

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11415-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANDREW JOHN TAYLOR

Respondent

Before:

Mr R. Nicholas (in the chair)

Mr S. Tinkler

Mr S. Howe

Date of Hearing: 15 January 2016

Appearances

Inderjit Johal, barrister 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 Allegation against the Respondent was:
 - 1.1 On 13 March 2015, at Manchester Crown Court, the Respondent was convicted of 13 counts of Fraud by abuse of a position, in breach of all or alternatively any of the following SRA Principles 2011:
 - Principle 1 - upholding the rule of law and the proper administration of justice
 - Principle 2 - acting with integrity
 - Principle 6 - behaving in a way that maintains the trust the public places in you and in the provision of legal services

Documents

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

Applicant:

- Application dated 4 August 2015 together with attached Rule 5 Statement and all exhibits
- Applicant's Statement of Costs dated 8 January 2015
- Letter dated 8 September 2015 from the SRA to the Tribunal
- Letter dated 17 September 2015 from the Respondent to the SRA
- Letter dated 6 November 2015 from the SRA to the Respondent, upon which the Respondent had written a short note received by the SRA on 2 December 2015
- Restraint Order prohibiting Disposal of Assets from the Manchester Crown Court dated 28 August 2013
- Official Copy of Register of Title from the Land Register in relation to the Respondent's property

Respondent:

- Medical Report from Dr Mann dated 25 March 2015
- Letter from the Respondent to the Tribunal received on 25 August 2015

Service of Proceedings

3. The Respondent was not present at the hearing. He was currently in prison. Mr Johal, on behalf of the Applicant, submitted the Respondent had been properly served with notice of today's hearing by way of a letter sent to him by the Tribunal on

7 August 2015. In late August 2015 the Respondent had sent a letter to the Tribunal providing details of his health and indicating he would not be able to attend the hearing in London.

4. On 9 September 2015, the Tribunal had issued further directions and written to the Respondent attaching a copy. Those directions also gave notice of today's hearing.
5. On 17 September 2015, the Respondent had written to the Applicant indicating he would try to arrange for a video link but since that time, he had not been in further contact, save on 2 December 2015 when the SRA received a short note from him asking for a copy of his medical report to be placed before the Tribunal. Mr Johal understood the Respondent's daughter had a Power of Attorney of some sort but he confirmed that she had not been in contact either.
6. Mr Johal submitted the Respondent had known about this hearing since August 2015 and was aware that he could attend by video link. Whilst it was accepted the Respondent had some medical issues and a Power of Attorney may indicate his capacity might be affected, Mr Johal pointed out that all letters from the Respondent were typed and appeared coherent.
7. The Tribunal considered carefully all the documents before it and was satisfied the Respondent had been properly served with notice of this hearing. The Tribunal had written to the Respondent notifying him of today's hearing on 7 August 2015 and again on 9 September 2015. He had responded to both of those letters indicating he would not be able to attend the hearing in person.

Proceeding in Absence

8. Mr Johal submitted that the Tribunal should proceed with this hearing in the Respondent's absence as the Respondent had indicated he would not be attending in his letter to the Tribunal received on 25 August 2015. The Respondent had also stated in that letter that he was subject to a Restraint Order and had no funds. Mr Johal submitted this may have restricted the Respondent's ability to instruct a representative to attend on his behalf. Mr Johal accepted there may be an issue over the Respondent's health which could have affected his ability to attend.
9. The Clerk to the Tribunal, having checked the Tribunal file, confirmed that a further letter dated 5 January 2016 had been sent by the Tribunal to the Respondent at his prison address by first class post attaching a copy of the Cause List. This letter had not been returned. A similar letter had also been sent by the Tribunal to the Respondent's daughter on 5 January 2016 also attaching a copy of the Cause List. Whilst that letter had been sent by recorded delivery, the Tribunal office was unable to confirm whether it had been delivered.
10. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Respondent had written to the Tribunal in a letter received on 25 August 2015 in which he had stated his health would make it impossible for him to attend any meeting in London, even if the prison office would facilitate his travel. The Respondent had stated:

“Should anything need signing, my daughter [AT] has ‘empower of attorney’ and I see her most weeks. Could you please send copies of correspondence to her at [address].”

