SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11360-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JEAN ETIENNE ATTALA Respondent

Before:

Mr D. Glass (in the chair)
Mr S. Tinkler
Mr P. Wyatt

Date of Hearing: 2 September 2015

Appearances

Mr Andrew Bullock, 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 made against the Respondent by the Applicant were that:

1.1 By failing to comply with Orders and correspondence from the Employment Tribunal ("the ET") in respect of proceedings issued in June 2010 ("the proceedings") on behalf of his clients through their union ("the Union") resulting in the proceedings being struck out, he:

1.1.1 failed to act in the best interests of his clients, in breach of Rule 1.04 of the SRA (sic) Code of Conduct 2007 for the period before 6 October 2011 and Principle 4 of the SRA Principles 2011 for the period thereafter;

1.1.2 failed to provide a proper standard of service to his clients, in breach of Rule 1.05 of the SRA (sic) Code of Conduct 2007 for the period before 6 October 2011 and Principle 5 of the SRA Principles for the period thereafter; and

1.1.3 failed to provide services to his clients in a manner which protects their interests in their matter, subject to the proper administration of justice and therefore failed to achieve Outcome 1.2 of the SRA Code of Conduct 2011 for the period after 6 October 2011.

1.2 By deliberately misleading the ET prior to the proceedings being struck out that he was seeking his clients' instructions and/or gathering evidence in support of a Schedule of Loss, when there was no evidence on the file or case management system to support his assertions, he:

1.2.1 failed to uphold the rule of law and the proper administration of justice in breach of Rule 1.0 of the SRA (sic) Code of Conduct 2007 for the period before 6 October 2011 and Principle 1 of the SRA Principles 2011 for the period thereafter;

1.2.2 failed to act with integrity, in breach of Rule 1.02 of the SRA (sic) Code of Conduct 2007 for the period before 6 October 2011 and Principle 2 of the SRA Principles 2011 for the period thereafter;

1.2.3 failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Rule 1 of the SRA (sic) Code of Conduct 2007 for the period before 6 October 2011 and Principle 6 of the SRA Principles 2011 for the period thereafter;

1.2.4 attempted to deceive and knowingly or recklessly misled the court and therefore failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011; and

1.2.5 failed to comply with his duties to the Court and therefore failed to achieve Outcome 5.6 of the SRA Code of Conduct 2011.

1.3 By misleading his client and the Union that the proceedings were progressing when they had in fact been struck out; he:

1.3.1 failed to act with integrity, in breach of Principle 2 of the SRA Principles 2011; and

1.3.2 failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the SRA Principles 2011;

1.3.3 failed to inform his client of an act or omission which gave rise to a claim against him/his firm and therefore failed to achieve Outcome 1.16.

1.4 By misleading his employers that the proceedings were progressing when they had in fact been struck out, he:

1.4.1 failed to act with integrity, in breach of Principle 2 of the SRA Principles 2011; and

1.4.2 failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the SRA Principles 2011.

While dishonesty was alleged in respect of allegations 1.2, 1.3 and 1.4 proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 27 February 2015 with exhibit ECP1
- Statement of Agreed Facts dated 14 August 2015
- Judgment in the case of Secretary of State for Trade and Industry v Rogers [1996] 4 All ER
- Applicant's costs report

Respondent

- Answer to the Rule 5 Statement dated 1 May 2015
- Email to the Tribunal office dated 1 September 2015
- Letter dated 2 November 2013 from a Chartered Counselling Psychologist to the Respondent's GP
- Letter dated 4 November 2013 from the Respondent's GP To whom it may concern

Preliminary Issues

3. The Respondent was not present. For the Applicant, Mr Bullock informed the Tribunal that there had been regular contact with him throughout the proceedings. The Respondent had been in contact with Ms Priest of the Applicant who had day to day conduct of the matter and it was understood that the Respondent would not attend. The Tribunal office had received an email the day before, 1 September 2015 in which the Respondent confirmed that "I will not be attending the hearing but would be grateful if this email could be placed before them [the Tribunal]." Mr Bullock invited the Tribunal to proceed in the absence of the Respondent. The Tribunal had regard to the importance of exercising its discretion to proceed with great care. It was satisfied that the Respondent was aware of the proceedings and that he had informed the Tribunal that he would not attend. Clearly he knew that the hearing was taking place. In the particular circumstances the Tribunal being satisfied that notice of the hearing had been served on the Respondent in accordance with the Solicitors (Disciplinary Proceedings) Rules 2007 determined that it would proceed and hear the application under Rule 16(2) notwithstanding that the Respondent failed to attend in person and was not represented at the hearing.

