

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11362-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NANCY JOSEPHINE LEE

Respondent

Before:

Mr K. W. Duncan (in the chair)

Mr D. Green

Mr. S. Howe

Date of Hearing: 16 June 2015

Appearances

Mr Alastair Willcox, Solicitor employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

The Respondent was represented by her parents Mrs John Lee and Mrs Irene Lee and did not appear

JUDGMENT

Allegations

1. The allegation against the Respondent, Nancy Josephine Lee was that she breached Principle 1, 2 and 6 of the SRA Principles 2011 in that she had been convicted of the following dishonesty offences: five counts of fraud contrary to sections 1 and 2 of the Fraud Act 2006.

Documents

2. The Tribunal reviewed all the documents, which included:

Applicant

- Rule 5 Statement dated 3 March 2015 with exhibit AHJW1
- E-mail from Mr Willcox to the Respondent dated 8 June 2015 enclosing:
 - Letter from the Applicant to the Respondent dated 8 June 2015
 - Applicant's schedule of costs dated 8 June 2015
- E-mail from Mr Willcox to the Respondent dated 12 June 2015

Respondent

- Respondent's Answer to the Rule 5 Statement dated 23 April 2015
- Visa grant notification dated 2 April 2014
- Personal Financial Statement of the Respondent dated 5 May 2015 with:
 - Letter dated 28 April 2015 from managing agents confirming monthly rent payments
 - Payslips dated 30 March 2015, 27 April 2015 and 14 May 2015
 - Credit card statement dated 15 April 2015;
 - Bank statement dated 9 June 2015
 - Tax statement for period 13 January 2015 to 30 June 2015
 - Student loan repayment statement
- E-mail from the Respondent to Mr Willcox dated 13 June 2015

Preliminary Issue

3. For the Applicant, Mr Willcox drew to the attention of the Tribunal to the Respondent's Answer dated 23 April 2015 to the Rule 5 Statement in which she stated:

“I am sorry not to be able to attend these proceedings and reach a final conclusion to this matter. Unfortunately my financial circumstances mean that I cannot afford to fly back to the UK, neither is it possible for me to take time off work. I appreciate that my misconduct has ramifications for myself and the profession and that ideally I should be there in person. However I have asked my parents to attend the hearing on my behalf. They have supported me throughout this matter and were present at the criminal trial with me. They are fully aware of how much I regret the incredible lack of judgement which led to my conviction and how very sorry I am that this has happened. They are prepared to answer any questions on my behalf and relay the outcome to me.”

Mr Willcox also informed the Tribunal that the Respondent had provided a certificate of readiness dated 15 May 2015 in which she indicated that she would be represented by Mrs Irene Lee and Mr John Lee. The Tribunal fully understood why the Respondent was not able to be present and determined that in the particular circumstances it was prepared to hear from Mr and Mrs Lee on the Respondent's behalf.

Factual Background

4. The Respondent was admitted to the Roll of Solicitors in 2009. She was born in 1983. The Respondent did not hold a current practising certificate.
5. At the times material to the application, the Respondent carried on practice as an assistant solicitor in the conveyancing department at Russells Solicitors ("the firm") in London.
6. The Respondent was presently resident in Australia.
7. The Applicant received an e-mail dated 15 July 2013 timed at 12.59 from the Respondent in which she stated;

"I am contacting you to self-report myself. I pleaded guilty to five counts of fraud in Westminster Magistrates' Court on Thursday 11th July, the charges having been brought by 5 train companies. The charges were for making false representations in claims for refunds on train tickets in order to make a profit from the train companies.

Although I deny a number of examples alleged concerning specific train journeys I was left with no choice but to plead guilty since I was unable to defend the charges in their entirety. There are instances where, through a mis-interpretation of the train companies' terms & conditions I claimed refunds for journeys where I had travelled part of the journey."

8. The Applicant subsequently received an e-mail dated 15 July 2013 timed at 14.42 from Mr MS, the Compliance Officer for Legal Practice ("COLP") of the firm. The e-mail confirmed the following details:
 - On the Friday before the date of report, the firm had learnt that the Respondent had pleaded guilty to five counts of fraud on 11 July 2013.
 - The offences related to false claims for refunds on train tickets which the Respondent had made from various train companies.
 - Upon learning of the matter, the firm had immediately suspended the Respondent from her position, and it had terminated her employment on 15 July 2013.
9. The Supervisor in the employment of Applicant's Supervision Department with the conduct of the matter subsequently obtained a certified copy of the Memorandum of Conviction from the Westminster Magistrates' Court. The Memorandum set out that between 19 February 2009 and 13 June 2013, the Respondent dishonestly made false claims in that she submitted fraudulent claims for train services being delayed or

cancelled, intending to make a claim for herself and to dishonestly receive money from the following train companies subject to sections 1 and 2 of the Fraud Act 2006; SouthWest trains, Southern Trains, Greater Anglia Trains, First Capital Connect Trains and Southeast Trains.

