SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11358-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PAUL GEOFFREY DEAN SMITH Respondent

Before:

Mr D. Glass (in the chair)
Mr I. R. Woolfe
Mr M. G. Taylor CBE DL

Date of Hearing: 30 July 2015

Appearances

Mr Inderjit Johal, Counsel employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

Ms Joanna Shaw, Counsel of 1 Essex Court, Chambers, Temple London EC4Y 9AR instructed by Direct Access for the Respondent

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JUDGMENT

Allegations

1. The allegations against the Respondent Paul Geoffrey Dean Smith by the Applicant the Solicitors Regulation Authority as amended with the consent of the Tribunal were that:

1.1 By signing a witness statement in the name of one of the Directors of his client company and then submitting it to the High Court in support of an application which was subsequently granted, he breached Rules 1.01, 1.02, 1.04, 1.06 and 11.01 of the Solicitors Code of Conduct 2007.

It was alleged that, in respect of the above matter, the Respondent acted dishonestly although it was not necessary to prove dishonesty to prove the allegation.

Documents

2. The Tribunal reviewed the documents including:

Applicant

- Rule 5 Statement dated 26 February 2015 with exhibit AHJW1
- E-mail to the Tribunal office dated 14 July 2015 from Mr Alistair Willcox of the Applicant enclosing:
- Statement of Agreed Facts and Admissions dated 14 July 2015
- Judgment in the case of Secretary of State for Trade and Industry v Rogers [1996] 1 WLR 1569
- The Applicant's schedule of costs as at 21 July 2015

Respondent

- Answer to the Rule 5 Statement dated 16 April 2015 drafted by Ms Genevieve Parke
- E-mail from the Respondent to Mr Willcox dated 13 July 2015
- E-mail letter from the Respondent to the Tribunal office dated 27 July 2015
- Witness statement of Mr W dated 27 July 2015
- Submissions on behalf of the Respondent dated 30 July 2015 drafted by Ms Joanna Shaw
- Personal financial statement of the Respondent dated 24 July 2015
- Bundle of bank statements

Preliminary Issue

Application by the Respondent to admit a witness statement

3. Ms Shaw, for the Respondent confirmed that she wished to make an application to admit a witness statement of Mr W dated 27 July 2015. The statement was not for the purposes of mitigation but in order that the Tribunal might have as much information as possible especially regarding any harm which the Respondent's actions might have caused and the statement of Mr W might assist in that regard. Ms Shaw acknowledged that the statement was filed late but submitted that it was not detailed or lengthy and it was proposed only to rely upon two paragraphs. The Tribunal enquired why, Standard Directions having been issued dated 16 March 2015, including that witness statements were to be served by 9 July 2015, there had been delay in respect of this statement. Ms Shaw explained that for the most part this was because she and the Respondent had been seeking to agree the matter with the Applicant but in the end this was not possible. Information from Mr W had not been obtained until earlier in the week before the hearing.

4. For the Applicant, Mr Johal raised no objection to late service of the witness statement particularly in the context that the Applicant had delayed for over two years in prosecuting the matter after the Respondent had self-reported. The Applicant felt that the witness statement would be of limited assistance and the Tribunal would have to attach to it what weight it considered appropriate.

5. The Tribunal gave permission for the statement of Mr W to be admitted into evidence.

Application to amend the Rule 5 Statement and proceed by way of a Statement of Agreed Facts and Admissions