4. The Tribunal had been made aware that a Mr Zakeri had made contact with the Tribunal office and indicated that he wished to give evidence against the Respondent during the hearing. Neither the Applicant nor the Respondent had called him as a witness but he nevertheless attended. The Tribunal explained to Mr Zakeri that it had to hear the application on the basis of the specific allegations contained in the Rule 5 Statement and supporting documents and must not take into account representations made outside the application. If the Tribunal heard other unrelated matters and the Respondent had no knowledge of it the Tribunal would be open to criticism. The Tribunal was not an investigative body. The Tribunal permitted Mr Zakeri to address it briefly in order to determine whether he wished to raise anything of relevance to the proceedings. The Tribunal determined that he had no direct involvement in the matters the subject of the application as a client or in any other way and therefore his comments must be disregarded in determining the application which as an expert Tribunal, it would do.

Factual Background taken from the Statement of Agreed Facts

(The Applicant had submitted in advance of the hearing a document entitled Statement of Agreed Facts dated 14 August 2015 and signed by both parties.)

5. The Respondent was born in 1964, admitted to the Roll of Solicitors in 1991 and his name remained on the Roll.

6. The Respondent held a current practising certificate which was subject to conditions. In addition, the Respondent was a member of the Bar of England and Wales, having been called in 1994.

7. From 26 November 2007 until October 2013, the Respondent was employed as a Senior Executive in the Employment Department of Thompsons Solicitors LLP ("the firm") where he ran his own caseload and had supervisory responsibility for three team members.

8. In July 2013, following an enquiry by a number of clients via their Union, the GMB, the Respondent's team manager Mr PTS undertook a review of a file relating to instructions given by the GMB upon behalf of a number of its members in relation to the closure of the L site in Sunderland with the loss of 734 jobs. Proceedings were subsequently brought in the ET to recover unpaid redundancy pay (on behalf of 106 claimants) and notice pay (on behalf of 754 claimants).

9. The Respondent initially resisted disclosing his file to Mr PTS and did not do so until 9 August 2013. When he eventually did so he confessed that he had both "misled" and "lied" to GMB Officials, the individual members of the Union who were his clients and the firm itself regarding the progress of both claims.

10. The subsequent examination of the file undertaken by Mr PTS revealed the following matters:

10.1 On 20 September 2011, the ET had notified the Respondent that it was considering striking out the proceedings as they were not being actively pursued. The Respondent wrote to the ET on 4 November 2011 advising that he was seeking his clients' instructions; however he did not subsequently provide a substantive response to that notification. He also failed to respond to the ET's request for an update on 14 November 2011. Notice of the strike out was sent to the parties on 9 December 2011.

10.2 On 22 December 2011, the Respondent had sought a review of the ET's decision. On 3 March 2012, a review hearing took place, which confirmed the strike out and ordered £4,000 costs to the respondents in the proceedings. The Respondent subsequently wrote to the solicitors for the other side in the proceedings on 2 August 2012 enclosing a cheque for £4,000 in settlement of the costs order against his clients.

10.3 Despite being fully aware that the proceedings had been struck out on 30 November 2011, between 20 June 2012 and 18 July 2013, the Respondent sent a number of emails and letters to his client and to the Union, in which he variously stated that he was "looking to get the Tribunal to list a PHR" (on 20 June 2012); was "currently awaiting a hearing date from the Tribunal" (on 9 July 2012); "I've been promised a notice of hearing in the post today or tomorrow" (on 8 November 2012) and "I can confirm a pre-hearing review has been scheduled for the 25th and 26th March 2013" (but maintaining that his clients were not required to attend) (on 21 December 2012).

10.4 The Respondent also wrote to one of his clients on 3 May 2013 advising that "The current position is that the issue of the interpretation of the contract was considered by the Tribunal at the end of March and we are awaiting the Tribunal's judgment on the point". The Respondent further advised the Union on 20 June and 1 July 2013 that the ET's decision was "with the Judge" for signature, and that he had been promised the outcome by the end of the week (on 18 July 2013).

10.5 Moreover when writing to the ET on 26 July 2011 and 4 November 2011, prior to the proceedings being struck out, the Respondent had implied that he was in the process of taking instructions and/or gathering evidence regarding quantum, however there was no evidence on either the physical file or the firm's case management system that

the clients' instructions were ever sought or that the Respondent ever attempted to gather evidence in respect of quantum.

