had been in London in any event for a conference on another matter.

Statement of Full Order

39. The Tribunal Ordered that the Respondent, Bibiana Martial, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,000.

Dated this 4th day of July 2014
On behalf of the Tribunal

L. N. Gilford
Chairman