

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11448-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MATTHEW CHARLES CURTIS

Respondent

Before:

Mr. A. N. Spooner (in the chair)

Ms A. E Banks

Mrs L. Barnett

Date of Hearing: 30 March 2016

Appearances

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

The Respondent was not present or represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent made on behalf of the Applicant were that he;
 - 1.1 Fabricated two documents, one from Companies House and the other from Halton Borough Council (“the Council”), in breach of all or alternatively any of Principles 2,4,5 and 6 of the SRA Principles 2011 (“the Principles”), and failing to achieve Outcome 1.2 of the SRA Code of Conduct (“the SCC”);
 - 1.2 Furnished his client with the fabricated documents and represented to his client that they had been received from the two organisations referred to in allegation 1.1, in breach of all or alternatively any of Principles 2,4,5 and 6 of the Principles and failing to achieve Outcome 1.2 of the SCC;
 - 1.3 Accepted and was issued with a conditional caution (the condition of which was to pay £1,000 in compensation by the 28 March 2015) from Cheshire Police on the 16 January 2015 for making and supplying an article for use in fraud, contrary to the Fraud Act 2006, in breach of Principles 1,2 and 6 of the Principles.
 - 1.4 Dishonesty was alleged against the Respondent in respect of allegations 1.1 and 1.2; however proof of dishonesty was not an essential ingredient for proof of the allegations.

Documents

2. The Tribunal considered all the documents including;

Applicant

- Application and Rule 5 statement with exhibit “AHJW1” dated 19 November 2015
- Cost Schedules dated 19 November 2015 and 18 March 2016
- Letter from the Applicant to the Respondent dated 18 March 2016 enclosing costs schedule
- Letter from the Applicant to the Respondent dated 18 February 2016
- Certificate of Incorporation of a Private Limited Company and related information
- Office Copy Entry of the Land Registry Register for the Respondent’s address
- Entry from the Insolvency Register

Respondent

- Emails from the Respondent to the Applicant dated 14 January, 18 January 2016, 27 January 2016, 22 February 2016 (various), 29 March 2016 (timed 10.04, 12:22 and 14.08).

Preliminary Matters

The Absence of the Respondent

3. The Tribunal’s initial letter to the Respondent dated 26 November 2015 had been returned undelivered on 5 February 2016. The Respondent had then provided an

updated address to the Applicant. The Applicant had sent the papers to the Respondent by letter on 18 February 2016 and on at least three occasions by email. The Applicant and Respondent had been in contact by email on a number of occasions. The Applicant submitted that the Respondent had been properly served under Rule 10 (5) of the SDPR and was aware of the hearing date.

4. The Applicant invited the Tribunal to proceed in the Respondent's absence pursuant to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"). The Respondent was aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged. The Applicant referred the Tribunal to Hayward, Jones and Purvis [2001] EWCA Crim 168. The Applicant submitted that the Respondent was aware of the hearing and had chosen not to attend. The Applicant invited the Tribunal to proceed in the Respondent's absence.
5. The email from the Respondent to the Applicant dated 14 January 2016 stated "I do not intend to appear at the tribunal nor will I be engaging with the proceedings." On 29 March 2016 the Respondent emailed the Applicant and stated "I confirm I will not be attending the hearing as I simply cannot afford to travel to London for the inevitable outcome of these proceedings".
6. The Tribunal was satisfied that the Respondent had been properly served with the papers in this matter and notice of the hearing. The Tribunal considered whether it was in the interests of justice to proceed in the Respondent's absence. The Respondent was aware of the date of the hearing. The Respondent had made clear throughout the proceedings that he had no intention of appearing at the hearing. He did not challenge any part of the Applicant's case. The Tribunal was satisfied that he had voluntarily absented himself from proceedings. The Tribunal found there was no disadvantage to the Respondent in proceeding. The Respondent did challenge the anticipated level of costs to be sought by the Applicant. This had been done in the Respondent's email of 29 March 2016 and the Tribunal therefore was fully aware of the Respondent's position on costs. The Tribunal found that it was in the interests of justice that the matter should proceed in the absence of the Respondent.

