

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11346-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

TIMOTHY THOMAS ROGERS

Respondent

Before:

Mrs J. Martineau (in the chair)

Mr J. A. Astle

Mr S. Hill

Date of Hearing: 31 July 2015

Appearances

Andrew Bullock of 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 were that:
 - 1.1 The Respondent, by virtue of his conviction upon indictment of 2 counts of Cheat the Public Revenue, failed to uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Code of Conduct 2011; and/or
 - 1.2 The Respondent, by virtue of his conviction upon indictment of 2 counts of Cheat the Public Revenue, failed to act with integrity contrary to Principle 2 of the SRA Code of Conduct 2011; and/or
 - 1.3 The Respondent, by virtue of his conviction upon indictment of 2 counts of Cheat the Public Revenue, failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services contrary to Principle 6 of the SRA Code of Conduct 2011.

Documents

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

Applicant:

- Application dated 6 February 2015 together with attached Rule 5 Statement and all exhibits
- Letters dated 31 March 2015, 4 June 2015, 17 June 2015 and 17 July 2015 from the Applicant to the Respondent
- Letter dated 9 March 2015 from the Applicant to the Tribunal attaching a witness statement from Michael Atkins (process server) dated 4 March 2015
- Applicant's Statement of Costs dated 17 July 2015
- Emails between the Respondent and the Applicant dated from 31 March 2015 to 13 April 2015

Service and Proceeding in the Respondent's Absence

3. Mr Bullock submitted the Respondent had been properly served with details of the substantive hearing. The Applicant had written to the Respondent on 31 March 2015, 4 June 2015, 17 June 2015 and 17 July 2015 notifying him of this hearing on 31 July 2015. Those letters had been sent to the Respondent's last known registered address and had not been returned. They were also sent to him by email. The Respondent had corresponded with the Applicant by email in March and April 2015, when there had been a Case Management hearing, so he was clearly aware of these proceedings.
4. In addition, the Tribunal was referred to the witness statement dated 4 March 2015 from Michael Atkins, a process server, which confirmed the Application, Rule 5 Statement and other documents had been left at an address where the Respondent was

believed to have been present. Mr Bullock submitted the Respondent had been properly served with the details of the substantive hearing and that he had chosen to voluntarily absent himself.

5. The Tribunal, having considered the various documents, was satisfied there had been effective service on the Respondent. He had not applied for any adjournment of the proceedings. In his email dated 9 April 2015, he stated he did not admit the allegations. There was no indication from the Respondent that, even if the hearing was to be adjourned, he would attend on a future date. These were serious allegations relating to convictions in 2013. It was in the public interest for matters to be concluded as soon as possible. The Tribunal was satisfied that it was appropriate to proceed in the Respondent's absence.

Factual Background

6. The Respondent, born in October 1977, was admitted to the Roll on 15 March 2004. He did not currently hold a practising certificate.
7. The Respondent formerly practised as a sole practitioner trading as Rogers & Co Solicitors at Basinghall Buildings, Upper Basinghall Street, Leeds, LS1 5HR ("the firm"). He closed his practice on 30 September 2011.
8. HMRC undertook an investigation into the Respondent's firm, which had been registered for VAT from 19 September 2008. HMRC Investigators made enquiries in relation to a number of residential property transactions where the firm had acted. The Investigators identified discrepancies between the purchase price of properties given to HMRC on Stamp Duty Land Tax ("SDLT") Forms and the purchase price given to the Land Registry. In each instance, the purchase price of the property entered on the SDLT Forms was below the threshold for SDLT resulting in the assessment of a nil payment for SDLT, and no payment was made by the firm to HMRC. The corresponding Land Registry Forms submitted recorded that the purchase prices were above the threshold for payment of SDLT and therefore there was a liability to make a payment. The Land Registry Forms indicated that the total SDLT payments due would have been £49,860. These had not been paid.
9. The firm had submitted quarterly VAT returns which resulted in a repayment claim considered unusual for the trade. The maximum repayment claimed was £2,078.09. However, the VAT return submitted for the quarter ending June 2011 showed a repayment claim of £79,397 on the net sales figure shown of £354,741. This repayment was not issued due to a verification process. HMRC wrote to the Respondent requesting the business records to verify the repayment claimed, however, the Respondent did not provide a response. The firm's banking records did not reflect this level of turnover. The timing of the large repayment claim on 1 July 2011 followed the enquiries made by HMRC into the SDLT discrepancies in June 2011.
10. Witness statements were obtained from 8 of the firm's clients whose SDLT returns appeared to be incorrect. They all stated that funds for the SDLT had been paid to the firm and they had assumed these would be paid to HMRC. Documentary evidence provided by the clients showed the correct amounts on their completion statements.

