

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11462-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

SHARON PALLAGI

Respondent

Before:

Mr K. W. Duncan (in the chair)

Mrs C. Evans

Mr S. Howe

Date of Hearing: 17 May 2016

Appearances

David Barton, Solicitor Advocate of Flagstones, High Halden Road, Biddenden, Kent, TN27 8JG for the Applicant.

The Respondent appeared and was represented by Steve Roberts of Richard Nelson LLP, Priory Court, 1 Derby Road, Nottingham, NG9 2TA.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 In breach of Rule 22(1) of the Solicitors Accounts Rules 1998 and after 5 October 2011 in breach of Rule 20.01 of the SRA Accounts Rules 2011, the Respondent withdrew money from client account, in circumstances other than permitted by the said Rules. It was alleged the Respondent had acted dishonestly.
 - 1.2 In breach of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007, the Respondent altered two receipts dated 16 December 2010 and 30 May 2011. It was alleged the Respondent had acted dishonestly.
 - 1.3 In breach of Principle 5 of the SRA Code of Conduct 2011 the Respondent failed to provide her client, Mr N, with a proper standard of service.

The Respondent admitted all the allegations.

Documents

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

Applicant:

- Application dated 16 December 2015, together with attached Rule 5 Statement and all exhibits
- Statement of SRA's Costs dated 9 May 2016
- SRA's Schedule of Costs dated 16 December 2015

Respondent:

- Letter dated 5 February 2016 from Richard Nelson LLP to the Tribunal
- Medical Report dated 22 March 2016
- Various character references
- The Respondent's Personal Financial Statement dated 4 May 2016

Application for the Respondent's Mitigation Evidence to be heard in Private

3. Mr Roberts, on behalf of the Respondent, made an application for the Respondent's mitigation evidence to be heard in private. He submitted that the Respondent accepted her actions of dishonesty would normally lead to an order to strike her off the Roll, but her submission was that there were exceptional circumstances in this case and that the ultimate sanction would not be appropriate. Mr Roberts referred the Tribunal to the medical report provided and indicated the Respondent wished to give

oral evidence about her health. That evidence was of an extremely personal nature and the Respondent did not wish to give it in public. Mr Roberts submitted that there would be exceptional hardship to the Respondent and her family if that evidence became known to the wider community.

4. Mr Barton, on behalf of the Applicant, objected to the application. He reminded the Tribunal that Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2007 indicated that a hearing or part of the hearing could only be conducted in private on the grounds of exceptional hardship or exceptional prejudice to a party, witness or person affected by the application. He reminded the Tribunal of the case of SRA v Spector [2016] EWHC 37 (Admin) in which the principle of open justice was highlighted. Mr Barton submitted the Tribunal must balance the Respondent's interests with the interests of open justice.

The Tribunal's Decision on the Application for the Respondent's Mitigation Evidence to be heard in Private

5. The Tribunal considered carefully the submissions made by both parties and the case of SRA v Spector. The Tribunal accepted the importance of the principle of open justice and that any departure from this had to be justified. The Tribunal also acknowledged that some level of hardship was inevitably likely to be caused to respondents involved in disciplinary proceedings.
6. Whilst it was not desirable to prevent evidence from being given in public, the Tribunal was mindful of the Respondent's right to a private life and the fact that some of the evidence she wished to give related to her medical health, which was of a sensitive and private nature. This evidence could well be relevant to the Tribunal's decision on sanction in due course. If the Respondent was unable to give this evidence it could cause her exceptional prejudice in the event that the Tribunal was not provided with full information. It was important that the Respondent was able to present her case as fully as possible within reason and whilst a medical report had been provided, the Tribunal was mindful that there may be matters related to the Respondent's health, which she wished to elaborate on, that could be relevant and should be drawn to its attention.
7. Balancing the Respondent's interests with the interests of open justice, the Tribunal considered the minimum necessary to ensure both interests were met. The Tribunal determined that only the Respondent's evidence relating specifically to her health and medical conditions could be given in private. The rest of her evidence would be heard in public.

Factual Background

8. The Respondent, born in 1976, was admitted as a solicitor on 3 September 2001.
9. At the material time the Respondent was employed as an Associate Solicitor. From 9 October 2006 to 31 March 2008 she was employed by Clarion Solicitors, and from 1 April 2008 to 12 May 2010, she was employed by Clarion Solicitors LLP. Thereafter until 13 November 2013, she was employed by Clarion Solicitors Limited (collectively referred to as "the firm").

