

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11263-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

DUNCAN HUGH RANTON

Respondent

Before:

Miss N. Lucking (in the chair)

Mr. J. Astle

Mr. G. Fisher

Date of Hearing: 14 April 2015

Appearances

Ms Suzanne Jackson, Senior Legal Advisor, employed by the Solicitors Regulation Authority (“the SRA”) 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 in a Rule 5 statement dated 30 July 2014, on behalf of the SRA, are that he:
 - 1.1 Prepared and sent to his client a document which purported to be, but was not, a true copy of a Consent Order dated 23 April 2012 and sealed by the court on 27 April 2012 in order to mislead a client in breach of Principles 2, 4, 5 and 6 of the SRA Principles 2011 (“SRA Principles”) and in so doing further failed to achieve outcome 1.2 of the SRA Code of Conduct 2011 (“SRA CC”).
 - 1.2 Failed to act in the best interests of his clients and to provide a proper standard of service by failing to have lodged Point of Dispute in accordance with the Consent Order dated 23 April 2012 in breach of Principles 4 and 5 of the SRA Principles and in so doing failed to achieve outcome 1.2 and 1.5 of the SRA CC.
 - 1.3 Misled an opponent in litigation; in breach of Principles 2 and 6 of the SRA Principles.
 - 1.4 Misled his employers, Kingsley Napley during the investigation into the client’s complaint in breach of Principles 2 and 6 of the SRA Principles.
 - 1.5 Made misleading statements to his employer at interview on 8 May 2012 in breach of Principles 2 and 6 of the SRA Principles.
2. Dishonesty

In relation to Allegations 1.1, 1.3, 1.4 and 1.5 it was alleged that the Respondent acted dishonestly although it was not necessary to prove dishonesty to prove the allegations themselves.

The particulars of the dishonesty raised against the Respondent were:

- (i) That he falsified a document on a client file.
- (ii) That he made statements to his clients, his opponent in litigation and his employer

which he knew to be inaccurate, misleading and untrue.

Documents

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

Applicant:

- Application and Rule 5 Statement dated 30 July 2014, together with Appendix AJB1;
- Copy email from the Applicant to the Respondent dated 5 November 2014;
- Copy email from the Applicant to the Respondent dated 10 April 2015 attaching letter from the Applicant to the Respondent dated 27 June 2012;

- Copy letter from the Applicant to the Respondent dated 19 February 2015;
- Schedule of Costs of the Applicant dated 11 April 2015.

Respondent:

- Copy letter from the Respondent to the Applicant dated 3 October 2014.

Tribunal:

- Memorandum of agreed directions dated 4 October 2014;
- Memorandum of case management hearing on 24 March 2015.

Preliminary Matter (1)

4. In Ms Jackson's submission it was appropriate to proceed with the hearing in the Respondent's absence under Rule 16 (2) of the Solicitors (Disciplinary Proceedings) Rules 2007. Revised directions had been issued by the Tribunal in October 2014 by agreement with the Respondent and on 20 November 2014 the Tribunal had told the Respondent of the hearing date. The last contact with the Respondent had been on 4 October 2014 and there had been no indication that he had changed his address.
5. As background, Ms Jackson told the Tribunal that the Respondent held a practising certificate with conditions. Since 6 March 2015 he had been a consultant at another firm of solicitors. Under the conditions on his practising certificate the Respondent was only permitted to undertake employment in approved employment and that other firm was engaged in obtaining that approval which was still in progress.

The Tribunal's Decision on Preliminary Matter (1)

6. The Tribunal had taken careful note of the Respondent's involvement in the proceedings on 4 October 2014 at the case management hearing. It was clear that he had been fully aware of the proceedings, had had good service of them and was by now aware of the date fixed for the substantive hearing.
7. The Tribunal had been mindful of its discretion to proceed with the hearing, balancing fairness to the Respondent with the public interest in proceeding with cases as expeditiously as possible. In the Tribunal's determination, any adjournment of the matter would be unlikely to achieve the Respondent's attendance. The Tribunal had concluded that on balance it was right that the matter should proceed at this hearing.

Preliminary Matter (2)

8. Ms Jackson asked that the letter dated 27 June 2012 from the SRA to the Respondent be admitted into evidence. The Respondent was on notice that she would be asking for leave of the Tribunal to produce the document at the hearing as could be seen from her e-mail dated 10 April 2015 to him. He had made no objection to that course of conduct.

