

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11464-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MELVIN DOUGLAS GOLDBERG

Respondent

Before:

Mr G. Sydenham (in the chair)

Mr J. C. Chesterton

Mrs C. Valentine

Date of Hearing: 10 December 2019

Appearances

There were no appearances as the matter was dealt with on the papers.

**MEMORANDUM OF
APPLICATION FOR NON-PARTY
DISCLOSURE**

Background

1. On 25 November 2019 Marcus Indrevaer, attorney-at-law, made an application to the Tribunal for non-party disclosure of information referred to but not included in the Judgment from the substantive hearing which concluded on 27 October 2016.
2. Mr Indrevaer, an Oslo based lawyer, stated that he represented ten investors who had made payments to schemes which featured in the factual matrix of the allegations brought against the Respondent, Mr Goldberg. The information sought was in reference to paragraph 17.12 of the Judgment. That paragraph made reference to US\$3,645,723.46 having been paid out to multiple individuals. The information sought was:
 - Which individuals received the funds?; and
 - Who gave the direction for the transfer of funds?
3. The reason for the request was that Mr Indrevaer considered that the investment may have been a sham. He stated that he had been unable to obtain the information from other sources. He also stated that in order to answer questions from the Oslo City Court he asked that the application be considered as quickly as possible.
4. By an email from his representative dated 26 November 2019 the Respondent, Mr Goldberg, took a neutral stance on the application. His representative stated that he did not know the names requested and invited the Tribunal to take into account its GDPR obligations together with the fact that the relevant information was obtained by the Applicant under its statutory powers to override confidence and privilege. The Respondent's representative referred to international processes being in place for information to be shared between regulators, police forces and courts and submitted that the Tribunal should be slow to disregard these.
5. By an email dated 27 November 2019 the Applicant agreed that any disclosure should ensure that client privilege and confidentiality was protected. The Applicant's representative referred the Tribunal to the position of the Supreme Court in Cape Intermediate Holdings v Dring [2019] UKSC and invited the Tribunal to balance the principle of open justice and any good reason for ordering disclosure against the risk of harm to the maintenance of an effective judicial process or the legitimate interests of others.

The Tribunal's Decision

6. The Tribunal carefully considered the application made, the schedules provided and the submissions received on behalf of the Applicant and Respondent. The Tribunal had regard to its Policy on the Supply of Documents to a Non-Party.
7. The Tribunal noted that Mr Indrevaer did not confirm the identity of all of his clients or include documents confirming his instruction. The Tribunal was mindful that the Applicant would only include material directly relevant to its professional regulation application and that it may well possess further material not presented as part of its case against the Respondent.

8. The Tribunal was mindful of its obligations to protect personal data in accordance with GDPR principles, in a manner consistent with exercising its judicial function and open justice principles. The Tribunal was obliged to balance the rights of those named in background material which may have been presented by the Applicant and may not have featured in the public hearing. The Tribunal was mindful that privilege and/or confidence may apply to the requested material, and considered that it was not clear that open justice required the provision of the information requested. The identity of the individuals concerned was peripheral to the regulatory proceedings and such knowledge would not further understanding of the decision reached by the Tribunal or the reasons for it.
9. The Tribunal considered the further potential lawful basis under the GDPR for disclosure: whether the information was necessary for the individuals represented by Mr Indrevaer to establish, exercise or defend legal rights. Such disclosure must be *necessary* for these purposes. The Tribunal considered that if the identity of the individuals was relevant to potential legal action from the investor clients represented by Mr Indrevaer, law enforcement or regulation agencies were likely to be the appropriate bodies to assist with this request. Without being sure that the requested details were referred to in the public hearing the Tribunal did not consider that the reasons for the request and/or the principles of open justice outweighed the rights of the individuals concerned nor that the threshold for making the requested disclosure under the GDPR legal right exemption was met.
10. Mr Indrevaer was entitled to request a copy of the recording of the public hearing if he considered that would be helpful or to approach the Applicant or other law enforcement agencies who may possess additional information not presented to the Tribunal.
11. For the reasons set out above, the application for disclosure was dismissed.

Dated this 13th day of December 2019

On behalf of the Tribunal



G. Sydenham
Chairman