Factual Background

7. The Respondent was born in 1984 and admitted to the Roll of Solicitors in 2009. At all material times the Respondent practised as a solicitor, at Legal 4 Business and at Matthew Curtis both of which were unauthorised entities. At the time of the hearing the Respondent did not hold a current Practising Certificate.
8. In May 2014, the SRA received a report from the Managing Director of the Beechwood West Community Centre Ltd ("the Community Centre"). The Managing Director reported that the Community Centre had engaged Legal 4 Business to make two applications. The first one was to change the Community Centre's status at Companies House from a limited company to a community interest company. The second was to transfer the alcohol licence into the Managing Director's name so that she was the Designated Premises Supervisor ("DPS").

Allegations 1.1 and 1.2 – Fabrication of documents and onward transmission to client

9. The Managing Director reported that in or around May 2012 the Respondent visited the Community Centre to advise on company business. Subsequent to that, it was decided that the licence for the Community Centre would be transferred into the Managing Director's name. In mid-2013 it was decided that the name of the company would change. The Managing Director instructed the Respondent to deal with both applications.
10. The Respondent did not ask for payment for the work and the Managing Director discussed issues of payment with the Respondent in 2013. She subsequently received five invoices, from the Respondent, between 23 July 2013 and 3 March 2014 totalling £1,550.
11. In March 2014, as the Council had not issued a new licence and Companies House had not confirmed the name change of the company the Managing Director became concerned. She contacted the Respondent for an update on 30 March 2014. The issue of the licence was of particular concern as the manager holding a personal licence was leaving that week. The Managing Director was worried that there would be no DPS or anyone with a personal licence.
12. On Monday, 31 March 2014, the Respondent informed the Managing Director that she was confirmed as DPS as of Friday. He stated that he had asked the office to inform her that he would bring the new licence in that week. Subsequently, the Respondent brought the Managing Director, what she initially described as, a letter confirming that she was the DPS. She later clarified that this was a Premises Licence Summary.
13. At the same time the Respondent gave the Managing Director a letter from Companies House dated 16 April 2014, confirming that the application had been granted. Subsequent enquiries made by the Managing Director of Companies House and the Council established that the documents were fabricated and the Managing Director contacted the Applicant and reported matters to the Police.

Allegation 1.3- Conditional caution from the Cheshire Police dated the 16 January 2015

14. The Respondent was interviewed by Cheshire Police in respect of the Council document and accepted a conditional caution dated 16 January 2015. The details of the offence were:

“Make/supply an article for use in fraud- FRAUD ACT 2006

On 03/05/2014 at Runcorn in the County of Cheshire made and supplied an article, namely a fraudulent Halton Borough Council premise licence summary to the BEECHWOOD COMMUNITY CENTRE”.

Allegation 1.4 - Dishonesty

15. The Respondent represented to the Managing Director that he was making the relevant applications to Companies House and the Council when he knew that was not the case. The Respondent would have known that the Managing Director had an expectation to receive confirmation from Companies House, as to the change of name, and from the Council, as to the change of licence holder. The Respondent fabricated two documents in order to mislead the Managing Director into thinking he had successfully completed the work in accordance with her instructions. The Managing Director's own enquiries led to the discovery that the documents were not authentic. The Respondent accepted a conditional caution for making and supplying a fraudulent document from the Council contrary to the Fraud Act 2006.

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 right 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. The Respondent stated in his email of 14 January 2016 to the Applicant that "I will admit all allegations and confirm that you may produce this email to the SDT". On 18 January 2016 the Respondent emailed the Applicant "I confirm I do not intend to dispute the charges or call evidence." On 29 March 2016 the Respondent confirmed, in an email to the Applicant, "This matter has been admitted from the outset and I asked for my name to be removed from the roll as far back as May 15." The Respondent's undated application for Removal from the Roll stated "I admit all allegations against me including dishonesty and would enter into a regulatory settlement if required."
19. **Allegation 1.1 - The Respondent fabricated two documents, one from Companies House and the other from the Council, in breach of all or alternatively any of Principles 2,4,5 and 6 of the Principles, and failing to achieve Outcome 1.2 of the SCC.**
- 19.1 The Respondent had accepted a conditional caution dated 16 January 2015 in respect of the fabrication of the document from the Council. On 21 November 2014, the Fraud Team at Companies House informed the Applicant, with regard to the document which purported to be from them, that "it seems very possible that it was not issued by us. Apart from the fact that every time a letter is issued it is noted on the relevant company file as such, and there is no note of it on our records, none of the teams I have spoken to recognise it as a letter that would've been sent out by Companies House". The Respondent admitted the fabrication of the two documents and the Tribunal found the allegation proved beyond reasonable doubt.