6. The Tribunal had been made aware in advance of the hearing by way of an e-mail from Mr Willcox of the Applicant to the Tribunal office dated 14 July 2015 that the parties wished to make a joint application to proceed on the basis of a Statement of Agreed Facts and Admissions ("the Statement"). In support of the application, the Applicant attached the authority of Secretary of State for Trade and Industry v Rogers [1996] 1 WLR 1569. The e-mail explained that the Respondent admitted the allegations including the allegation of dishonesty but did not accept that he signed the document which was the subject of the allegations without the authority of his client Mr W. In the event that the Tribunal was content to proceed on the basis of the Statement, it was proposed to amend allegation 1.1 in the Rule 5 Statement by omitting the words "without their knowledge or authority" following the words "Directors of his client company". The Respondent had signalled his consent to the Statement by e-mail dated 13 July 2015. For the Applicant, Mr Johal relying on the Rogers case which related to director's disqualification as authority invited the Tribunal to deal with the matter by way of the Statement. He submitted that two principles emerged from the Rogers case; that only the facts as agreed would be relied upon and that it was not for the court to speculate if disputed facts might be proved or whether they would affect the seriousness of sanction. The Statement mirrored the facts in the Rule 5 Statement save that the Applicant placed no reliance on an allegation that the Respondent signed a witness statement without the knowledge or authority of his client; it only alleged that he signed purporting to be Mr W. Mr Johal

also submitted that the parties did not suggest what the outcome in terms of sanction should be. That was a matter for the Tribunal to determine.

7. The Tribunal agreed in the circumstances to proceed as the parties requested and to rely on the Statement. It also gave permission for allegation 1.1 in the Rule 5 Statement to be amended in the terms sought.

Factual Background taken from the Statement of Agreed Facts

8. On 18 September 2012, the Applicant received a letter from Mr M, a solicitor, instructed by the Respondent. Mr M indicated that the Respondent had instructed him to report a matter to the Applicant in accordance with his (the Respondent's) self-reporting obligations.

9. The letter enclosed a letter dated 5 September 2012 which had been sent to the Chief Registrar at the High Court of Justice, and said that the Respondent was in the process of notifying his professional indemnity insurers.

10. A letter dated 4 September 2012 was also received from Mr CA a partner at A Solicitors where the Respondent worked from 2010 to 2012. On the morning of 30 August 2012, Mr CA was inspecting the incoming post that had arrived at his offices and noted the contents of a letter from J & Co Solicitors which alleged unprofessional conduct on the part of the Respondent. The letter from Mr CA also enclosed a letter of admission from the Respondent to Mr CA dated 2 September 2012.

11. The letter to the Court, sent by Mr M on the Respondent's instructions, stated that the reason for writing to the Court was the Respondent's involvement in the matter of B Properties Ltd which had been before the Court on 9 October 2008.

12. The Respondent acting on behalf of B Properties Ltd had made an application to the High Court to extend the time within which a legal charge was to be registered at Companies House. The letter stated that the Respondent had engaged the services of a specialised firm by the name of C to act as his agent in preparing that application.

13. Enclosed with the letter to the Court was a copy of a witness statement of Mr W (Director of B Properties Ltd) dated 6 October 2008.

14. The letter set out the following:

> "An issue has arisen regarding the authenticity of Mr [W's] signature. After very careful consideration [the Respondent] accepts that the signature on this witness statement is not that of [W] and that it is very likely to be in [the Respondent's] own handwriting. [The Respondent] accepts that in signing the witness statement in this way the court will have been misled into granting the order requested."

15. The letter then went on to provide the following background details:

- B Properties Ltd had instructed the Respondent to act in respect of a loan from Lloyds TSB Bank Plc, secured against a residential property for the development of land which that company already owned;

- A mortgage deed was executed on 21 March 2007 but was not registered at Companies House within the requisite 21 days as set out in section 395 of the Companies Act 1985;

- The Respondent recognised that his firm had made an error in not seeing to the registration within the requisite period of time and instructed C to act as agent and make an application to the High Court to extend time;

- An application was prepared by C, which included a witness statement from Mr W as to his business's solvency, to be returned to C within a week in readiness for a hearing listed for 9 October 2008;

- The Respondent had been in touch with Mr W on the telephone on 2 October 2008 about him calling into the Respondent's offices to sign the statement but could not recall why Mr W had not subsequently visited the Respondent's office to sign the statement;

- It was not clear to the Respondent why he had taken the decision to sign the witness statement himself, purporting to be Mr W;

- The Respondent appeared to have been prompted into reporting the matter to the Applicant following receipt of a letter from J & Co in 2012 who, acting on behalf of Mr W's wife, had obtained a copy of the Respondent's file of papers in respect of B Properties Ltd and had discovered that the signature on the witness statement presented to the Companies Court in respect of the registration of the mortgage was not, in fact, that of Mr W;

- On 20 August 2012, the Respondent had denied forging the signature of Mr W but, having reviewed the file, had come to the conclusion that he "must have signed a statement using a signature purporting to be that of Mr [W]".