10. On 12 February 2014, the Supervisor wrote to the Respondent requesting an explanation for a number of breaches of the SRA Code of Conduct 2011 which he had identified.
11. The Respondent replied under the cover of a letter dated 6 March 2014, in which she said:

“I first and foremost acknowledge the serious nature of a conviction for fraud and appreciate how far below the conduct expected of a solicitor my actions have proved to be. Honesty is integral to the profession and since I admitted dishonesty by pleading to the offences, I fully accept the consequences and that I must be struck off the roll of solicitors. I am ashamed of what I have done and for letting down my family and employer, and also for bringing discredit to my profession...”
12. The Respondent went on to say that what happened was the consequence of being in debt through having to repay money she had borrowed to fund her university and Legal Practice Course fees. She said that the long journeys to and from her place of work each day left her “exhausted and stressed” which led to a “lack of judgment”. She also indicated that she accepted that her “behaviour has fallen below the standards of conduct expected of a solicitor” and must be “subjected to disciplinary procedures.”
13. On 12 December 2014, an Authorised Officer of the Applicant made a decision to refer the Respondent’s conduct to the Tribunal.

Witnesses

14. None

Findings of Fact and Law

15. 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
16. **Allegation 1 - The allegation against the Respondent, Nancy Josephine Lee was that she breached Principle 1, 2 and 6 of the SRA Principles 2011 in that she had been convicted of the following dishonesty offences: five counts of fraud contrary to sections 1 and 2 of the Fraud Act 2006.**
 - 16.1 For the Applicant, Mr Willcox relied on the Rule 5 Statement and exhibit including the Respondent’s self-report to the Applicant in her e-mail of 15 July 2013 and the Memorandum of Conviction extracted from the register for Westminster Magistrates’

Court and dated 28 January 2014. Mr Willcox reminded the Tribunal of Rule 15(2) of the Solicitors Disciplinary Proceedings Regulations 2007 which stated that:

“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.”

Mr Willcox drew the attention of the Tribunal to the Respondent’s response dated 6 March 2014 to the Applicant’s letter dated 12 February 2014 and her Answer dated 23 April 2015. He referred to the detail of the five counts of fraud in the Memorandum of Conviction. The Respondent had pleaded guilty and reappeared for sentencing when she was made subject to a community order, and compensation orders totalling £711.11 were made against her for the five counts (in addition to a victim surcharge of £60 and prosecution costs of £85). The Respondent had claimed refunds over a five-year period to which she was not entitled, giving as her reason the death of a family member which was not true. The reason that she used this ground for a refund was because in 2009 she had successfully claimed a refund on that basis. In her letter dated 6 March 2014, the Respondent stated:

“Stupidly, because the first time I had taken advantage of this provision was genuinely because of a death in the family I thought I would be more likely to obtain a refund if the excuse for non-travel was a death in the family.”

16.2 Elsewhere in her letter, the Respondent said:

“With hindsight, I can see that it was entirely inappropriate to re-use a tried and tested excuse on more than one occasion to obtain refunds, especially such a distasteful one.”

16.3 The Respondent had been apprehended as she explained:

“The reason my conduct was eventually brought into question by the train companies was that they conducted a nationwide audit of train refund claims. They noticed that I had made a very large number of claims and so contacted me to ask me some questions about my claims...”

16.4 The police made contact with the Respondent leading to her being charged and pleading guilty. In her Answer to the Rule 5 Statement, the Respondent stated:

“I admit all the allegations against myself, the Respondent. I acknowledge and admit that I have breached Principles 1, 2 and 6 of the SRA Principles 2011 in that I have been convicted of the following dishonesty offences: five counts of fraud contrary to sections 1 and 2 of the Fraud Act 2006.

...

Furthermore, I admit that in the instances proved to be untrue by the train companies, I did make false statements. I acknowledge that such dishonesty amounts to fraud, which is the crime for which I was convicted. I fully appreciate the seriousness of this crime and the extent to which such a crime breaches the principles and foundations upon which the legal profession is based...”

- 16.5 Mr Willcox submitted that the Respondent stated in her Answer that she appreciated the ramifications of what she had done. She had also stated in her letter of 6 March 2014:

...I understand that the issue is not the value of my fraud and the fact I admit to dishonesty at any level shows a lack of integrity...”