11. The Respondent voluntarily attended an interview under caution in February 2012 at which the offences relating to VAT and SDLT were put to him. He provided a short pre-prepared statement stating the allegations were complex and that he would provide a full explanation in due course. The Respondent then made no comment. He attended a further voluntary interview under caution in November 2012 at which he again made no comment.
12. On 6 August 2013, at Leeds Crown Court, the Respondent was convicted, after pleading guilty upon indictment of two counts of “Cheat the Public Revenue – Contrary to common law”.
13. On 20 November 2013, the Respondent received 21 months imprisonment, concurrent on each count. The Respondent also received a Confiscation Order under the Proceeds of Crime Act in the sum of £5,000 or to serve 3 months imprisonment consecutive in default.
14. The Respondent was released from prison on 23 May 2014.

Witnesses

15. No witnesses gave evidence.

Findings of Fact and Law

16. The Tribunal had carefully considered all the documents provided, and the Applicant’s submissions. 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.
17. **Allegation 1.1: The Respondent, by virtue of his conviction upon indictment of 2 counts of Cheat the Public Revenue, failed to uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Code of Conduct 2011; and/or**

Allegation 1.2: The Respondent, by virtue of his conviction upon indictment of 2 counts of Cheat the Public Revenue, failed to act with integrity contrary to Principle 2 of the SRA Code of Conduct 2011; and/or

Allegation 1.3: The Respondent, by virtue of his conviction upon indictment of 2 counts of Cheat the Public Revenue, failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services contrary to Principle 6 of the SRA Code of Conduct 2011.
- 17.1 The Respondent in an email to the Applicant dated 9 April 2015 stated he did not admit the allegations. He stated he regretted pleading guilty to the offences, that he had concerns about the handling of his criminal case and that he intended to seek

advice on an appeal against the convictions. The Respondent made reference to his health, which he stated had affected his behaviour at the material time.

- 17.2 The Tribunal had been provided with a Certificate of Conviction dated 8 January 2015 which confirmed that on 6 August 2013, the Respondent, upon his own confession, had been convicted on indictment of two counts of “Cheat the Public Revenue – Contrary to common law”. The Certificate also confirmed the Respondent was, on 20 November 2013, sentenced to 21 months imprisonment concurrent. A Confiscation Order for £5,000 was made or in default the Respondent was to serve 3 months imprisonment consecutive.
- 17.3 Although the Tribunal noted the Respondent did not now admit the allegations, under Rule 15(2) of The Solicitors (Disciplinary Proceedings) Rules 2007, 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 is guilty of the offence. The findings of fact upon which that conviction was based were admissible as conclusive proof of those facts, save in exceptional circumstances.
- 17.4 The Respondent had made reference to health issues which he believed had affected his conduct at the time of the offences. However, the Tribunal noted the Respondent’s health had been taken into account by Her Honour Judge Cahill, who had made reference to the medical reports provided, in her sentencing remarks. The Tribunal was therefore satisfied there were no exceptional circumstances.
- 17.5 The Tribunal found the allegations proved on the Certificate of Conviction provided. The Respondent had acted with a lack of integrity as he had been convicted of 2 counts of “Cheat the Public Revenue”. This was conduct which failed to uphold the rule of law and the proper administration of justice. The Respondent had behaved in a way that did not maintain the trust the public placed in him or in the provision of legal services.