20. **Allegation 1.2 - The Respondent furnished his client with the fabricated documents and represented to his client that they had been received from the two organisations referred to in allegation 1.1, in breach of all or alternatively any of Principles 2,4,5 and 6 of the Principles and failing to achieve Outcome 1.2 of the SCC.**
- 20.1 The Respondent provided copies of both documents to the Managing Director. The Managing Director contacted Companies House about the letter and they informed her that they had not received any correspondence from the Respondent or the Community Centre. The Managing Director made enquiries of the Council in respect of the licence. She was informed by the Licensing Manger at the Council that she was not the DPS. The Respondent had spoken to the Council about the application but had never submitted the application.
- 20.2 The Respondent had furnished his client with the fabricated documents and represented to her that they had been received from the Council and Companies House. The Respondent admitted the allegation and the Tribunal found it proved beyond reasonable doubt.
21. **Allegation 1.3 - The Respondent accepted and was issued with a conditional caution (the condition of which was to pay £1,000 in compensation by the 28 March 2015) from Cheshire Police on the 16 January 2015 for making and supplying an article for use in fraud, contrary to the Fraud Act 2006, in breach of Principles 1, 2 and 6 of the Principles.**
- 21.1 The conditional caution that the Respondent accepted was exhibited to the Rule 5 statement. The Respondent had agreed to pay compensation of £1,000 to be held on behalf of the Community Centre. The Respondent admitted the allegation and the Tribunal found it proved beyond reasonable doubt.
22. **Allegation 1.4 - Dishonesty was alleged against the Respondent in respect of allegations 1.1 and 1.2; however proof of dishonesty was not an essential ingredient for proof of the allegations.**
- 22.1 The Applicant submitted that the Respondent's actions were dishonest according to the test laid down in Bultitude v The Law Society [2004] EWCA Civ 1853, applying the test for dishonesty as formulated in Twinsectra v Yardley and others [2002] UKHL 12. The Twinsectra test requires that the person has a) acted dishonestly by the ordinary standards of reasonable and honest people and b) knew that by those standards he was acting dishonestly and had done so knowingly. The Tribunal considered the objective test as set out in Twinsectra. It concluded that there was no doubt that fabricating the letters from the Council and Companies House and representing to the Managing Director that they had been received from the two organisations would be considered dishonest by the ordinary standards of reasonable and honest people.
- 22.2 The Tribunal considered the subjective test. The Tribunal found that the Respondent knew that the two letters were fabricated and that the Respondent provided the fabricated documents to his client. The Tribunal was entirely satisfied that the Respondent knew he was acting dishonestly. Accordingly the combined test in

Twinsectra was met and the Tribunal found beyond reasonable doubt that the Respondent had acted dishonestly and that this Allegation was proved beyond reasonable doubt.

Previous Disciplinary Matters

23. None.

Mitigation

24. The Respondent's mitigation was submitted in an email dated 29 March 2016, which stated "With regard to mitigation, I would wish to make the Tribunal aware that I voluntarily repaid all fees to Beechwood Community Centre. Whilst dishonest, my actions did not result in, nor were motivated by, personal gain to myself. The actions were a result of trying to buy time to satisfy a difficult client. Whilst I appreciate a strike off is nigh on inevitable, I would ask the Tribunal to consider a period of suspension."
25. The Respondent informed the Applicant, in a separate email also dated 29 March 2016,

"My current financial circumstances are dire. I am unemployed and not receiving any benefits. I have separated from my wife and all benefits are currently in her name. Due to not having a fixed address, I cannot currently claim benefits or open a bank account. I effectively have no income and must rely on friends. The stress of these proceedings has contributed to my marriage breakdown."

