

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11274-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

PETER ELLIS TAYLOR

Respondent

Before:

Miss J. Devonish (in the chair)

Mr S. Tinkler

Mr R. Slack

Date of Hearing: 23 January 2015

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 by the Applicant were that:

On 25 April 2014 in the Crown Court at the Central Criminal Court of the Old Bailey, he was convicted of three counts of Fraud by abuse of position, in breach of all or alternatively any of the following SRA Principles 2011:

- Principle 1 upholding the rule of law and the proper administration of justice;
- Principle 2 acting with integrity
- Principle 3 behaving in a way that maintains the trust the public places in you and in the provision of legal services.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 22 August 2014 with exhibit IJ1
- Standard directions for first instance proceedings dated 26 August 2014
- Applicant's Certificate of Readiness dated 9 December 2014
- Applicant's schedule of costs as at 18 December 2014

Respondent

- Letter from the Respondent to the Tribunal dated 2 September 2014
- Letter from the Respondent to Mr Willcox of the Applicant dated 2 October 2014
- Letter from the Respondent to Mr Willcox dated 3 January 2015 within enclosed:
- Personal Financial Statement dated 3 January 2015

Preliminary Issue

3. For the Applicant, Mr Johal submitted that so far as he was aware the Respondent was not going to attend the hearing. Notice of the hearing had been given to the Respondent twice; on 26 August 2014, the Tribunal's Standard Directions which included details of the hearing had been sent to HMP Belmarsh. The Respondent had been released on 16 October 2014 and since then the Applicant had sent him notice of the hearing on 31 December 2014 to an address where he was believed to be residing with friends. Mr Johal referred the Tribunal to the Respondent's letter of 3 January 2015 to Mr Willcox of the Applicant sent from that same address. This was the last contact which the Applicant had with the Respondent. Mr Johal also referred the Tribunal to the Respondent's other two letters of 2 September 2014 to the Tribunal and 2 October 2014 to Mr Willcox which had been sent from prison. Mr Johal

submitted that the Applicant admitted the allegations and had asked the Tribunal to strike him off. No indication that he had any wish to attend was expressed in any of those letters and in the circumstances Mr Johal invited the Tribunal to exercise its discretion and proceed in his absence. Rule 16(02) 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.”

In arriving at its decision whether to proceed in the absence of the Respondent, the Tribunal recognised that it needed to be alert to its obligation to exercise extreme caution (as set out in the case of R v Hayward, Jones and Purvis [2001] QB 862, CA). It was satisfied that notice of the hearing had been served on the Respondent, who had engaged with the process and that he had now waived his right to attend by deliberately and voluntarily absenting himself from the hearing. In his letter to the Tribunal of 2 September 2014, the Respondent stated:

“However I plead guilty to the charges you have put to me and request that I am struck off the roll.”

In his letter to the Applicant of 2 October 2014 the Respondent included:

“Please accept my letter of the 2 September 2014 as my formal response. I do not wish anyone to incur unnecessary time and cost on this matter. I plead guilty to all the charges and desire that I am struck off the roll without further ado... “

In his letter to the Applicant of 3 January 2015 the Respondent stated:

“I refer to one of my letters some months ago when I stated quite clearly that I admit the charges put and requested to be struck off, I am therefore surprised that some 3 or 4 months later this matter is still continuing...”

In the circumstances, the Tribunal was satisfied that the Respondent had been properly served with notice of the hearing and having regard to the Respondent’s letters quoted above that he had deliberately and voluntarily absented himself from the hearing. The Tribunal determined that it would hear and determine the application notwithstanding that the Respondent had failed to attend in person and was not represented at the hearing.

Factual Background

4. The Respondent was born in 1957 and was admitted as a solicitor in 1982.
5. At all material times the Respondent was a member of Ellis Taylor Law LLP (“the firm”).

6. On 25 April 2014, the Respondent pleaded guilty to three counts of fraud by abuse of position and was sentenced to 20 months imprisonment on each count to run concurrently.
7. The conviction related to the Respondent making improper payments and transfers of money from the client account of the firm. A total of £133,550 was misappropriated
8. On 10 June 2014, a decision was made by an authorised officer at the Applicant to refer the Respondent's conduct to the Tribunal.

Witnesses

9. None.

Findings of Fact and Law

10. 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.
11. **Allegation 1 - The allegations against the Respondent made by the Applicant were that:**

On 25 April 2014 in the Crown Court at the Central Criminal Court of the Old Bailey, he was convicted of three counts of Fraud by abuse of position, in breach of all or alternatively any of the following SRA Principles 2011:

Principle 1 upholding the rule of law and the proper administration of justice;

Principle 2 acting with integrity

Principle 3 behaving in a way that maintains the trust the public places in you and in the provision of legal services.