- It was very difficult for the Respondent to explain his actions. He recognised that they were wrong, and apologised unreservedly to the Court.

Witnesses

16. None.

Findings of Fact and Law

17. 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.

18. **Allegation 1.1 - By signing a witness statement in the name of one of the Directors of his client company and then submitting it to the High Court in support of an application which was subsequently granted, he breached Rules 1.01, 1.02, 1.04, 1.06 and 11.01 of the Solicitors Code of Conduct 2007.**

It was alleged that, in respect of the above matter, the Respondent acted dishonestly although it was not necessary to prove dishonesty to prove the allegation.

18.1 For the Applicant, Mr Johal submitted that in 2007 the Respondent was practising on his own account and acted for B Properties Ltd to perfect a mortgage to Lloyds Bank TSB. The mortgage was executed on 23 March 2007 but it was not registered within 21 days and the Bank contacted the Respondent. Mr Johal referred the Tribunal to the Statement for an account of what followed. The High Court duly extended time and the charge was registered. When the matter was raised (four years later) the Respondent initially denied signing the witness statement of Mr W (in a letter to J & Co referred to in A Solicitors' letter of 4 September 2012) but on reviewing the situation accepted that the signature was his. The Respondent made a self-report via Mr M on 18 September 2012. Mr Johal also referred to the letter from J & Co to A Solicitors. The Applicant received the letter from A Solicitors on 4 September 2012.

18.2 In the Statement, it was set out in respect of the allegation of dishonesty: that the Respondent accepted that his actions were dishonest according to the test laid down in the case of Twinsectra v Yardley and Others [2002] UKHL 12. By signing a witness statement, for submission to the High Court, purporting to be that of someone else, the Respondent acted dishonestly according to the ordinary standards of reasonable and honest people ("the objective test"). The Respondent accepted that he was aware when he acted in the manner above that by the standards of reasonable and honest people he was acting dishonestly ("the subjective test"). The Respondent accepted that he was aware of what he was doing at the time of signing the witness statement and made a conscious decision to forge the signature.

18.3 The Tribunal had regard to the Statement, the submissions for the Applicant and the admissions of the Respondent and found allegation 1.1 proved to the required standard; indeed it was admitted.

18.4 In respect of the allegation of dishonesty the Tribunal applied the two limbed test set out in the case of Twinsectra; there could be no doubt that reasonable and honest people would consider that a solicitor who signed a witness statement in the name of a client and submitted it to the High Court acted dishonestly and therefore the objective test was satisfied. The Respondent admitted that he had made a conscious decision to forge Mr W's signature and that he was aware at the time of doing so that it would be considered dishonest. The Tribunal found that the subjective test was also satisfied and that dishonesty was proved to the required standard.

