

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11466-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

KIM SINGH LANDA

Respondent

Before:

Miss N. Lucking (in the chair)

Mr J. P. Davies

Dr S. Bown

Date of Hearing: 18 May 2016

Appearances

Andrew Bullock, Counsel of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

Nick Trevette, Solicitor of Murdochs Solicitors, 45 High Street, Wanstead, London E11 2AA (instructed by Jonathan Greensmith of Keystone Law) for the Respondent

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were that:-
 - 1.1 By failing to register a form AN1 (“the AN1”) to secure the interest of Mr JM at HM Land Registry in accordance with the undertaking given in an email dated 23 December 2013 and/or subsequent letter dated 3 January 2014 he:
 - 1.1.1 failed to behave in a way which maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the SRA Principles 2011 (“the Principles”);
 - 1.1.2 failed to comply with his legal and regulatory obligations, in breach of Principle 7 of the Principles and
 - 1.1.3 failed to perform all Undertakings given by him within an agreed timescale or within a reasonable amount of time, and therefore failed to achieve Outcome 11.2 of the SRA Code of Conduct 2011 (“SCC”)
 - 1.2 By failing to ensure that accurate information was provided to Drysdale Solicitors (“Drysdale”), instructed on behalf of Mr JM, in a letter dated 2 April 2015 regarding the registration of the form AN1, he failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles.

Documents

2. The Tribunal considered all the documents in the case including:

Applicant

- Application and Rule 5 Statement with exhibit EP1 dated 31 December 2015
- Cost Schedules dated 31 December 2015 and 9 May 2016

Respondent

- Respondent’s Answer to the Applicant’s Rule 5 statement dated 8 February 2016
- Witness Statement of the Respondent with exhibit KSL1 dated 3 May 2016
- Character Reference from Afzal Khan MEP (undated)
- Character Reference from Ansar Hussain, Partner at HSK Solicitors LLP dated 17 May 2016

Factual Background

3. The Respondent was born in 1981 and was admitted to the Roll of Solicitors in November 2006. The Respondent’s name remains on the Roll of Solicitors and he has a current practising certificate free from conditions. The Respondent is employed as an Assistant Solicitor at HSK Solicitors LLP (“the Firm”).
4. In late 2013 and early 2014 the Respondent acted for Newbury Venture Capital Limited (“NVCL”) in respect of a joint venture with Mr JM and two others, Ms JC and Mr RB, regarding a property in Blackburn (“the Property”). Mr JM was

represented by Drysdales and the other two investors were represented by the same, separate firm of solicitors. Mr JM's interest in the Property was a £25,000 contribution to the purchase price, plus a stated profit on re-sale of £15,400. The agreement was formalised in a joint venture agreement dated 9 December 2013. The Property was purchased by Berkshire Homes Limited ("BHL") and transferred by them to NVCL for nil value upon registration. The Firm did not act on the purchase of the Property. The Firm's instructions concerned the investments in the Property.

5. In an email dated 12 December to Mr MR at Drysdales Ms KA, who was the Respondent's secretary and an unadmitted member of staff at the Firm, confirmed that "we are instructed to provide you with an undertaking to register an agreed notice in favour of your client against the property once we receive funds from you". This email was copied to the Respondent.
6. In a subsequent email dated 23 December 2013 to Mr MR at Drysdales from Ms KA, an undertaking was given to Drysdales to "register an agreed notice against the title in favour of your client MR JM". This email was copied to the Respondent.
7. On 3 January 2014 the Respondent wrote to Mr MR at Drysdales and stated "Please accept our undertaking to register the AN1 upon receipt of your funds". The sum of £25,000 was transferred from Drysdales to the Firm on that date.
8. A draft AN1 was sent to Drysdales, which was amended and returned to the Respondent on 10 January 2014. The Firm applied to register the agreed notice against the Property. A number of issues arose during the process and HM Land Registry raised a number of requisitions. The original application to register the agreed notice was cancelled on 27 February 2014. The application was re-submitted on 3 March 2014.
9. On 12 March 2014 Drysdales sent the Respondent an email stating "Further to completion of this matter, could you please confirm whether the AN1 has now been registered in accordance with your undertaking". On 13 March 2014 Ms KA emailed Drysdales stating:

"Unfortunately the application to register our clients (sic) interests has been returned on various occasions due to issues with registering our clients (sic) ownership of the property. Unfortunately we did not act for our client when they purchased the property and therefore there has been some confusion in making the application.

All matters have now been resolved and we did return the application to the Land Registry on 11th March. Upon receipt of the title information we shall revert back to you."
10. On 24 March 2014 Ms KA sent an email to Drysdales noting the property would now be transferred from BHL to NVCL as a gift. Confirmation was sought that the provisions of a clause in the transfer of 29 November 2013 had been met. This information had been requested by the Land Registry.

