

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11349-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

SILVAN SYLVESTER SENIOR

Respondent

Before:

Mrs J. Martineau (in the Chair)

Mr L. N. Gilford

Mr D. E. Marlow

Date of Decision: 22 July 2015

Appearances

There were no appearances, the matter being conducted on the papers.

**MEMORANDUM OF WITHDRAWAL APPROVED BY THE
TRIBUNAL ON CONSIDERATION OF THE PAPERS ON 22
JULY 2015**

Background

1. The Tribunal had before it a number of documents including the Rule 5 Statement dated 13 February 2015 and associated exhibit, Amended Reply of the Respondent to the Rule 5 Statement, an application by the SRA to withdraw the allegations against the Respondent on the terms agreed dated 13 July 2015 and a copy of a proposed Regulatory Settlement Agreement, between the Respondent and the SRA, signed by the Respondent.
2. There were two allegations against the Respondent in relation to 3 clients, Mr M, Mr S and Mrs B:
 - i) acting as a solicitor in his own name while not holding a practising certificate; and
 - ii) undertaking reserved legal activity.
3. The Respondent provided an initial Answer dated 4 May 2015. The SRA wrote to the Respondent on 8 May 2015 noting that the Answer did not deal with all matters in the Rule 5, as he had limited his answer to the matters that had been raised in the earlier investigation. Under the circumstances, the SRA asked that the Respondent provide an amended Answer dealing with all relevant matters within seven days. The Respondent requested an extension until 26 May 2015 but this was never formalised.
4. The Respondent provided a further amended Answer to the SRA by e-mail on 25 May 2015. The exhibit bundle subsequently arrived with the hardcopy of that Answer. Following review of the Respondent's Answer on 4 June 2015 the SRA sought clarification of his position in relation to allegation 2.2, as his answer solely dealt with allegation 2.1 and did not address reasons for his denial of allegation 2.2. Following his request, the SRA sent the Respondent a copy of relevant case law on 12 June 2015.
5. Following further review of the Respondent's position and the further evidence he had provided, the SRA took the view that it was no longer in the public interest to pursue allegation 2.1 at the Tribunal. Although the Respondent had not provided clarification of the status of the draft letters that appeared in the SRA bundle, he had subsequently provided evidence that the correspondence actually sent did contain clarification of his status. In the footer of that correspondence the Respondent was described as "retired" or "not practising". The Respondent had also indicated his willingness to change the way he described himself in his letterhead, so as to make it abundantly clear that he was a non-practising solicitor.
6. On reviewing the whole matter in the round, the SRA considered that, while there was evidence of breaches in relation to undertaking reserved legal activities, and evidence had been provided of at least one client who not been properly informed of the Respondent's status, it might be possible for the matter to be appropriately addressed by way of a Regulatory Settlement Agreement if admissions were made in appropriate terms. The SRA had had regard to its policy document "Settlement of Regulatory and Disciplinary Decisions".

7. Without prejudice correspondence was entered into with the Respondent in relation to possible agreement. On 13 July 2015 the Respondent confirmed his agreement to a Regulatory Settlement Agreement in the form now presented to the Tribunal. In addition to the Regulatory Settlement Agreement, the SRA would send the Respondent a Letter of Advice in relation to the limitations on him while he remained on the Roll but did not have a Practising Certificate.
8. Under the Regulatory Settlement Agreement the Respondent would be rebuked and fined £500 in respect of the two allegations which he admitted and agreed to pay the SRA's costs of £800. The Regulatory Settlement Agreement would be published and disclosed by the SRA. The Respondent agreed that he would not act in any way inconsistent with the Agreement such as, for example, denying the misconduct set out in his admission. If he were to act in any way inconsistent with the agreement then all the issues could be referred for consideration or referral to the Tribunal (or SRA internal decision) on the original facts and allegations and also on the basis that such failure to comply with the agreement may constitute a breach of Principles 2, 6 and 7 of the SRA Principles 2011.

Submissions of the Applicant

9. In the letter from the SRA to the Tribunal dated 13 July 2015, the SRA said that it had kept the matter under review, particularly in light of the documentation received from Respondent. In addition, the Tribunal would note that the proposed agreement allowed for the Respondent to make admissions of breaches, with an agreement that he would not act in any way inconsistent with the Regulatory Settlement Agreement and provision for publication of outcome in the interests of transparency and open justice.
10. Given the evidence that had been provided since the matter had been referred and lodged, the SRA now accepted that the Respondent's conduct could be dealt with appropriately in the terms set out in the Regulatory Settlement Agreed. The Respondent's conduct (as it was now understood) involved breaches that were focussed on failure to properly explain his position and, in relation to reserved legal activities, a misunderstanding as to the scope of his role as a non-practising solicitor. In addition, the Respondent's admissions as set out indicated a level of insight and acceptance of breaches that had not previously been shown.
11. The sanction of a rebuke and a fine at a lower level would be appropriate given the Respondent's submissions and mitigation.

Mitigation of the Respondent

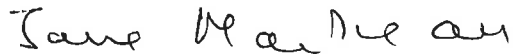
12. The Respondent had clarified in letters sent to Mrs B's husband's solicitors and others that he was retired or no longer practising. The Respondent believed that he had clarified his status with Mrs B and did not intend to mislead her about his status. He had now amended his letterhead to show clearly that he was a non-practising solicitor.
13. The Respondent had mistakenly assumed that he could undertake work for his clients that was reserved to practising solicitors, in the manner that he did. The Respondent also believed that the covering letter, submitted with the Court forms on which he was

entered as Mrs B's solicitor would have noted his status as being retired in the footer of the letter.

Decision of the Tribunal

14. The Tribunal had considered all the documentation before it most carefully. It had taken fully into account the submissions of the Applicant and the mitigation of the Respondent. In all of the circumstances it would permit this matter to proceed by way of RSA for the reasons cited by the Applicant and accordingly would allow both of the allegations currently before the Tribunal to be withdrawn.
15. The Tribunal made no Order for costs.

Dated this 11th day of August 2015
On behalf of the Tribunal



J Martineau
Chairman