10. Throughout her employment the Respondent worked from offices at Elizabeth House, 13-19 Queen Street, Leeds, LS1 2TW in the private client department dealing with Wills, Lasting Powers of Attorney, Trusts, tax planning and estate administration. She was also a Court of Protection Panel Deputy.
11. The Respondent's employment was terminated on 13 November 2013 as a result of circumstances identified by colleagues while she was absent from work. The concerns were investigated and there were two investigatory meetings on 5 and 12 November 2013. The Respondent did not attend the second meeting. She was dismissed for gross misconduct.
12. The firm submitted a report to the SRA on 8 November 2013 and made further reports as the firm's investigation continued. On 13 November 2013 the Respondent telephoned the SRA to report her misconduct and informed the SRA of health issues.
13. When it was apparent that the Respondent was able to deal with matters, the SRA began a formal enquiry with the Respondent by a letter dated 29 January 2015. The Respondent replied in a letter received by the SRA on 26 February 2015 making a number of admissions.

Allegation 1.1

14. The Respondent was the court appointed Deputy for Mr N, Miss R and two sisters - Miss C and Miss C. The firm's report to the SRA indicated that the primary concern was the withdrawal of sums of money from client account by the Respondent, either as cash or as reimbursement of expenses incurred.
15. By letters dated 17 and 19 December 2013, the firm wrote to the Respondent with schedules setting out what appeared to be unauthorised transfers in relation to each said client. The firm's letter to the SRA dated 3 December 2014 summarised the sums repaid by the Respondent totalling £32,561.12 which included court fees and legal costs following the issuing of proceedings against her for recovery. The firm was repaid in full in respect of all identified withdrawals. The first repayment was made in cash when £6,000 was deposited by the Respondent at Miss R's home. It had, until then, been kept by the Respondent at her home in a secure box in her wardrobe. She returned the cash to Miss R's home between the two investigatory meetings with the firm. The remainder was also subsequently repaid to the firm.

Mr N

16. The Respondent improperly withdrew a total of £522.76. In her letter to the SRA received on 26 February 2015 the Respondent said she could not remember the specific transactions and was unable to explain them in their entirety. She could recall the purchase of an orange jumper for Mr N but the purchase price did not amount to the withdrawals made.

Miss R

17. In relation to Miss R, the Respondent improperly withdrew a total of £12,325. In her letter to the SRA received on 26 February 2015 the Respondent stated in relation to these transactions:

“I accept responsibility for and also accept that I amended the documentation and acted dishonestly in doing this. I have addressed the explanation for my behaviour during this time frame in the explanation section below. I do remember the amendments and feeling very depressed and anxious, to the point that I was physically sick after amending the documents. Having this reaction meant there was recognition by me of doing something wrong, but I did nothing to rectify my actions. I was depressed and needed help. I left all of the amended documents on the file so that on a review I would be called to explain and at that time would get some help, but the reviews did not highlight my actions and this spurred on further erratic, out of character behaviour.....

I have accepted responsibility for transactions 25-29 and 32-34 each of these transactions being a withdrawal of £1,000. These withdrawals were made from April 2012 to 29 April 2013 and were made on consecutive months June, July, September, October, November and December 2012. The last unauthorised withdrawal being on 29 April 2013. At this time I was suffering from [various medical conditions] I do remember that by requesting funds I knew I was failing in my duty as a solicitor but my aim at the time was to fail and be at home with my [relative]

.....The monthly withdrawals stopped in December 2012, and you will see from the schedule that in April 2013 there was again an unauthorised withdrawal of £1,000..... Again under high emotional pressure I then made an unauthorised withdrawal. I retained these monies in my own home and did not spend them and I returned these funds, £6,000 to the client’s property and informed the client of my actions.....

..... the funds obtained of £6,000 were retained by me in my cupboard in my house and then returned to the client [Miss R]. I explained to [Miss R] my actions and returned the money to her house and Clarion recovered these funds from her property.....

In summary, I accept responsibility and admit unauthorised withdrawals in the sum of £12,861.00. I took back £6,000 to the client and so the remaining £6,861 was repaid by me to Clarion.”

18. The Respondent stated in her letter:

“The unauthorised money was retained in my house..... No other person was aware that the money was in the house. I accept that some of the funds did get confused and mixed in with funds that I held to run the house and this money was spent. I was able to repay the funds quickly to Clarion as most of it was retained by me.....