10.6 In his meeting with Mr PTS on 1 August 2013 to discuss the file the Respondent informed Mr PTS that the proceedings had been withdrawn, then stated the following day that the claim had been successfully reviewed but was later withdrawn on instructions from the client.

10.7 In a report dated 9 August 2013 which the Respondent prepared for Mr PTS at the latter's request, the Respondent stated:

> "I have not told anyone that the review [of the strike out] was refused and have led people to believe that the claim was continuing. The current position is due to my own misjudgement of the situation, blind panic and inability to ask for help. I cannot excuse what had happened and I do not seek to do so."

The Respondent had since confirmed to the Applicant in an email dated 23 September 2014 that he produced the Report and that it was accurate and complete.

10.8 In a meeting with Mr PTS to discuss the file prior to his departure on annual leave on 9 August 2013, the Respondent stated that he was "thoroughly ashamed of his actions and how he had dealt with the file" and that "he had misled people. He then said that misled was not a strong enough a word as what he had actually done was to lie to people. He said that he had been lying to PTS for a long time and had even lied to PTS on a number of occasions over the last two weeks. He said that he had misled the members and misled the GMB."

11. A disciplinary meeting was convened by the firm on 16 September 2013. This was subsequently adjourned until 1 October 2013 at the Respondent's request. On the morning of the adjourned hearing, the Respondent indicated that he accepted the findings of the investigation and requested that the matter be dealt with in his absence. The allegations were therefore upheld and a letter was sent to the Respondent the following day advising him that his actions were of such serious professional misconduct that it amounted to gross misconduct, and that summary dismissal was the appropriate sanction.

Witnesses

12. None.

Findings of Fact and Law

13. 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.

(Quotations omit paragraph numbers and cross references unless these aid comprehension.)

14. **Allegation 1.1 - By failing to comply with Orders and correspondence from the Employment Tribunal ("the ET") in respect of proceedings issued in June 2010 on behalf of his clients through their union ("the Union") ("the proceedings") resulting in the proceedings being struck out, he [the Respondent]:**

1.1.1 failed to act in the best interests of his clients, in breach of Rule 1.04 of the SRA (sic) Code of Conduct 2007 for the period before 6 October 2011 and Principle 4 of the SRA Principles 2011 for the period thereafter;

1.1.2 failed to provide a proper standard of service to his clients, in breach of Rule 1.05 of the SRA (sic) Code of Conduct 2007 for the period before 6 October 2011 and Principle 5 of the SRA Principles for the period thereafter; and

1.1.3 failed to provide services to his clients in a manner which protects their interests in their matter, subject to the proper administration of justice and therefore failed to achieve Outcome 1.2 of the SRA Code of Conduct 2011 for the period after 6 October 2011.

Allegation 1.2 - By deliberately misleading the ET prior to the proceedings being struck out that he was seeking his clients' instructions and/or gathering evidence in support of a Schedule of Loss, when there was no evidence on the file or case management system to support his assertions, he [the Respondent]:

1.2.1 failed to uphold the rule of law and the proper administration of justice in breach of Rule 1.0 of the SRA (sic) Code of Conduct 2007 for the period before 6 October 2011 and Principle 1 of the SRA Principles 2011 for the period thereafter;

1.2.2 failed to act with integrity, in breach of Rule 1.02 of the SRA (sic) Code of Conduct 2007 for the period before 6 October 2011 and Principle 2 of the SRA Principles 2011 for the period thereafter;

1.2.3 failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Rule 1 of the SRA (sic) Code of Conduct 2007 for the period before 6 October 2011 and Principle 6 of the SRA Principles 2011 for the period thereafter;

1.2.4 attempted to deceive and knowingly or recklessly misled the court and therefore failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011; and

1.2.5 failed to comply with his duties to the Court and therefore failed to achieve Outcome 5.6 of the SRA Code of Conduct 2011.

Allegation 1.3 - By misleading his client and the Union that the proceedings were progressing when they had in fact been struck out; he [the Respondent]:

1.3.1 failed to act with integrity, in breach of Principle 2 of the SRA Principles 2011; and

1.3.2 failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the SRA Principles 2011;

1.3.3 failed to inform his client of an act or omission which gave rise to a claim against him/his firm and therefore failed to achieve Outcome 1.16.