11. It was not clear to the Tribunal precisely what was meant by ‘empower of attorney’ or what this related to, whether that be financial or otherwise. There was no medical evidence before the Tribunal to indicate the Respondent did not have capacity to deal with his affairs. The Tribunal had also written to both the Respondent and his daughter on 9 September 2015 attaching directions which referred to today’s hearing. These contained a direction for the Respondent to make an application to the Prison Governor if he wished to attend the hearing either in person or by videolink/telephone. The Respondent had written to the Applicant on 19 September 2015 acknowledging receipt of the Tribunal’s letter and stating he would try to arrange a videolink. Finally the Respondent had sent a short note to the Applicant which was received on 2 December 2015 in relation to his medical report.
12. Whilst letters had been copied and sent to the Respondent’s daughter, she had not contacted the Tribunal or the Applicant in response.
13. The Tribunal was satisfied that the Respondent clearly did have capacity to deal with his affairs in August and September 2015, and to some extent in December 2015. There was no medical evidence before the Tribunal to indicate this position had changed. Nor was there any information about whether the Respondent had contacted the Prison Governor. The Tribunal concluded the Respondent was content to allow these proceedings to continue in his absence and indeed, noted he had indicated in his letter to the Tribunal received on 25 August 2015 that he admitted his “actions”. The Respondent had not requested an adjournment and it was unlikely he would attend on a future date if the hearing was to be adjourned.
14. This was a case involving a conviction relating to 13 counts of fraud by abuse of position which was a very serious matter. Taking into account the circumstances of this case, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent’s absence, and that matters should be concluded without any further delay.

Factual Background

15. The Respondent, born on 13 May 1957, was admitted to the Roll of Solicitors on 15 December 1981. He did not hold a current practising certificate.
16. At all material times, the Respondent carried on practice as a solicitor at Andrew J Taylor Solicitors of 10 Wilmslow Road, Cheadle, Cheshire, SK8 1BT (“the firm”).
17. In July 2013, the SRA was contacted by the Greater Manchester Police Economic Crime Unit following suspicious activity on the Respondent’s personal bank account. The SRA carried out an inspection into the firm which resulted in a partial intervention on 24 July 2013. On the same day the Respondent’s practising certificate was suspended.

18. On 13 March 2015, the Respondent was convicted upon indictment of 13 counts of Fraud by abuse of position, contrary to section 4 of the Fraud Act 2006. The conviction related to the Respondent making improper payments and transfers of monies from the firm's client account for his own personal use. A total of £624,000 was identified as being misappropriated between May 2011 and the Respondent's arrest in July 2013.
19. On 1 June 2015, the Respondent was sentenced to 4 years of imprisonment.

Witnesses

20. No witnesses gave evidence.

Findings of Fact and Law

21. The Tribunal had carefully considered all the documents provided, and the submissions of the Applicant. The Tribunal confirmed the allegation had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering the allegation.
22. **Allegation 1.1: On 13 March 2015, at Manchester Crown Court, the Respondent was convicted of 13 counts of Fraud by abuse of a position, in breach of all or alternatively any of the following SRA Principles 2011:**
- **Principle 1 - upholding the rule of law and the proper administration of justice**
 - **Principle 2 - acting with integrity**
 - **Principle 6 - behaving in a way that maintains the trust the public places in you and in the provision of legal services.**
- 22.1 The Tribunal had been referred to a letter from the Respondent to the Tribunal received on 25 August 2015 in which he had stated:
- “5. I have consistently admitted my actions
8. The only matter I would draw your attention to is the fact that I was entirely honest and ran an efficient business until such time as I was prescribed drugs for my [medical condition], where upon the side effects induced my conduct.....”
- It was not clear to the Tribunal precisely what “actions” the Respondent was admitting.
- 22.2 The Tribunal had before it a Certificate of Conviction from the Manchester Crown Court dated 15 June 2015 which confirmed that on 13 March 2015, the Respondent had been convicted on indictment, upon his own confession, of 13 counts of Fraud by abuse of position. The Certificate also confirmed the Respondent had been sentenced to 4 years imprisonment on 1 June 2015.