It was my intention to return the funds. I frequently thought about how I could return funds..... It was my intention to find a way to get the funds back to the clients. Over time, this became increasingly difficult.”

Miss C and Miss C

19. In relation to clients Miss C and Miss C, the Respondent improperly withdrew £980 on 12 May 2011, £1,000 on 3 November 2011 and £114 on 23 August 2012. In relation to these transactions the sum of £980 was stated to be for “Care Equipment” but the Respondent accepted there was no need to pay cash for this. The transaction of £1,000 was stated to be for “Pocket money client/Xmas/Property”. The Respondent stated in her letter to the SRA received on 26 February 2015:

“I would not however as standard practise leave £1000 with carers and get them to sign and send the receipts for building works. The building works did not happen and so this element is untrue and I have taken responsibility for this unauthorised withdrawal.”

20. The third transaction of £114 was purportedly for a “Drain blockage”. The Respondent stated in her letter to the SRA received on 26 February 2015:

“...The sisters outside drain frequently became blocked but this repair did not proceed and so the credit of £114 was made to my Barclaycard without the works being done and I did not refund this money and so I am responsible for the unauthorised withdrawal.”

Allegation 1.2

21. The Respondent altered a receipt from HH to her dated 16 December 2010 which acknowledged receipt of funds from her to amend the figure from £1,000 to £1,200. The Respondent also altered a further receipt from HH to her dated 30 May 2011, again acknowledging receipt of funds from her, to amend the figure from £1,000 to £1,600.

Allegation 1.3

22. On 18 June 2013 the Respondent purchased a Vax cleaner, purportedly for her client, Mr N. It was delivered to the Respondent’s home address, which she said was:

“.....because I live 5 minutes from the client’s property”.

The Respondent stated she tested the Vax cleaner at her property and then:

“.....place [sic] it in my cellar for delivery to [Mr N].”

The Respondent stated she:

“.....forgot about the Vax and did not deliver it until October 2013 when I was reminded of the purchase by [SH]”

Witnesses

23. The following witnesses gave evidence in relation to mitigation:

- The Respondent, Sharon Pallagi

Findings of Fact and Law

24. The Tribunal had carefully considered all the documents provided and the submissions of both parties. 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.

26. **Allegation 1.1: In breach of Rule 22(1) of the Solicitors Accounts Rules 1998 and after 5 October 2011 in breach of Rule 20.01 of the SRA Accounts Rules 2011, the Respondent withdrew money from client account, in circumstances other than permitted by the said Rules. It was alleged the Respondent had acted dishonestly.**

Allegation 1.2: In breach of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007, the Respondent altered two receipts dated 16 December 2010 and 30 May 2011. It was alleged the Respondent had acted dishonestly.

Allegation 1.3: In breach of Principle 5 of the SRA Code of Conduct 2011 the Respondent failed to provide her client, Mr N, with a proper standard of service.

26.1 The Respondent admitted all the allegations, including the allegations of dishonesty.

26.2 The Tribunal took into account the fact that the Respondent had been a Court appointed Deputy for Mr N, Miss R and Miss C and Miss C, who were all vulnerable clients and that she accepted she had made unauthorised withdrawals from their funds. The Respondent also admitted altering two receipts to give the impression she had paid more funds to HH than she actually had. The Tribunal was satisfied that this was conduct that would be regarded as dishonest by the ordinary standards of reasonable and honest people. Furthermore, in light of her admissions and the comments contained in her letter to the SRA received on 26 February 2015, the Tribunal was satisfied the Respondent knew her conduct was dishonest by those standards.

26.3 In failing to deliver the Vax cleaner to Mr N promptly, the Tribunal was satisfied the Respondent had failed to provide a proper standard of service. The Tribunal, having considered the admissions made and the other documents provided, found all the allegations proved.