Previous Disciplinary Matters

19. None.

Mitigation

20. For the Respondent, Ms Shaw submitted that the Respondent had nothing to add to the Statement but she had detailed instructions on his financial position. In her written submissions on behalf of the Respondent, Ms Shaw had analysed the Tribunal's Guidance Note on Sanctions. It was accepted that dishonesty was the most serious aspect of misconduct which the Tribunal could find proved and that without exceptional circumstances a Respondent in that position would be struck off and this Respondent accepted that being struck off was the appropriate penalty for him. In terms of the factors which the Tribunal had to take into account in assessing the seriousness of misconduct, the Respondent accepted without question his responsibility and culpability for his misconduct. He also accepted that there had been harm to the profession occasioned by the misconduct in terms of the impact on the public and reputation of the legal profession. His clients B Properties Ltd and Lloyds TSB became aware of the misconduct and the High Court was also notified. Individuals associated with the clients such as Mr W were also aware of it. It was accepted that the Respondent's misconduct was a significant and grave departure from the standards expected of a solicitor and included misleading the Court. As to the extent of the harm, reputational damage to the profession of solicitor and the esteem in which the profession was held had been occasioned by the Respondent's misconduct. There was harm in the sense that the High Court was required to re-examine the issue of the charge over the relevant property. According to Mr W's statement no harm was occasioned; there was no evidence from Lloyds TSB or other potentially affected parties as to other possible forms of harm. The Respondent was unaware of any other harm. To the extent that harm could be minimal, Ms Shaw submitted that it was. It was accepted that there had been dishonesty which was an aggravating factor and was the most serious misconduct possible. In terms of mitigating factors, the Respondent had been on the Roll for over 35 years and had been in practice continuously until 2012. There had been no disciplinary matters until the end of his career. Since he had self-reported he had not practised. He had voluntarily self-reported and there was no identifiable loss save costs in the High Court. Ms Shaw submitted that the Respondent had displayed insight into the seriousness of the matter and acknowledgement of the seriousness and harm and a willingness to accept the most serious sanction as a consequence. The Respondent did not initially recognise that the signature was in his handwriting but very quickly accepted it and then was entirely frank about reporting it and taking the consequences of his own foolish actions. He very quickly recognised his own dishonesty and mistake. He had cooperated fully since then with the Applicant and the Tribunal. There had been a delay of over two years from the self-report to action being taken. This was troubling and upsetting for the Respondent and indicated the stress that he was under. It was a single episode of brief duration in a very lengthy career. The Respondent accepted that the sanction would be strike off and Ms Shaw was in a slightly unusual position in saying that. It would be a great punishment after a long proud and happy career and a matter of deep regret to the Respondent. He would have no opportunity to repeat the misconduct and strike off would make that absolutely clear. It would also maintain the reputation of the profession.

Sanction

21. The Tribunal had regard to its Guidance Note on Sanctions, the submissions of Ms Shaw and the witness statement of Mr W although strictly speaking it was not submitted in mitigation. Mr W expressed surprise that the Respondent was being pursued as neither he nor the bank had made a complaint and Mr W took the view that the Respondent gained no financial or other advantage by what he did. The Respondent admitted breaching Rules 1.01 (upholding the rule of law and the proper administration of justice), 1.02 (acting with integrity), 1.04 (acting in the best interests of clients), 1.06 (not behaving in a way likely to diminish the trust the public places in the solicitor or the profession), and 11.01 (additional duties imposed on a solicitor when conducting litigation or acting as an advocate). Dishonesty had also quite properly been admitted and found proved from which consequences followed. In view of the decisions of the higher courts strike off was the appropriate order unless exceptional circumstances were identified but none had been put forward to mitigate the penalty. The Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 (Admin) which was the authority on exceptional circumstances. In that judgment it was said that there would be a small residual category where striking off would be a disproportionate sentence in all the circumstances after a finding of dishonesty. In deciding whether or not a particular case fell into that category, relevant factors would include the nature, scope and extent of the dishonesty itself; whether it was momentary, over a lengthy period of time, whether it was a benefit to the solicitor and whether it had an adverse effect on others. The Statement noted that it was very difficult for the Respondent to explain his actions. On the agreed facts and the submissions for the Respondent, the Tribunal could find no grounds for finding exceptional circumstances and determined that strike off was the appropriate sanction in this case where dishonesty involving misleading the High Court had been admitted and found proved. It was regrettable that a long and previously unblemished career should end in this way but the Respondent clearly expected that this would be the conclusion long before the hearing.

