

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11426-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

VICTORIA LOUISE ROBINSON

Respondent

Before:

Mr L. N. Gilford (in the chair)

Ms A. Horne

Mrs V. Murray-Chandra

Date of Hearing: 22 June 2016

Appearances

Mr Inderjit Johal, Barrister, 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 against the Respondent, made by the Solicitors Regulation Authority (“SRA”) were that:
 - 1.1 She withdrew client money from client account otherwise than in the circumstances permitted by Rule 20.1 of the SRA Accounts Rules 2011 (“SRA AR 2011”) in breach of that Rule and all, or alternatively any, of the following SRA Principles 2011 (“the Principles”); 2, 4, 6 and 10.
 - 1.2 She used client monies for her own benefit in breach of all, or alternatively any, of the following Principles; 2, 4, 6 and 10.
 - 1.3 She failed to protect client money in breach of all, or alternatively any, of the following Principles: 4, 6 and 10.
 - 1.4 She failed to remedy breaches of the SRA AR 2011 promptly on discovery in breach of Rule 7.1 SRA AR 2011.
 - 1.5 She failed to keep properly written up accounting records at all times in accordance with Rule 29 of the SRA AR 2011 in breach of that Rule.
 - 1.6 She made unjustified use of a suspense ledger in breach of Rule 29.25 of the SRA AR 2011.
2. Dishonesty was also alleged in respect of allegations 1.1 and 1.2, however a finding of dishonesty was not an essential ingredient to sustain those allegations.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included:
 - Notice of Application dated 28 August 2015
 - Applicant’s Rule 5 Statement and Exhibit KMS 1 dated 28 August 2015
 - Applicant’s Schedule of Costs dated 16 June 2016
 - Respondent’s Response to the Rule 5 Statement dated 10 February 2016
 - Medical Reports dated 29 February 2016, 2 March 2016 and 10 March 2016 for the Respondent
 - Respondent’s Statement of Means dated 11 April 2016
 - Statement of Agreed Facts and Admissions

Preliminary Matters

Non Attendance of the Respondent

4. The Respondent did not attend the hearing and was not represented. She had been in regular contact with the Applicant in relation to the proceedings, through Mr Hewitt, who had been assisting her. In his email to the Tribunal of 20 May 2016 Mr Hewitt made it clear that due to her medical situation the Respondent would not be attending the hearing.

5. Mr Johal applied for the case to proceed in the Respondent's absence, pursuant to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"), which provided that:

"If the Tribunal is satisfied that notice of the hearing was served on the Respondent in accordance with these Rules, the Tribunal shall have the power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

6. The Tribunal was satisfied that the proceedings, and notice of the hearing date, had been properly served on the Respondent. The Tribunal reviewed the correspondence between the parties and the Tribunal office.
7. The Tribunal had regard to the principles in R v Hayward and others [2001] EWCA Crim 168, R v Jones [2002] UKHL 5 and Tait v Royal College of Veterinary Surgeons [2003] WL 1822941. The Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent herself from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. There was nothing to indicate that the Respondent would attend any future hearing if the case were to be adjourned. In the light of these circumstances, the Tribunal found it just to proceed with the case, notwithstanding the Respondent's absence.

Withdrawal of the allegation of dishonesty

8. Given the additional information that had been received by the Applicant in relation to the Respondent's health, the SRA had reviewed the case against the Respondent and did not think that there was a realistic prospect of its being able to prove the allegation of dishonesty to the requisite standard. In the circumstances Mr Johal applied to withdraw that allegation.
9. The Tribunal accepted the representations made, and consented to the withdrawal of the allegation of dishonesty.

Reliance upon the Agreed Statement of Facts and Admissions

10. Mr Johal submitted that the parties invited the Tribunal to proceed on the basis of the Statement of Agreed Facts and Admissions; that document had been signed by the Respondent on 10 May 2016, and on behalf of the Applicant on 19 May 2016.
11. The Applicant relied on the case of Secretary of State for Trade and Industry v Rogers [1996] 1 WLR 1569 ("Rogers") which, it was submitted, held that the matter should proceed only on the basis of the agreed facts, and that it was not for the Court to speculate whether the disputed facts, if pursued, might be proved or affect sanction.
12. The agreed facts in this matter mirrored those in the Rule 5 Statement, absent dishonesty.

13. In light of the Respondent's express agreement, evidenced by her signature on the Statement of Agreed Facts and Admissions, the Tribunal allowed the Applicant's application to rely on that document. The Tribunal further accepted the submissions made in respect of Rogers, and agreed to proceed on the basis of those matters set out in the Statement of Agreed Facts and Admissions only.