Sanction

26. The Tribunal referred to its Guidance Note on Sanctions (4th Edition) when considering sanction.
27. From the information before the Tribunal the Respondent's motivation for the misconduct appeared to be self-preservation. His actions were planned and he fabricated more than one document. The Respondent was the Community Centre's solicitor and acted in breach of a position of trust. He committed fraud and accepted a conditional caution for fraud. The Respondent was in sole control of his actions and had five years post qualification experience. He was culpable for his actions.
28. The impact of the Respondent's misconduct upon the public and the reputation of the profession was high. The Respondent, in his role as a solicitor, had forged documents and passed them off as genuine. The effect on the Community Centre's business was significant. The harm caused was considerable because the Respondent's actions left a licensed premises without a licensee.
29. Dishonesty was alleged and proved. The Respondent had committed a criminal offence for which he had received a conditional caution. The misconduct was deliberate, repeated and calculated. There was seven months between the Managing Director instructing the Respondent to make the application for the licence and the

provision of the forged licence document. The misconduct continued over a period of time. The Managing Director stated in her witness statement dated 22 July 2015, that “This whole matter has caused me considerable stress and I felt at one stage that my integrity was being questioned in the community. My professional reputation also suffered for a while. The business also suffered reputational risk”. In the Managing Director’s email of 30 March 2014 to the Respondent (which was prior to him producing the fabricated documents) she stated “I feel very vulnerable!!!” This was due to the licensing situation. The Respondent’s actions were a material breach of his obligations to protect the public and the reputation of the legal professional. These were all aggravating factors.

30. The Respondent had paid back the bills and had made open and frank admissions at an early stage. These were mitigating factors. He had co-operated with the investigating body to an extent but had not produced evidence and information that he said he would. There were no other mitigating factors. The Respondent had not voluntarily notified the regulator nor was the misconduct a single episode. The Respondent’s actions were fairly sophisticated. He had forged documents. The Respondent had not apologised for his actions. There was no evidence of genuine insight.
31. The Tribunal, having determined that the Respondent’s misconduct was serious, considered the appropriate sanction. Given the seriousness of the misconduct and the fact that dishonesty was admitted and proved No Order, a Reprimand, a Fine and a Restriction Order were not sufficient sanction.
32. A finding of dishonesty will almost invariably lead to striking off save in exceptional circumstances. The Tribunal concluded that there were no exceptional circumstances that justified the imposition of a suspension. The appropriate sanction was to strike the Respondent’s name off the Roll of Solicitors.

Costs

33. The Applicant applied for its costs, supported by a schedule totalling £3,817. The Tribunal was concerned that the Applicant’s Schedule of Costs lacked detail and, as such, was not as helpful as it could be. The Applicant submitted there had been significant correspondence with the Respondent, Tribunal and the Police. The Tribunal queried why 58 units were recorded for drafting/dictation in November 2015 but only 33 in March 2016. The Applicant was unable to explain the discrepancy. The Applicant clarified that the £300 costs of the Supervision Department were the costs incurred by the Applicant’s Investigations Department. The Applicant submitted that the Respondent faced serious allegations and that it was in the public interest for the Tribunal to hear the matter. The Applicant could not have accepted the Respondent’s application for his name to be removed from the Roll.
34. The Applicant had made enquiries as to the Respondent’s financial position. His former address was not a property he owned. There was an entry in the Individual Insolvency Register for a person with the same name as the Respondent but a different date of birth. The Respondent was a Company Director of a Private Limited Company, incorporated in December 2015. There were no accounts as yet for this Company.

35. The Respondent had requested that the Tribunal put the Applicant to proof in terms of costs. The Respondent in an email dated 29 March 2016 to the Applicant stated “With regards to the SRA costs, I view the preparation and correspondence times as unreasonable”. In the same email the Respondent made submissions in respect of his financial position and stated “I cannot satisfy any costs order and would need time to pay”. The Tribunal noted the Respondent’s submissions in respect of his financial position but further noted that he had failed to provide any evidence in respect of his means to support these submissions. On 14 January 2016 the Respondent had emailed the Applicant “I am in the process of bankruptcy and will send copy documents to you as to the issue of costs.” On 18 January 2016 the Respondent had emailed the Applicant “It is also my intention to provide medical evidence as this will go the issue of costs.” He had not produced any such evidence.
36. The Tribunal identified there was an unexplained discrepancy between the drafting and dictation figures claimed in November 2015 and March 2016. Although there had been significant correspondence the Respondent had made admissions at a very early stage. The Tribunal concluded that, in the circumstances, the Applicant’s costs were too high and summarily assessed costs at £3000.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, Matthew Charles Curtis, 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 £3,000.00.

Dated this 14th day of April 2016
On behalf of the Tribunal

A. N. Spooner
Chairman