Costs

22. For the Applicant, Mr Johal applied for costs in the amount of £3,345 save that he accepted that the costs claimed should be reduced to reflect the shorter than estimated hearing. The Tribunal expressed concerns about the delay of almost two years between the Respondent self-reporting and the response from the Applicant which asked for the Respondent's reply within two weeks from the date of that response. Mr Johal acknowledged the unjustifiable delay; it had been dealt with in correspondence and the Applicant accepted that the matter had not been progressed in a timely way. The Respondent was informed that the Applicant had given priority to other serious matters but this itself was a matter of dishonesty. The Tribunal invited Mr Johal to consider whether he wished to persevere with his application for costs and he confirmed that he did. Mr Johal submitted that if the matter had been progressed at the time the Respondent self-reported in all likelihood the Applicant would have been awarded a costs order. If the Tribunal determined that a reduction was appropriate to reflect the delay that might be appropriate but the Respondent's liability should not be extinguished entirely. The Respondent was not impecunious and had suggested that he would pay £25 a month. If the Tribunal made a costs order the Respondent could

reach an agreement with the costs recovery staff of the Applicant without the need for leave of the Tribunal to be sought for enforcement.

23. In her written submissions, Ms Shaw said that the Respondent had at all times sought to keep cost, inconvenience and time spent on this matter by the Applicant and himself to a minimum. He had incurred his own costs in seeking to resolve the Tribunal proceedings and in obtaining representation for this hearing. He had very limited means as shown by his Personal Financial Statement. The Respondent had retired since self-reporting and was not earning any money. He had been relying on savings. The Respondent lived in rented accommodation and also owned a rental property elsewhere. The Tribunal had also been provided with details of the Respondent's bank accounts and income sources. His monthly expenditure was something over £2,000 and his income was around £1,750 per month. He had a judgement debt in his favour in respect of Mr CA and A Solicitors of approximately £90,000 relating to professional fees but Mr CA had been declared bankrupt in around March 2015. As to his liabilities, the Respondent had debts from his time in practice and assisted by a consumer credit advice organisation had reached an agreement to pay a small amount per month in respect of those. He also had a costs liability which could increase significantly in respect of another party who had become involved in charging order proceedings against Mr CA. The Respondent did not wish to risk having a charge placed on his rental property because he might need to sell it. He had no other income or assets and a costs order would create further debt for him. He did not wish to move to his rental property because he had local links in the community but he might have to move to cheaper rented accommodation in the same area.

24. Bearing in mind the nature of the misconduct, self-reporting, the cooperation with Applicant and the Tribunal, the admissions and the Respondent's financial situation and the discretion which the Tribunal had in costs matters, Ms Shaw submitted that there should be no order as to costs against the Respondent or an order for costs not to be enforced without leave of the Tribunal. Ms Shaw submitted that if the Tribunal wished to reduce the costs order because of the delay that would be a fair outcome. She appreciated that the Applicant had apologised but the Respondent had lived with this matter for two years and since March 2015 when the Applicant had issued its application, the Respondent had been seeking to deal with it by agreement and even to agree sanction. He accepted that he would be struck off and Ms Shaw could not see what more he could do.

25. The Tribunal considered the submissions for the Applicant and for the Respondent and took into account the information provided about the Respondent's financial circumstances. The Tribunal found the costs claim of the Applicant to be in a reasonable amount after allowing for the shorter than expected hearing time. The Tribunal was not satisfied that the Applicant's delay of itself should cause the Tribunal to make no order for costs. As to what the Respondent should be ordered to pay, this was not a question of removing the Respondent's livelihood by striking off as he had already retired. The Respondent had a difficult cash flow situation and debts but he also had a capital asset and the Tribunal did not think that his financial circumstances were such as to cause no order to be made. Self-reporting, attempts to resolve the matter and admissions (which as Ms Shaw pointed out to the Tribunal although qualified in the Respondent's Answer were complete in respect of the allegation as amended) did not give rise to a reduction in the costs to be awarded to

the Applicant. However the Tribunal considered that it would be appropriate to reduce the costs award because of the inordinate delay which had occurred between the reports to the Applicant and the issue of proceedings. The Tribunal assessed the Applicant's costs at £3,000 and having regard to the delay reduced the award against the Respondent to £1,500.

Statement of Full Order

26. The Tribunal Ordered that the Respondent Paul Geoffrey Dean Smith, 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 £1,500.00.

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

D. Glass
Chairman