Factual Background

14. The Respondent was born in 1975 and was admitted to the Roll of Solicitors in May 2005. As at the date of the hearing, the Respondent remained upon the Roll of Solicitors; her practising certificate was suspended.
15. At all material times, the Respondent was trading on her own account, under the style of Victoria L Robinson Solicitors ("the Firm"), having been granted recognition as a sole practitioner by the Applicant on 12 March 2012. The Firm closed on 11 March 2014, following an intervention by the Applicant on the same date.
16. On 5 March 2014, a duly authorised officer of the Applicant commenced an inspection of the books of account and other documents of the Firm. That inspection culminated in an interim memorandum dated 7 March 2014. A final report was subsequently prepared dated 9 September 2014.

Allegations 1.1 & 1.2

17. The final shortfall on the account of the Firm was £93,885.67. Of that shortfall, £58,385.47 was attributable to over transfers from client to office account for which the Respondent was responsible.
18. The Respondent received a letter from "Paul" dated 17 December 2013 confirming that the client account of the Firm was overdrawn in the sum of £62,483.85, much of which was attributed to a number of round figure transfers. The letter also referred to the lack of information and the resulting difficulty in reconciling the accounts. For this reason, the letter advised that an "Error Account Ledger" was set up, and entries which could not be attributed to a specific client were posted to the Error Account Ledger.
19. The letter also specifically referred to a transfer that took place on 22 November 2013 in the sum of £30,000 in respect of which it stated: "I acknowledge that this figure was an error and that you only intended to transfer £3,000 but to date only £15,000 has been repaid. You say that these transfers are/were in respect of costs but have been unable to supply bills or state which clients they apply to."
20. On 22 November 2013, the Respondent transferred the sum of £30,000 from client to office account. The Forensic Investigation Report ("FI Report") identified that £30,000 was transferred instead of £3,000. £27,000 was therefore improperly transferred from client account, £15,000 of which was replaced on 5 December 2013 by office to client bank account transfer.

21. Transfers of lump sums from client to office account were carried out by the Respondent whilst in a confused state, as a result of alcohol-related problems that she was experiencing at the time. Transfers were also duplicated by the Respondent which resulted in over transfers.
22. On 25 November 2013, the Respondent made a payment of £3,723.98 by debit card from the office account of the Firm to a holiday company. Had the Respondent transferred the correct amount of £3,000 from client to office account rather than the £30,000 as set out above, then this along with the existing office account balance of £1,067.97 would have been enough to cover that payment to the holiday company. On 26 November 2013, a further debit card payment was made in the sum of £3,839 to another holiday company. Had the transfer been for the correct amount together with the existing office balance, there would have been insufficient funds in the office account to cover this second holiday company payment. This second payment was therefore made utilising client money derived from the £30,000 transfer on 22 November 2013.
23. The Respondent confirmed in her Defence Case Statement that the first holiday payment was subsequently re-funded by the holiday company. A copy of the Respondent's bank statement showing transactions that took place on 2 December 2013 shows that a refund in the sum of £3,839.00 was made into the office account.

Allegation 1.3

24. £35,000 of the minimum shortfall on client account was caused by amounts improperly withdrawn from client bank account. Between 20 and 21 January 2014, two unauthorised withdrawals were made from the client account totalling £35,500. The Respondent reported this to the police stating that the unauthorised withdrawals were likely to have been made via her iPad Air, which she had previously lent to a third party who was known to her. When logging into her Firm's accounting information, the Respondent had selected the option to have the password and login details remembered, which may have enabled the third party to access the client account online.
25. The FI Report identified a direct transfer of £15,500 made from the Firm's client account with the narrative on the client account bank statement "G EDWARDS – B PLAN 18 Jan 14" and that a further payment of £20,000 was made on 21 January 2014 with the narrative on the firm's client bank account statement "G EDWARDS – HOUSE".
26. The Respondent accepted that she failed to protect client money as unauthorised withdrawals totalling £35,500 were made from the Firm's client account.

Allegation 1.4

27. On or around 17 December 2013, it was brought to the Respondent's attention that her client account was overdrawn in the sum of £62,483.85. A letter, written to her by "Paul" made particular reference to an improper transfer that had taken place in the

sum of £27,000. The Respondent was further informed, within that letter, that only £15,000 had been paid back into the client account.