- 22.3 The remarks of the Sentencing Judge, the Honourable Mr Justice Openshaw, indicated the Respondent had defrauded a number of clients of about £624,000. The Honourable Mr Justice Openshaw had stated all the clients had been acutely vulnerable due to their elderly age or dementia, and in many cases the Respondent had held a Power of Attorney for them. There were some clients who had been unaware of the Respondent's actions. Their families had been caused distress and anxiety due to not knowing precisely what had happened. The Sentencing Judge stated the Respondent had "frittered away" the money on "various absurd extravagancies".
- 22.4 The Tribunal had been provided with a copy of a medical report dated 25 March 2015 which had also been available at the Manchester Crown Court trial. The Honourable Mr Justice Openshaw had taken into account the medical report provided. The report indicated the effect of one of the drugs used to treat the Respondent's medical condition could cause compulsive and addictive behaviour resulting in various conditions. The Honourable Mr Justice Openshaw stated the Respondent's behaviour had been entirely out of character, and that it was therefore highly likely that his compulsive behaviour and extravagance was due to the drugs that he was receiving. However, the Honourable Mr Justice Openshaw concluded that the Respondent was competently conducting other parts of his business, he had family, friends and advisors from whom he could and should have sought help. This would have identified the effects the medication was having on him and would have led to a change in regime with more effective treatment. The Tribunal accepted and agreed with the conclusions reached by the Sentencing Judge.
- 22.5 The Tribunal was satisfied that in light of the Respondent's conviction, he had failed to uphold the rule of law and the proper administration of justice. He had grossly breached his position of trust and had thereby failed to act with integrity. Various vulnerable clients had been taken advantage of and the Tribunal's attention had been drawn to copies of a number of newspaper articles publicising the Respondent's conviction. The Tribunal was satisfied his conduct had not maintained the trust the public placed in him or in the legal profession. The Tribunal found the allegation proved.

Previous Disciplinary Matters

23. None.

Mitigation

24. The only mitigation before the Tribunal was that contained in the Respondent's letter received on 25 August 2015, referring to his medical situation and his financial position. The Tribunal also had a copy of the Respondent's medical report of 25 March 2015.

Sanction

25. The Tribunal had considered carefully the Respondent's statements and the medical report provided. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.

26. The Tribunal considered the aggravating and mitigating factors in this case. The Respondent's conduct had taken place over an extended period of just over 2 years. He had personally benefited from defrauding vulnerable clients of a large amount of money and this had resulted in a criminal conviction. The money had been used for the Respondent's personal benefit to fund a lavish and degenerative lifestyle. These were all aggravating factors.
27. The Respondent did have a previously long unblemished record and he had co-operated with the regulator, making admissions to his behaviour. He had also experienced a number of stressful life events relating to his health and family. These were mitigating factors. Whilst the Tribunal accepted the Respondent's medication may have contributed to his behaviour, it also took into account the content of the medical report which stated:

“.... it is unlikely that he developed a hypomanic illness as he denies experiencing elation in mood, racing thoughts and his occupational judgement was unaffected (other than clients' finances).”

28. The medical report also went on to say:

“..... it is likely Mr Taylor demonstrated features of ICD (Impulsive Compulsive Disorder) at the material time he committed his offences.....