Previous Disciplinary Matters

27. None.

Mitigation

28. The Tribunal heard evidence from the Respondent. Her evidence relating to her health and medical conditions was given in private. In her public evidence, the Respondent explained that she had hidden the client's money in her cupboard at home even though she had not needed it. She stated that she had not concealed anything on the files and that the requisition slips were there to be seen together with the amended receipts. The Respondent stated she volunteered the files for review to the partner and had not tried to remove any documents from the files. She submitted the amendments to the two receipts were not sophisticated and it had been her attempt to try and get help.
29. The Respondent expressed remorse in her evidence and reminded the Tribunal that, once she received appropriate medical treatment, she had done everything she could to put matters right. She had repaid the money, and apologised to both the firm and her clients. With appropriate medical treatment, the Respondent stated she saw the devastation she had caused and even now she continued to think about what she could have done differently. The Respondent stated that at the time she could see no other options at all and just wanted to be "found out" so that she could "get help".
30. Mr Roberts, on behalf of the Respondent, referred the Tribunal to the character references provided. He also drew the Tribunal's attention to the case of Burrowes v The Law Society [2002] EWHC 2900 Admin. Mr Roberts accepted Mr Burrowes had been involved in only one incident whereas the Respondent had been involved in a protracted period of conduct but submitted there had been health issues in the Respondent's case and no real sophistication in her dishonest behaviour, which had been a cry for help. He submitted these were exceptional circumstances.
31. Mr Roberts also referred the Tribunal to the case of The Law Society v Tilsiter [2009] EWHC 3787 (Admin). He submitted that in the Respondent's case the medical evidence provided confirmed the Respondent's health had affected her during the time of the misconduct. There had been one period of grace from December 2012 to May 2013 when the Respondent's dishonest behaviour stopped and, Mr Roberts submitted, this was because the Respondent could see an exit and expected her problems would end.
32. Mr Roberts stated the Respondent accepted her ability to practise was likely to be restricted and indeed, she had been on a self-imposed suspension as she had not worked over the last 3 years. She had no plans to return to work at the moment and would not do so until her health and personal situation improved. Mr Roberts submitted an indefinite suspension would be a sufficient sanction in this case. This would ensure the Respondent would not be able to return to work without evidence that she had the mental strength to withstand the rigours of practise. It would also protect the public and the reputation of the profession. If the Respondent decided to return to work, conditions could then be imposed on her practising certificate.
33. Mr Roberts submitted, but for the Respondent's medical condition, she knew what she was doing and her thought process had gone wrong. He submitted that whilst she knew what she was doing was wrong, she could not see any other way out of the position she was in.

Sanction

34. The Tribunal had considered carefully the Respondent's submissions and evidence. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.
35. The Respondent had acted dishonestly on a number of occasions. Her conduct was deliberate as, by her own admissions, she stated she wanted the conduct to be discovered. She had repeated her actions several times. She had taken advantage of vulnerable clients by using her appointment as a Court of Protection Deputy on their behalf which allowed her to withdraw their funds. Furthermore she had tried to conceal her conduct. Firstly she had falsely recorded the purported reason for withdrawing the funds when they were not used for those purposes. Secondly she had altered the figures on the two receipts, albeit not in a particularly sophisticated manner. Her conduct had caused harm to the public and to the reputation of the profession. These were all aggravating factors.
36. The Tribunal took into account the Respondent's previously unblemished long record, her early admissions and her cooperation with the regulator. She had shown genuine insight and remorse into her actions and had repaid all the funds she had taken. The Tribunal considered the character references, a number of which were from family members, and all of which supported the Respondent. The Tribunal also accepted that she had been under pressure at the time and had medical issues. These were all mitigating factors.
37. The Respondent's mitigation was that whilst she had known what she was doing, this had been a "cry for help" and that there were exceptional circumstances that should not lead to her removal from the Roll.
38. The Tribunal took into account the cases of Burrowes v The Law Society and Law Society v Tilsiter to which it had been referred. However, both these cases predated the case of SRA v Sharma [2010] EWHC 2022 (Admin). In that case Coulson J had stated:

"13. (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury. This 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 the 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 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.

34. Their first finding was that "there was no harm to the public". I assume that by this the Tribunal meant that no client suffered financial loss. It seems to me that this is a very narrow way of looking at dishonesty, and wholly fails to recognise the wider issues involved. In my judgment there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to

ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”

39. The Tribunal had carefully considered the Respondent’s medical report dated 22 March 2016. In this report Dr Thirumalai had stated:

“10.1 Based on the review of her medical notes forwarded by the solicitor and GP and her current treatments offered by the GP, it is clear that Mrs Pallagi has suffered from fluctuating episodes of Clinical Depression in the last 4-5 years.

10.5 She accepts that she had behaved dishonestly at her last place of employment. In my opinion, a combination of the on-going life stresses relating to her [medical conditions] and her unrecognised symptoms of depression and anxiety would have impaired her thinking and judgement at the alleged material time in question.”