Allegation 1.5

28. The books of account for the Firm were not in compliance with the SRA AR 2011. In the letter from Paul dated 17 December it was suggested that a reconciliation of the accounts had not taken place due to the lack of accounting information available, particularly in respect of transactions that took place from the end of January 2013.
29. At the point of intervention into the firm on 11 March 2014, the client account was not reconciled and was not intact. A client account reconciliation had not been completed during the entire time that the Firm was holding client funds and the accounts were in very poor order with no discernible filing system in place. As per the findings of the Intervention Officer in his report of 9 September 2014:
- Client to office transactions in the region of £69,000 could not be reconciled to a client Ledger or outstanding fee;
 - approximately 120 cheque book stubs and paying in slips were not completed: and
 - a number of bank statements and cheque books were missing.

Allegation 1.6

30. In the letter to the Respondent from Paul dated 17 December 2013, the author stated that due to the difficulty in trying to reconcile the accounts, an error account was set up to which entries which could not be posted to a specific client, were posted.
31. The use of the suspense ledger was not justified. The ledger was created in December 2013. The postings were not temporary in nature, but as a consequence of a poor accounting system on the part of the Respondent; that was not the purpose of a suspense ledger.

Witnesses

32. None.

Findings of Fact and Law

33. 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.

34. **Allegation 1.1 - She withdrew client money form client account otherwise than in the circumstances permitted by 20.1 of the SRA AR 2011 in breach of that Rule and all, or alternatively any, of the following Principles; 2, 4, 6 and 10.**

Allegation 1.2 - She used client monies for her own benefit in breach of all, or alternatively any, of the following Principles; 2, 4, 6 and 10.

- 34.1 The Respondent accepted that she had withdrawn client money otherwise than in accordance with the SRA AR 2011, and that she had used client monies for her own benefit. In so far as she could recall any of the events, she believed that she was transferring monies on account of costs which were due to her for work done and authorised. However she did not dispute the facts and it was evident that she was duplicating transfers without realising it. The Respondent admitted that in breaching the SRA AR 2011 and using client money in the way that she did, she had breached principles 2, 4, 6 and 10 of the Principles.

- 34.2 The Tribunal found the allegations proved beyond reasonable doubt (indeed they were admitted), on the agreed facts and documents. The facts, in and of themselves, were sufficient to establish a lack of integrity. In acting in the way that she did, the Respondent was clearly not acting in the best interests of her clients, and had failed to protect client money. Members of the public would be extremely dismayed to know that a solicitor was using client money in this way; she effectively transferred client money to office account, which she then used, in some circumstances, as her own personal account. Accordingly, the Tribunal found beyond reasonable doubt, that the Respondent had breached the Principles as pleaded and alleged.

35. **Allegation 1.3 - She failed to protect client money in breach of all, or alternatively any, of the following Principles: 4, 6 and 10.**

- 35.1 The Tribunal found allegation 1.3 proved beyond reasonable doubt (indeed it was admitted), on the agreed facts and documents. The Respondent accepted that she had failed to protect client money. The Tribunal found that allowing a third party access to the Firm's client account was extremely serious, and that in failing to protect access to that account, she had allowed a third party to, effectively, steal client money. The Respondent had clearly failed to act in the best interests of each client, and her conduct in relation to client money was woefully inadequate. Members of the public would be appalled to know that a solicitor left access to client account open on an electronic device, and then gave that device to somebody else to use for their own purposes. Accordingly, the Tribunal found beyond reasonable doubt, that the Respondent had breached the Principles as pleaded and alleged.

36. **Allegation 1.4 - She failed to remedy breaches of the SRA AR 2011 promptly on discovery in breach of Rule 7.1 SRA AR 2011.**

- 36.1 Rule 7.1 provided that:

“Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.”