Allegation 1.4 - By misleading his employers that the proceedings were progressing when they had in fact been struck out, he [the Respondent]:

1.4.1 failed to act with integrity, in breach of Principle 2 of the SRA Principles 2011; and

1.4.2 failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the SRA Principles 2011.

(The allegations were considered together as they arose out of related facts.)

14.1 For the Applicant, Mr Bullock submitted that all the allegations including dishonesty were admitted by the Respondent since the outset which was to his credit. A Statement of Agreed Facts ("the Statement") set out what was the agreed position of the parties. In respect of the status of the Statement, Mr Bullock referred the Tribunal to the case of Secretary of State for Trade and Industry v Rogers [1996] 4 All ER with which the Tribunal was very familiar. Mr Bullock submitted that on the basis of Rogers the parties were competent to agree the factual basis of the application and the Tribunal could not go behind it but the matter of sanction was for the Tribunal to determine and in respect of sanction the Tribunal was free to depart from the indication given by the parties in respect of it.

14.2 Mr Bullock referred to the Respondent's work situation as set out in the factual background above. He was instructed in a class action brought by members of the GMB in respect of two aspects of claim. When he eventually acceded to Mr PTS's request to disclose the file on 9 August 2013 he confessed that he had misled and lied to Union officials, individual clients and the firm about the progress of the claims. Mr Bullock took the Tribunal through the agreed facts. The file showed that the claim had been struck out in November 2011 because of the Respondent's inactivity. After the unsuccessful review of the strike out order the Respondent maintained the fiction that proceedings were still ongoing until the file was reviewed in August 2013. Regarding his clients, what the Respondent had done went beyond lying; between 20 June 2012 and 18 June 2013 he wrote to the Union and clients on eight occasions informing them that steps were being taken to progress the claim by the ET. The Respondent had effected a complete cover up of his inactivity not only regarding the Union, the individual clients and the firm but also regarding the ET to which he had written twice indicating that he was progressing the claims by way of gathering evidence when the firm's internal systems showed that was not the case. When the matter first came to light he told the senior partner that the claims had been withdrawn on the clients' instructions. However he made full and frank admissions subsequently on 9 August 2013 when he responded to the firm's internal report. He had been very frank with the firm and the Applicant in the investigations thereafter. Mr Bullock

submitted that all the allegations save dishonesty were plainly made out on the Statement as presented to the Tribunal and agreed by the parties.

14.3 In respect of the allegation of dishonesty, Mr Bullock referred to the test for dishonesty set out in the case of Twinsectra Ltd v Yardley [2002] UKHL 12

> "… before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest..."

Mr Bullock submitted that the facts agreed satisfied the objective test. It was set out in the Statement:

> "The sending by [the Respondent] of correspondence to his clients, the Union and the ET, the contents of which he knew to be misleading and untrue, was dishonest according to the standards of reasonable and honest people. Furthermore [the Respondent] realised that by those standards he was acting dishonestly."

Mr Bullock submitted that the Respondent's admission in the above quotation also satisfied the subjective test in Twinsectra.

14.4 The Tribunal considered the Statement of Agreed Facts and the evidence in support of the Rule 5 Statement as well as the submissions by Mr Bullock and the admissions of the Respondent and found as follows. Allegations 1.1, 1.2, 1.3 and 1.4 were found proved to the required standard that is sure beyond reasonable doubt in all their aspects; indeed they were admitted.

14.5 As to the allegation of dishonesty, the Respondent expressly admitted in the Statement that he had been dishonest and the Tribunal found that the agreed facts constituted dishonesty satisfying the objective and subjective tests in Twinsectra. The Tribunal found dishonesty proved in respect of allegations 1.2, 1.3 and 1.4 to the required standard.

Previous Disciplinary Matters

15. None.

Mitigation

16. The Respondent was not present but mitigation and sanction were expressly covered in the Statement of Agreed Facts as follows:

> "By way of mitigation [the Respondent] states that he suffered with depression at the time of the events in question and submits that the condition affected his decision making and ability to think clearly. However, he does not seek to contend that there are exceptional circumstances in this case which would justify the Tribunal in finding that it fell into the "...small residual category

> where striking off will be a disproportionate penalty...” identified by Mr Justice Coulson in Sharma [see below]”

The Respondent’s email to the Tribunal of 1 September 2015 elaborated upon and was consistent with what was set out in the Statement of Agreed Facts in respect of mitigation and sanction.