Previous Disciplinary Matters

18. None.

Sanction

19. The Tribunal had considered carefully the Respondent’s emails. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.
20. The Tribunal noted there was little mitigation save the reference to the Respondent’s health issues. Although there was no medical evidence before the Tribunal, the Respondent’s health had been taken into account by Her Honour Judge Cahill. There was no evidence of insight or remorse from the Respondent.
21. The allegations related to serious offences involving repeated dishonesty over a period of time which was calculated and deliberate. A number of clients had suffered losses as a result of the Respondent’s behaviour and HMRC had been deprived of a

large amount of SDLT payments which should have been made by the Respondent's firm on behalf of those clients. By completing different figures on the forms submitted to HMRC and forms submitted to the Land Registry, the Respondent had deliberately concealed the true position. The Respondent ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the profession.

22. The Tribunal particularly noted the sentencing remarks of Her Honour Judge Cahill who had stated:

“This was very much planned and you knew what you were doing, and whilst I accept it was not fraudulent from the outset, once you had committed the first offence or the first part of Count 1 in terms of taking the money from the first householder who was seeking to buy a property you well knew how you could cheat the remaining ones and you continued to do so.

Looking at the guidelines it seems to me that, although it was not fraudulent from the outset, it could not be said that it was completely non-fraudulent from the outset of the actual offence because from the beginning of the time when you started offending in January 2010 you knew what you were doing and continued to do so. They were multiple offences carried out over a significant period of time. The total amount that you defrauded your clients of was some £49,860 and you sought to deprive the Revenue of £79,397. In my view one particular aggravating feature of this offence is that you knew as a solicitor that in taking that money and not paying it over to the Revenue, the people who would suffer the most were your clients because the Revenue would go after them so they would have to pay the same amount of money on a second occasion to settle their debt to the Revenue, and that is something I view as being a significant aggravating feature of this offending. I hope it turns out to be the case that they can get their money back from the appropriate insurance companies.”

23. The Tribunal took into account the case of The SRA v Sharma [2010] EWHC 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”

24. The Tribunal was satisfied that the Respondent's health issues were not exceptional circumstances as these had been drawn to the attention of the sentencing Judge. The Respondent's conduct was very serious and had caused damage to the reputation of the profession. The Tribunal concluded there were no exceptional circumstances in this case and that accordingly the appropriate sanction was to strike the Respondent off the Roll of Solicitors. This was the minimum sanction necessary to uphold standards and maintain public confidence in the profession.

Costs

25. Mr Bullock requested an Order for the Applicant's costs. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. Mr Bullock

confirmed the costs needed to be reduced slightly in relation to the time claimed for preparation of the hearing, the costs of accommodation which he had apportioned with other matters he had been dealing with that day, and advocacy as the actual hearing had taken less time than originally anticipated.

26. Mr Bullock also reminded the Tribunal that the Respondent had still not paid the Applicant's costs relating to an earlier Case Management Hearing. The Respondent had not provided any evidence of his means despite being aware that he needed to do so. He had now been released from prison on licence.
27. The Tribunal had considered carefully the matter of costs and, having made the reductions sought, assessed the Applicant's costs in the sum of £2,857.20. The Tribunal made an Order that the Respondent pay the Applicant's costs in this amount.
28. In relation to enforcement of those costs, the Tribunal noted the Respondent had not provided any Schedule of means or evidence of his financial circumstances. The Tribunal took into account the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

“If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive.”
29. In the absence of any documentary evidence of the Respondent's income, expenditure, capital or assets, it was difficult for the Tribunal to take a view of his financial circumstances.
30. The Tribunal was also 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. In this case, the Respondent was relatively young and it was possible he could gain some form of alternative employment. The Tribunal did not consider this was a case where there should be any deferment of the costs order.

Statement of Full Order

31. The Tribunal Ordered that the Respondent, TIMOTHY THOMAS ROGERS, 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 £2,857.20.

Dated this 17th day of September 2015

On behalf of the Tribunal

J. Martineau
Chairman