She also expressed her shame at what she had done and for bringing discredit to the profession.

- 16.6 Mr Willcox submitted that this was a very serious case where a solicitor had pleaded guilty to five criminal offences of dishonesty and that the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) applied in that the normal and necessary penalty in such circumstances was for the solicitor to be struck off unless there were exceptional circumstances.
- 16.7 For the Respondent, Mr Lee submitted that he did not feel in a position to argue that his daughter’s case constituted exceptional circumstances. From her response the Tribunal could see that she accepted the serious nature of the offences for which she had been prosecuted. The Respondent had complied absolutely with what had been required of her and even in the early stages offered to resign as a member of the profession and to be struck off to avoid having to go through the Tribunal process and in order to seek closure. Mrs Lee added that the Respondent had also placed herself in a form of self-imposed exile and was aware of the ramifications for her family. What had happened had been a large personal blow for both her and the people around her.
- 16.8 The Tribunal considered the evidence and submissions for the Applicant and for the Respondent. The Tribunal also had regard to Rule 15(2) which enabled it to rely on the Memorandum of Conviction. The Tribunal found that the Respondent had breached Principles 1 (upholding the rule of law and proper administration of justice), 2 (relating to integrity) and 6 (behaving in a way that maintains the trust the public places in you and in the provision of legal services) of the SRA Code of Conduct 2011 by her conviction and found allegation 1 proved to the required standard on the evidence; indeed it was admitted.

Previous Disciplinary Matters

17. None.

Mitigation

18. In addition to what he had said in response to the allegation, for the Respondent Mr Lee submitted that there was nothing else he wished to say that would have a bearing on the Tribunal’s decision save to stress the enormous blow to the

Respondent personally of what had happened. She was finding it difficult to rebuild her life and had done all in her power to bring the proceedings to a swift conclusion and he asked the Tribunal to take that into account when awarding costs against her. In her letter dated 6 March 2014, the Respondent set out in detail her career history including that the firm where she had trained had been unable to employ her after admission for financial reasons and her financial difficulties including that she had lived in London paying a rent which represented a significant proportion of the salary which she was able to earn in Kent to which she had a long commute. Mrs Lee added that the Respondent had experienced difficulties when she first came to London. She had enormous financial difficulties but these were no more than others coming to London. The family had other children at University and were not able to assist her financially. The Respondent had provided information about her financial means as she wished to have them taken into account in respect of costs. Mrs Lee referred the Tribunal to the Respondent's e-mail of 13 June 2015 in response to Mr Willcox's schedule of costs. He asked whether she agreed them and whether she had any proposals for payment other than monthly instalments of £5.00 which she had referred to in the Personal Financial Statement. The Respondent stated that she could not agree to pay the costs. She had extremely limited funds and no savings and at the time of writing could not even afford the amount she had suggested earlier. Since that time her employment had ended because of her working holiday visa restrictions. She was struggling to survive financially and could not take on any further liability. Mr Lee submitted that bearing in mind the Respondent's current circumstances it would take a long time for costs to be paid. The Respondent was presently relying on the hospitality of family and friends in Australia. She was starting another low paid job.

Sanction

19. The Tribunal had regard to its Guidance Notes on Sanction and the mitigation offered by the Respondent in her Answer and letter to the Applicant of 6 March 2014 as well as the submissions made by Mr and Mrs Lee. In the Guidance Notes it was set out that the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. The Tribunal noted that the Respondent's conduct had taken place over a period of years commencing before she qualified as a solicitor. It involved fraud and had been the subject of a criminal conviction. This was a very sad case. It appeared that the Respondent had behaved impeccably since the conviction. However the Tribunal could find no exceptional circumstances such as would justify a lesser sanction than strike off and indeed none had been advanced.

Costs

20. Mr Willcox applied for costs in the amount £2,321. The Respondent did not challenge the amount of costs but made representations about her inability to pay them. The Tribunal considered the costs sought to be reasonable and assessed them in the amount claimed. The Tribunal had regard to the evidence which the Respondent had provided about her present financial difficulties including that she was only permitted to work intermittently and that the work was low paid. It noted the evidence she had provided of student debt and other aspects of her financial position. In all the

circumstances the Tribunal considered that the costs order should not be enforced without leave of the Tribunal.

Statement of Full Order

21. The Tribunal Ordered that the Respondent, Nancy Josephine Lee, solicitor, be struck off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,321.00, such costs not to be enforced without leave of the Tribunal.

Dated this 9th day of July 2015
On behalf of the Tribunal

K. W.Duncan
Chairman