The Tribunal's Decision on Preliminary Matter (2)

9. The Tribunal noted that there was no objection to the admission of the letter dated 27 June 2012. The Tribunal determined that the letter could be produced by the Applicant at this hearing and would be allowed into evidence.

Factual Background

10. The Respondent was born on 19 June 1972 and admitted as a solicitor on 15 September 2000. At all material times the Respondent was an assistant solicitor in the Family Department at Kingsley Napley LLP ("the firm") of Knights Quarter, 14 St Johns Lane, London EC1M 4AJ. The Respondent was summarily dismissed from the firm for gross misconduct on 17 May 2012.

Background

11. A self-report was made to the SRA by Kingsley Napley on 25 May 2012 detailing the conduct undertaken by the Respondent on a matter known as the "G" matter.
12. The Respondent acted for the G family (the first to sixth Defendants in contentious probate proceedings). He was instructed in September 2007. The proceedings related to a dispute concerning the clients' late father's estate. The instructions included the opposition to an application to declare their father domiciled in the UK, an application for the removal of the administrators of the estate, "DH" and "JO" a partner in another firm of solicitors ("the other firm"), and an application made by DH and her adult son "KH" under the Inheritance (Provision for Family and Dependents) Act 1975. DH and KH were represented by the other firm.
13. Under a Consent Order dated 23 April 2012 Points of Dispute were to be filed by 27 April 2012. The Respondent failed to lodge the Points of Dispute by this date and proceeded to provide the client with a document which purported to be, but was not, a true copy of that consent order and which detailed that the Points of Dispute were to be filed by 8 May 2012.
14. A letter dated 30 April 2012 which was sent to the other firm, contained false information regarding the Points of Dispute and did not appear on the physical file or the firm's IT system.
15. Following two letters of complaint from the client, Ms G, on 2 and 4 May 2012 an investigation was commenced during which the Respondent was interviewed on 8 May 2012 prior to the Disciplinary Proceedings which took place on the 16 May 2012.

Allegations 1.1 and 1.2 – The Consent Order and failing to lodge the Points of Dispute

16. The Respondent wrote to the other firm by fax and DX on 19 April 2012 enclosing a draft Consent Order. On the same day the draft Consent Order was returned by DX and fax by the other firm with proposed amendments. In a letter dated 20 April 2012 the Respondent agreed to the other firm's proposed amendments and enclosed a signed revised version. The letter referred to amendments to paragraphs 3, 4 and 6,

which related to timing. By letter dated 23 April 2012 the other firm returned the Consent Order to which they had added their signature and asked for confirmation of its lodgement. The Consent Order (CO1) was thereafter lodged with the Senior Courts Costs Office (“SCCO”) of the Family Division of the High Court within the proceedings and sealed on 27 April 2012.

17. The relevant paragraphs on the second page of the CO1 read:
- “3. The First to Sixth Defendants do file and serve, by 4.00pm on 27 April 2012, Points of Dispute to the Claimants’ Bills of Costs in respect of the Costs Orders.
 - 4. The Claimants do file and serve (if so advised), by 4.00pm on 18 May 2012, Points in reply thereto.
 - ...
 - 6. Detailed assessment of the Bills of Costs in respect of the Costs Orders be listed on the first open date after 18 May 2012 ...”
18. In a letter dated 30 April 2012 the Respondent wrote to the other firm saying he had failed to lodge the Points of Dispute and requested an extension of time to 4 May 2012. The Respondent stated that the Points of Dispute were with his clients and their costs draughtsman for consideration when this was not the case.
19. On 30 April 2012 a copy of the sealed Consent Order was requested by the clients and chased on 1 and 2 May 2012. The Respondent sent what was purported to be CO1 attached to an email on the same day. The attachment which was sent (CO2) was different in that paragraphs 3, 4 and 6 read:
- “3. The First to Sixth Defendants do file and serve, by 4.00pm on 8 May 2012, Points of Dispute to the Claimant’s Bills of Costs in respect of the Costs Orders.
 - 4. The Claimants do file and serve (if so advised), by 4.00pm on 29 May 2012, Points in Reply thereto.
 - ...
 - 6. Detailed assessment of the Bills of Costs in respect of the Costs Orders be listed on the first open date after 29 May 2012 ...”
20. Kingsley Napley carried out an examination of the court file on 8 and 10 May 2012 which confirmed that CO1 was the only Consent Order filed on the court file since 1 April 2012. There was no copy of CO2 on the court file or on Kingsley Napley’s IT system. The other firm had no knowledge of CO2. There was no copy of the letter dated 30 April 2012 on the file or on the firm’s IT system. A copy of the letter had to be obtained from the other firm.