- 36.2 The Respondent explained that as a direct result of her problems with alcohol at the time, she did not think that she had overdrawn the client account, even when she received the letter informing her that the client account was overdrawn. The Tribunal found as a fact, that the Respondent was on notice in relation to the client account when that letter was received. Further, the letter made it plain that the Respondent had not fully replaced the overdrawn funds.
- 36.3 Accordingly, the Tribunal found allegation 1.4 proved beyond reasonable doubt (indeed it was admitted), on the agreed facts and the documents.
37. **Allegation 1.5 - She failed to keep properly written up accounting records at all times in accordance with Rule 29 SRA AR 2011 in breach of that Rule.**
- 37.1 Rule 29 provided (amongst other things) that a solicitor must at all times keep accounting records properly written up to show dealings with client money received, held or paid, and that all dealings with client money must be appropriately recorded.
- 37.2 The Respondent accepted that she had failed to maintain proper and up-to-date accounting records. There were no reconciliations conducted on the client account from the time that the Firm began holding client money. Accordingly, the Tribunal found allegation 1.5 proved beyond reasonable doubt (indeed it was admitted), on the agreed facts and the documents.
38. **Allegation 1.6 - She made unjustified use of a suspense ledger in breach of Rule 29.25 SRA AR 2011**
- 38.1 Rule 29.25 provided that:
- “Suspense client ledger accounts may be used only when [a solicitor] can justify their use; for instance, for temporary use on receipt of an unidentified payment, if time is needed to establish the nature of the payment or the identity of the client.”
- 38.2 The Respondent accepted that she had not used the suspense ledger account for that purpose. The tribunal determined that the postings to the suspense account were not, as was agreed between the parties, temporary in nature but were a result of the Respondents lack of an adequate accounting system. Accordingly, the Tribunal found allegation 1.6 proved beyond reasonable doubt (indeed it was admitted), on the agreed facts and the documents.

Previous Disciplinary Matters

39. None.

Mitigation

40. At the material time, the Respondent was alcohol dependent. She had a history of alcohol-related problems and depression as outlined in her medical reports. The Respondent’s problems with alcohol led to her admission as an inpatient to a rehabilitation centre for a period of over 6 months. The medical evidence showed that

the Respondent presented with features in keeping with Recurrent Depressive Disorder with anxiety. The medical evidence also showed that the Respondent's alcohol intake had had a negative effect on her mental health, and had impacted on the way she behaved at work. It was conceivable that, depending on her alcohol intake, the Respondent may well have been confused and not known what she was doing day-to-day at work.

41. The Respondent was no longer alcohol dependent, however she was still taking medication and regularly attending counselling, AA meetings and Care/Recovery clinics.

Sanction

42. The Tribunal had regard to the Guidance Note on Sanction (4th Edition). The Tribunal firstly considered the seriousness of the Respondent's admitted and proven conduct. The Tribunal found the Respondent to be culpable for the breaches; the misconduct having arisen as a direct result of her actions. The Tribunal found that the Respondent had acted in breach of the trust placed in her by her clients, to safeguard their monies. The Tribunal noted that at the relevant time the Respondent had been sufficiently able to manage her own affairs, such that she was able to book a holiday. She had failed to show any real understanding of the stewardship and obligation she was under in relation to client monies. The Respondent had caused harm to her clients - as a result of the mismanagement of the client account, the Compensation Fund had paid out £231,000 in grants to former clients. The Applicant had recovered £128,000 from the client account when it intervened into the Firm, leaving an overall shortage of £102,000. The Respondent's misconduct was clearly harmful to the reputation of the profession.
43. The Tribunal noted the mitigation and medical evidence advanced on behalf of the Respondent. The Tribunal also took account of the Respondent's co-operation with the Applicant, open and frank admissions and genuine insight. The Respondent regretted what had happened, and took full responsibility for her actions. She did not think that she was currently fit to practice.
44. The proven and admitted misconduct was so serious, such that sanctions of No Order, Reprimand, a Fine, Restrictions or a definite Suspension, were not appropriate or proportionate. The seriousness of the misconduct was at the highest level; the departure by the Respondent from the required standards of integrity probity and trustworthiness was extreme. It was clear to the Tribunal that the Respondent recognised the seriousness of her misconduct; the Respondent stated in her answer to the allegations that it was clear that "I deserve to be struck off the Roll of Solicitors." The Tribunal considered that a sanction lesser than striking the Respondent from the Roll, given the seriousness of her proven and admitted misconduct, was not appropriate.

Costs

45. Mr Johal made an application for the costs of the Applicant in the agreed sum of £13,394.15. He accepted the representations made by the Respondent in her statement of means, which showed that she was not in a good financial position.

46. The Tribunal reduced the costs to reflect the actual hearing time. The Tribunal also found that the costs charged for the preparation of the Statement of Agreed Facts and Admissions was excessive. The Tribunal determined that the sum of £12,500 was reasonable and proportionate in the circumstances.

Statement of Full Order

47. The Tribunal Ordered that the Respondent, VICTORIA LOUISE ROBINSON, 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 £12,500.00.

Dated this 12th day of July 2016
On behalf of the Tribunal

L. N. Gilford
Chairman