40. The Respondent had already accepted she had acted dishonestly and indeed, that she knew what she was doing was dishonest but she could not see any other way out of the position she was in. The Tribunal considered carefully the period of time over which the conduct took place. The first admitted withdrawal on the case of Miss R took place on 26 June 2010 and the withdrawals continued until 29 April 2013. There were 15 instances of withdrawing money over this period of nearly 3 years, all of which the Respondent admitted had been dishonest. These had not been a one off incident but had taken place repeatedly over a lengthy period of time.
41. The Tribunal then considered the Respondent’s medical history. The first medical event the Tribunal had been referred to took place in August 2008 and whilst the Respondent was absent from work, she returned to work in October 2009. The medical records indicated the Respondent had started to take medication in February 2010. This was all before the first admitted unauthorised withdrawal which took place on 26 June 2010. A number of withdrawals then took place during August 2010, October 2010, November 2010, January 2011, May 2011 and October 2011. In addition one of the receipts had been altered on 16 December 2010.
42. The second medical event the Tribunal had been referred to, took place in November 2011 and the stress related to this event continued until February 2012. Whilst some unauthorised withdrawals were made during this period, a withdrawal was made by the Respondent on the case of Miss C and Miss C on 12 May 2011, and a receipt was altered on 30 May 2011, both of which were before this material period. Several withdrawals took place after this period, on Miss R’s matter in April 2012, June 2012, July 2012, September 2012, October 2012, November 2012 and December 2012, and on Miss C’s matter in August 2012.
43. The third medical event took place in January 2013. The Respondent failed to attend an appointment in August 2013 and thereafter the medical records referred to stresses from November 2013, which is when the firm’s investigation commenced. During this period a withdrawal was made in April 2013 on Miss R’s matter and in May 2013 on Mr N’s matter.

44. The Tribunal gave careful consideration as to how the Respondent's medical history related to the period of conduct. The Respondent's actions had clearly been planned. She stated in her letter to the SRA received on 26 February 2015 that she had given the accounts department a week's notice of the withdrawals. This indicated that she knew what she was doing. Her medical expert accepted there had been "fluctuating" periods of depression. This indicated there were periods of lucidity. The Tribunal's view was that during one of these periods of lucidity it would have been expected the Respondent would have admitted her improper conduct, if it had indeed been "a cry for help". She failed to do this.
45. The Tribunal also took into account the Respondent's statement in her letter to the SRA received on 26 February 2015 that:
- "No other person was aware that the money was in the house. I accept that some of the funds did get confused and mixed in with funds that I held to run the house and this money was spent."
- The Tribunal took the view that had the Respondent's conduct been a genuine and desperate attempt to get some help, she would not have allowed the money to become mixed up with her own personal money and nor would she have used it.
46. Whilst the Respondent may have been deeply unhappy and under immense pressure at the time she made some of the unauthorised withdrawals, the Tribunal did not accept that her conduct was indeed "a cry for help" on all of the unauthorised withdrawals made, or that the circumstances of this case amounted to exceptional circumstances. The prevailing feature of the case was that the Respondent admitted that she knew that what she was doing throughout the relevant period was dishonest but despite that, she continued to repeat the conduct over and over again. The pressure that the Respondent was under and her difficulties at the time did not justify or excuse her actions.
47. The Respondent had repeatedly taken advantage of vulnerable clients over a long period of time, and whilst she had repaid the money she had taken, this did not detract from the harm she had caused both to those clients and to the reputation of the profession. The Tribunal concluded there were no exceptional circumstances in this case and accordingly the appropriate and proportionate sanction in this case was to strike the Respondent's name from the Roll of Solicitors. This was necessary in order to protect the public and maintain public confidence in the profession.

Costs

48. Mr Barton requested an Order for the Applicant's costs. He confirmed the costs had been agreed with the Respondent in the sum of £8,209. Mr Roberts confirmed this to be the position and indicated the Respondent hoped to come to an arrangement with the SRA in relation to payment of those costs.
49. The Tribunal noted the parties had reached an agreement and therefore made an Order that the Respondent pay the Applicant's costs in the sum of £8,209.

Statement of Full Order

50. The Tribunal Ordered that the Respondent, Sharon Pallagi, 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 agreed sum of £8,209.00.

Dated this 28th day of June 2016
On behalf of the Tribunal

K. W. Duncan
Chairman