Allegation 1.3 - Misleading an opponent in litigation

21. The letter to the other firm dated 30 April 2012 stated that the Points of Dispute were with the Respondent's clients and their costs draughtsman for consideration and approval. They were however incomplete at this time and had never been sent to the clients. The Respondent made admissions to this effect in the internal meeting held by Kingsley Napley on 8 May 2012, to look into the complaints made by Ms G.
22. The Respondent was asked whether the Points of Dispute were with the client, to which he answered "no". He was then asked if they were with the costs draftsman, to which he answered "in house". The Respondent agreed that the letter contained untruths.

Allegation 1.4 and 1.5 - Misleading his employer

23. At the meeting on the 8 May 2012 the Respondent maintained that CO2 was a genuine document. In the internal investigation undertaken by Kingsley Napley, following the complaints from Ms G, the Respondent maintained that the court must have sealed two versions of the same document and maintained that the Points of Dispute were still due on the 8 May 2012, being the date referred to in the CO2.
24. At the Disciplinary Hearing on 16 May 2012 the Respondent again accepted that he had deceived the other firm in the letter of 30 April 2012 and that he had "on repeated request of a client to send you a copy of a Court document you sent the second page of a document you had created to deceive the client into believing that this was the true court document and that you had not missed the deadline imposed on you by the court order"

Submissions of the Applicant

25. Ms Jackson took the Tribunal carefully through the facts of the matter and the evidence underlying the allegations.
26. Ms Jackson said that the Respondent had not filed an Answer to the allegations but at the disciplinary hearing convened by Kingsley Napley on 16 May 2012 and in his letter dated 16 June 2014 to the SRA he had made certain admissions and accepted that he had altered a court document, deceived the other firm and had lied and misled his employers at the preliminary disciplinary hearing on 8 May 2012. He had also accepted that he had been dishonest in this respect.
27. In Ms Jackson's submission the creation of document CO2 had been done in order to cover up the failure of the Respondent to deal with the G matter in a timely manner. She referred to the dual test for dishonesty set out in Twinsectra Ltd v Yardley and Others [2002] UKHL and submitted that the Tribunal could be sure that the Respondent was acting dishonestly; indeed he had made extensive admissions. He had concealed the truth from his employer which had led to the clients being further misled. In Ms Jackson's submission his conduct had been premeditated and was a conscious attempt to conceal the true facts of the matter. The Respondent had given various explanations for his behaviour but no reasonable, prudent, honest solicitor

would have acted in the manner that the Respondent had acted; the probity of a solicitor was tested when pressures arose.

28. Ms Jackson referred to one of the guiding principles in Bolton v The Law Society [1994] 1 WLR 512 that a solicitor should be trusted “to the ends of the Earth” and asked the Tribunal to bear in mind the judgment in SRA v Sharma [2010] EWHC 2022 (Admin), where it was said that where a solicitor had been found to have been dishonest, unless exceptional circumstances could be shown, then the normal consequence should be for that solicitor to be struck off. In her submission, in cases of dishonesty this was the sanction required to maintain public confidence in the profession.

Witnesses

29. None.

Findings of Fact and Law

30. The Tribunal had due regard to the Respondent’s right 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.
31. The Applicant was required to prove the allegations beyond reasonable doubt.
32. The Tribunal treated each of the allegations as having been denied by the Respondent.
33. **The allegations against the Respondent, Duncan Hugh Ranton, made in a Rule 5 statement dated 20 July 2014, on behalf of the SRA, are that he:**

Allegation 1.1 - Prepared and sent to his client a document which purported to be, but was not, a true copy of a Consent Order dated 23 April 2012 and sealed by the court on 27 April 2012 in order to mislead a client in breach of Principles 2, 4, 5 and 6 of the SRA Principles 2011 (“SRA Principles”) and in so doing further failed to achieve outcome 1.2 of the SRA Code of Conduct 2011 (“SRA CC”).

Allegation 1.2 - Failed to act in the best interests of his clients and to provide a proper standard of service by failing to have lodged Point of Dispute in accordance with the Consent Order dated 23 April 2012 in breach of Principles 4 and 5 of the SRA Principles and in so doing failed to achieve outcome 1.2 and 1.5 of the SRA CC.