... In my opinion the defence of automatism in Mr Taylor's case is weak. Such a defence requires total loss of voluntary control; impaired or reduced control is not enough. When considering this defence it is important to note the following:

- i. Mr Taylor acknowledges that at the time he committed the offences, he did so in the knowledge that his actions were illegal. He reports that he did not view his actions as morally wrong for various reasons, e.g. he gave this matter little thought and initially justified his actions as merely 'borrowing' the money rather than stealing it.
- ii. Mr Taylor admits that he told lies to both his wife and work colleagues about acquiring a financial windfall in order to deflect any attention about his excessive spending behaviour. His avoidance of telling these individuals the truth suggests he knew his actions were wrong at the time.
- iii. His sudden realisation of the serious nature of what he had done in March 2013 occurred in the run-up to the inevitable detection of his unlawful actions by the accountants reviewing the finances around July 2013.

- iv. Mr Taylor using a client's account to pay his tax bill in January 2013 as an alternative to pursuing the rather bureaucratic process of acquiring a loan appears to have been a pre-meditated act rather than a reflex reaction or one where an individual commits the act in a semi-conscious state.
 - v. Mr Taylor's offences occurred over a period of 2 years when he was still able to make rational judgements in the wider aspects of his occupational role (outside of his offending behaviour)."
29. The Honourable Mr Justice Openshaw had concluded that the effects of the Respondent's medication provided no real mitigation and the Tribunal agreed with that analysis. This was a case of unsophisticated fraud whereby the Respondent had transferred large sums of money belonging to vulnerable clients to his personal account. This had been a gross abuse of his position as a solicitor, further aggravated by the fact that he had held a Power of Attorney on behalf of a number of those vulnerable clients. The effect of the Respondent's medication on him did not amount to exceptional circumstances in this case. There had also been a huge amount of media coverage on Mr Taylor's case and this had had a derogatory effect on the reputation of the profession.
30. The Tribunal took into account the case of Bolton v The Law Society [1994] I WLR 512 and the comments of Sir Thomas Bingham MR who had stated:
- "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well."
31. The Tribunal had compassion for the Respondent's very sad personal circumstances and indeed noted the Sentencing Judge had described these as "wretched". The Respondent had clearly suffered greatly in his personal life. However, when considering each of the possible sanctions that could be imposed the Tribunal concluded that the seriousness of the misconduct, which was at the highest level, was such that nothing short of an Order striking the Respondent off the Roll would be sufficient to protect the public, maintain public confidence in the profession and protect the reputation of the legal profession. Accordingly, the Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

Costs

32. Mr Johal, on behalf of the Applicant requested an Order for his costs in the total sum of £2,843.83 and provided the Tribunal with a breakdown of those costs.

33. Mr Johal reminded the Tribunal that the Respondent was still in prison and subject to a Restraint Order dated 28 August 2013. However he referred the Tribunal to a Land Registry Office Copy Entry of a property owned by the Respondent jointly with his wife. The Respondent had not provided any supporting evidence of his financial circumstances and it was clear he had an interest in this property. In light of this, Mr Johal requested an order for the Applicant's costs, such order not to be enforced in breach of the Restraint Order. He stated the Applicant could then wait until the Restraint Order was discharged before taking any enforcement action, if necessary.
34. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £2,843.83.
35. In relation to enforcement of those costs, the Tribunal noted the Respondent was subject to a Restraint Order but did have some interest in a jointly owned property. The Tribunal had particular regard for 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.”
36. In this case the Respondent had not provided any documentary evidence of his income, expenditure, capital or assets and therefore it was difficult for the Tribunal to take a view of his financial circumstances. The Tribunal was 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 those costs in light of his age and the Tribunal's Order depriving him of his livelihood. However, in this case, the Respondent clearly had an interest in a property and there was no reason why the Order sought by the Applicant should not be made. Accordingly, the Tribunal Ordered the Order for costs was not to be enforced in breach of the Restraint Order of Manchester Crown Court dated 28 August 2013.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, ANDREW JOHN TAYLOR, 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 £2,843.83, such costs not to be enforced in breach of the Restraining Order of Manchester Crown Court dated 28 August 2013.

Dated this 1st day of March 2016
On behalf of the Tribunal

R. Nicholas
Chairman