- 11.1 For the Applicant, Mr Johal submitted that the Respondent had no practising certificate and last practised in the middle of 2013. In June 2013 the partnership ended. The Respondent had asked that his letter of 2 September 2014 be treated as his formal response in which he pleaded guilty to the charges (that is, he admitted the allegations) and asked to be struck off. Mr Johal referred the Tribunal to a certified copy of the Certificate of Conviction dated 7 May 2014. The Respondent's criminal conviction related to his practice as a solicitor where he had abused his position by misappropriating money from client account between April and June 2013. This included transfers from client account to his own personal account and that of others. He used some of the money for his own benefit but the vast majority went to a business client of the firm's Miss D to whom reference was made in the Judge's sentencing remarks:

“Miss [D] was a youngish, business client at your firm with whom, in effect, you had become infatuated, indeed obsessed...

... when I read the psychiatric report prepared for this hearing I see that for many years now you have suffered with a depressive disorder... It seems to me that, undoubtedly, you were someone who was deeply vulnerable to this particular young woman...”

Mr Johal submitted that the Respondent made the point in his letter of 2 October 2014 that the offences occurred during “a severe bout of clinical depression...” Despite the Respondent’s obvious health problems, Mr Johal submitted that the Judge concluded:

“...that is indeed a tragedy but there can be no denying that you, from everything I have read about you and everything you have said yourself, were absolutely aware of the gravity of what you were doing, whilst now you look back on it, you can hardly believe what you have done, and speak of your deep shame and embarrassment. I do not believe that you could have not recognised at the time how serious this was.”

Mr Johal submitted that there did not appear to be any dispute that the Respondent had acted dishonestly. The Tribunal’s Guidance Notes on Sanction set out that the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. It stated that 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 an offence of dishonesty and it was an aggravating feature that his actions arose from his practice as a solicitor in which he held a position of trust. Accordingly Mr Johal invited the Tribunal to strike the Respondent off which the Respondent said he wished to happen and which was clearly the appropriate sanction given the gravity of his misconduct.

11.2 The Tribunal had regard to Rule 15(2) of the SDPR which provided:

“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 did not consider that there were any exceptional circumstances which prevented it from relying on the Certificate of Conviction for proof of the facts upon which the Respondent’s conviction was based. He had been convicted of dishonest behaviour in that he had pleaded guilty to three counts of fraud and the Tribunal found all aspects of allegation 1 proved to the required standard; indeed they had been admitted.

Previous Disciplinary Matters

12. None.

Mitigation

13. The Respondent had not submitted any formal mitigation but the Tribunal noted in the first two of his three letters that he had referred to suffering from clinical depression and in his letter of 2 September 2014 to the Tribunal described his condition as being “why the actions were so out of character...” He also stated in his letter of 3 January 2015 to the Applicant that he was now fit to work “following my breakdown (the cause of the events of which you complain)...” He went on to state that he was still unemployed but was endeavouring to start as a self-employed consultant, had no assets at all and considerable debts that he was unable to pay.

Sanction

14. The Tribunal had regard to its Guidance Notes on Sanction which had already been quoted by Mr Johal and the points in mitigation which had been drawn from the Respondent’s correspondence addressed to the Tribunal and to the Applicant as well as the sentencing remarks of the Judge who had referred to very serious aspects of the Respondent’s depressive state. The Respondent had been convicted of a serious criminal offence, involving dishonesty. In mitigation, he had admitted this at an early opportunity, and he had not previously been before the Tribunal in around 33 years of practice. However he had misappropriated a large amount of money (£133,550) in a very short space of time and it was an aggravating factor that he took the money from client account. The Tribunal had taken note of his medical problems as described in the judgment of the criminal court but did not consider that these constituted exceptional circumstances within the terms of the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). In all the circumstances the Tribunal therefore determined that the Respondent should be struck off.

Costs

15. For the Applicant Mr Johal applied for costs in the sum of £1,733. A schedule of costs had been served on the Respondent on 31 December 2014 in the sum of £1,928 but Mr Johal was halving the claim for travel and waiting as he had attended the Tribunal on another matter earlier that day. He submitted that the Respondent did not appear to take issue with the Applicant having its costs although from his letter of 3 January 2015, his finances did not appear to be in a good state. Mr Johal noted that in the Personal Financial Statement which he had submitted with that letter, the Respondent stated that he was in receipt of benefit, and declared credit debts of £45,000 approximately, although provided no specific evidence in support. The Tribunal summarily assessed costs in the sum sought of £1,733. It noted that while the Respondent submitted that he had considerable debts in addition to those referred to by Mr Johal; he also said that he was trying to establish himself in alternative employment and was in receipt of a pension. He had not provided any documentary evidence to support his Personal Financial Statement in spite of the requirement in the Tribunal’s Standard Directions that he should do so. The costs would therefore be immediately enforceable.

Statement of Full Order

16. The Tribunal Ordered that the Respondent, Peter Ellis Taylor, 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 £1,733.

Dated this 6th day of February 2015

On behalf of the Tribunal

J. Devonish
Chairman