Allegation 1.3 - Misled an opponent in litigation; in breach of Principles 2 and 6 of the SRA Principles.

Allegation 1.4 - Misled his employers, Kingsley Napley during the investigation into the client’s complaint in breach of Principles 2 and 6 of the SRA Principles.

Allegation 1.5 - Made misleading statements to his employer at interview on 8 May 2012 in breach of principles 2 and 6 of the SRA Principles.

- 33.1 The Tribunal determined that this was a case where the facts spoke for themselves. The Respondent had made wide-ranging admissions in correspondence and in interview with Kingsley Napley, which evidence was before the Tribunal.
- 33.2 The Tribunal had considered most carefully all of the evidence before it, the SRA Principles and the SRA CC and was satisfied to the higher standard of proof that each of the allegations before it was made out.
34. **Allegation 2 - In relation to Allegations 1.1, 1.3, 1.4 and 1.5 it was alleged that the Respondent acted dishonestly although it was not necessary to prove dishonesty to prove the allegations themselves.**
- 34.1 The Tribunal applied the test in Twinsectra Ltd v Yardley. The first part of that test was whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. The Tribunal had no doubt that in relation to allegations 1.1, 1.3, 1.4 and 1.5 the Respondent's conduct was objectively dishonest.
- 34.2 In deciding upon the subjective part of the test, as to whether the Respondent had himself realised that by those same standards his conduct was dishonest, the Tribunal had fully considered the evidence presented to it, including the Respondent's assertion that at the relevant time his judgement had been poor. However, at the time the Respondent had been an experienced solicitor who had set out on a deliberate and calculated course of action to conceal his failure to deal with a matter, which had involved him in creating a false document and then embarking upon a series of untruths. His conduct had been repeated and he had persisted in those untruths over a matter of days. There was no cogent medical evidence before the Tribunal concerning the Respondent's state of mind at the time of these events, only the Respondent's assertion that his judgement had been poor due to his personal circumstances.
- 34.3 In the Tribunal's determination, these were blatant acts and the Tribunal was satisfied so that it was sure that the subjective part of the test in Twinsectra v Yardley was proved. The Tribunal therefore found allegation 2 to have been proved beyond reasonable doubt.

Previous Disciplinary Matters

35. None.

Mitigation

36. Any mitigation by the Respondent was contained within his letter dated 16 June 2014 to the SRA and the Tribunal took full account of that mitigation.

Sanction

37. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
38. The Tribunal determined that the matter before it involved allegations of the most serious kind. The Respondent's culpability was considerable and harm had been caused both to the clients concerned and to the reputation of the profession.

39. There were a number of aggravating factors in this case, such as the dishonesty and the deliberation with which the Respondent had gone about concealing the matter from the other firm, the client and his own employer. Whilst the Respondent had said that he wished to make good and assist the person taking over the case it had been an empty offer as he had been summarily dismissed.
40. Whilst the Respondent's actions had been of relatively brief duration in a previously unblemished career, the Tribunal was concerned that he had absented himself from the proceedings and had given no explanation for his conduct. It noted that although he had co-operated with the Applicant and the Tribunal at the start of the proceedings he had not done so in the past few months.
41. The Tribunal had considered most carefully the most appropriate sanction in all of the circumstances. The Tribunal had found a number of most serious allegations against the Respondent to have been proved and had also found that the Respondent had been dishonest. There were no exceptional circumstances in this case and following the guidance in Sharma the appropriate and proportionate penalty was that of Strike-Off. The Tribunal had concluded that the Respondent was not a fit person to be a member of the profession.

Costs

42. The Tribunal had before it the Applicant's schedule of costs in the sum of £2,615.05, which Ms Jackson said had been sent to the Respondent on 11 April 2015. She told the Tribunal's that the Respondent had also received a copy of the judgment in SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) on 9 April 2015 and a statement concerning the principles from that judgment had been contained within the directions for the substantive hearing. There had been no response from the Respondent.
43. The Tribunal summarily assessed the costs in the sum of £2,615.05. Since there was no substantive evidence before the Tribunal concerning the Respondent's financial means, the Tribunal was unable to take those means into account. The Tribunal would therefore make an immediate Order for costs in the sum of £2,615.05.

Statement of Full Order

44. The Tribunal Ordered that the Respondent, Duncan Hugh Ranton, 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 £2,615.05.

Dated this 2nd day of June 2015
On behalf of the Tribunal

J.A. Astle, Solicitor Member

On behalf of N Lucking, Chairman