Sanction

17. The Tribunal had regard to its Guidance Note on Sanctions and to the Statement of Agreed Facts. It was acknowledged by the parties that sanction was a matter for the Tribunal. The Statement recited that a finding of dishonesty had consequences for the manner in which the Tribunal might exercise it discretion. The Statement referred to the words of Mr Justice Coulson delivering the judgment of the Divisional Court in SRA v Sharma [201] EWHC 2022 (Admin):

> “(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salsbury. That is the normal and necessary penalty in cases of dishonesty: see Bultitude. (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances, see Salisbury. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as in Burrowes, or over a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes) and whether it had an adverse effect on others.”

The Statement of Agreed Fact also included:

> “In particular [the Respondent] acknowledges that his dishonest conduct extended over a period of 13 months and was to the prejudice of his clients in the class actions being brought against [L] in relation to redundancy and notice pay....”
>
> Having considered the Solicitors Disciplinary Tribunal’s Guidance Note on Sanctions the [Applicant] contends, and [the Respondent] accepts, that the proper penalty in this case is an Order that [the Respondent] be struck off the Roll of Solicitors.”

The Tribunal could take note of the indication regarding sanction agreed on by the parties but the decision was the Tribunal’s alone. The Respondent’s admitted dishonesty directly related to his work as a solicitor; he had misled his clients, the firm and the Court. His misconduct had extended over a 13 month period. He had not directly benefited save that he put off the evil day of having to account for his inactivity in respect of his clients’ claims. There had been an adverse impact on everyone else involved; the clients were disadvantaged and suffered the stress of finding out that their solicitor had lied to them and of having to try to retrieve the situation, the Court was put to unnecessary work and the firm was laid open to claims. Notwithstanding the Respondent’s acknowledgement that there were no exceptional circumstances such as would satisfy the test in Sharma, the Tribunal had to look at the

medical evidence he had provided. The proceedings had been struck out in November 2011 and the misconduct spanned June 2012 to July 2013, the matter came to a head in August 2013 and the Respondent had been receiving treatment for some months prior to that. There was no medical evidence relating to his state prior to the misconduct or when it was in its early stages. The Respondent admitted that he knew that he was misleading others and did not assert that his circumstances were exceptional. The Tribunal had regard to the case of Bolton v The Law Society [1994] 1 WLR 512 where it was stated that the reputation of the profession was more important than the fortunes of any individual member. This was a particularly serious case of dishonesty in the conduct of a solicitor's practice and the Tribunal agreed with the parties' assertion that there were no exceptional circumstances such as would mitigate strike off as the appropriate sanction.

Costs

18. The Statement of Agreed Facts recorded that the Respondent agreed to pay the Applicant's costs of the application in the sum of £2,162. For the Applicant, Mr Bullock submitted that there was no costs schedule before the Tribunal but a printout had been provided showing work undertaken by the Applicant indicating that up to the day preceding the substantive hearing costs in the sum of £3,562 had been recorded including the anticipated costs of Mr Bullock's attendance. In the light of the Respondent's admissions and his bowing to what appeared to be the inevitable sanction, it seemed to the Applicant disproportionate to prepare a schedule and the amount agreed was favourable to the Respondent. The Applicant considered that it did not seem fair to charge him for any costs after he had done all he could to bring the matter to a conclusion. The Tribunal asked to what extent if any the Applicant had enquired about the Respondent's financial circumstances in arriving at the costs figure. Mr Bullock informed the Tribunal that the case of Davis v McGlinchey [2011] EWHC 232 (Admin) about making representations as to ability to pay had been drawn to his attention and the Respondent had not sought to say that he could not pay costs. The Tribunal also enquired as to the time lapse which had occurred between the matter being drawn to the Applicant's attention in November 2013 and the Applicant communicating with the Respondent in September 2014. Mr Bullock could not give reasons for the time lapse in this particular case but submitted that the Applicant was dealing with a large backlog of cases in 2013 and 2014 arising out of changes to its way of working in 2012 and 2013 but there had been no delay in the decision to prosecute; the decision to refer the matter to the Tribunal was made in October 2014. The Tribunal noted with favour that the Applicant had adopted a reasonable position and mitigated the costs they might have claimed to the agreed figure and the Tribunal approved the costs in the sum agreed.

Statement of Full Order

19. The Tribunal Ordered that the Respondent Jean Etienne Attala, 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 agreed sum of £2,162.00.

Dated this 30th day of September 2015
On behalf of the Tribunal

D. Glass
Chairman