11. Confirmation of completion of registration was received from the Land Registry dated 1 April 2014. The title information noted the interest of Ms JC but not Mr JM. The AN1 was not registered. The title information was sent to NVCL on 3 April 2014 with a covering letter notifying the client that the matter was concluded and the file would be closed. The file was closed on 30 April 2014.
12. On 17 December 2014 the Property was sold by NVCL. The Firm were not instructed to act for NVCL on the sale of the Property.
13. On 20 February 2015 Drysdales emailed Ms KA at the Firm stating “we note we have not yet heard from you with confirmation that the AN1 has now been registered in accordance with your undertaking”. A further email was sent by Drysdales to Ms KA, dated 25 March 2015, stating “we have not yet heard from you with confirmation that the AN1 has been registered in accordance with your undertaking given on 23 December 2013. We now see that the property changed hands on 17 December 2014 and obviously our clients (sic) entitlement of £40,400 has not been paid”. Ms KA forwarded the email to the Respondent on 26 March 2015.
14. On 2 April 2015 the Respondent wrote to Drysdales advising:

“We refer to our recent telephone conversation. Please note that our application was returned from the Land Registry and confirmation of registration was sent out to all parties. We were extremely surprised to learn that your clients (sic) agreed notice had not been registered.

We have liaised with the Land Registry who have confirmed that the application to register an equitable charge in favour of [Mr JM] was removed. We believe that this has been done by [NVCL] directly with the consent of your client. We have liaised with our clients who are checking their records and believe that they are in receipt of paperwork confirming your clients (sic) intention to modify the agreement with your client”.
15. The information in the letter of 2 April 2015 was inaccurate. Drysdales subsequently made enquiries with H M Land Registry, and were advised by email from the latter on 9 April 2015 that their “records show that no application to note the Agreement dated 6 January 2014 in favour of [Mr MR JM] was ever submitted for registration.”
16. Principle 6 requires a solicitor to “behave in a way that maintains the trust the public places in you and in the provision of legal services”. Principle 7 states that a solicitor must “comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner”. Outcome 11.2 is an outcome that must be achieved and requires that “you perform all undertakings given by you within an agreed timescale or within a reasonable amount of time”.

Witnesses

17. None.

Findings of Fact and Law

18. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
19. **Allegation 1.1- By failing to register a form AN1 to secure the interest of Mr JM at HM Land Registry in accordance with the undertaking given in an email dated 23 December 2013 and/or subsequent letter dated 3 January 2014 he:**
- 1.1.1 failed to behave in a way which maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles;**
- 1.1.2 failed to comply with his legal and regulatory obligations, in breach of Principle 7 of the Principles; and**
- 1.1.3 failed to perform all Undertakings given by him within an agreed timescale or within a reasonable amount of time, and therefore failed to achieve Outcome 11.2 of the SCC**
- 19.1 The Respondent admitted allegations 1.1.1 and 1.1.3. He denied allegation 1.1.2.
- 19.2 There was much about the factual background surrounding the purchase of the Property and the investments that were made that was not known to the Tribunal. This information was irrelevant to the matters before the Tribunal. What was known and was relevant was that Mr JM's interest was to be protected by notice being placed against the registered title to the Property. There were separate Joint Venture Agreements for Mr JM and Ms JC. The AN1 in respect of Mr JM was never registered.
- 19.3 In an email sent on 12 December 2013, Ms KA had referred to being instructed to give an undertaking to register an agreed notice in favour of Mr JM against the Property once the Firm received funds from Drysdales. This was sent to Mr MR at Drysdales and copied to the Respondent. An undertaking was given by Ms KA in an email dated 23 December 2013 again sent to Mr MR and copied to the Respondent. The Respondent had written to Mr MR on 3 January 2013 and asked Drysdales to "accept our undertaking to register the AN1 upon receipt of your funds". In the same letter confirmation was given that the Firm agreed Drysdale's proposed amendments to the wording of the AN1.
- 19.4 The Respondent did not accept that he had given an undertaking on 23 December 2013 but accepted he had given an undertaking on 3 January 2014. As allegation 1.1 referred to an undertaking on 23 December 2013 and/or on 3 January 2014 it was not necessary for the Tribunal to determine whether the email sent by Ms KA and copied to the Respondent on 23 December was an undertaking given by the Respondent. It was sufficient that the Respondent had given an undertaking on 3 January 2014.

- 19.5 Funds were received on 3 January 2014 and the AN1 should then have been registered in accordance with the undertaking. This did not happen. The Respondent acknowledged that this had not happened. By the time it was discovered the AN1 had not been registered the Property had been sold and Mr JM had not received the funds he was due. This failure to comply with his undertaking meant the Respondent, as he admitted, had failed to achieve Outcome 11.2 of the SCC. Allegation 1.1.3 was proved.
- 19.6 The Applicant's case was that in failing to perform his undertaking the Respondent had failed to comply with his legal and regulatory obligations. The giving of an undertaking by a solicitor gives rise to legal obligations to the individual to whom the undertaking is given and also subjects the giver to specific obligations under the SCC. Principle 7 was plainly engaged when the Respondent gave the undertaking. The Respondent was at personal fault as he failed to send in for registration the agreed AN1 and this was not rectified before the Property was sold, almost a year later.
- 19.7 The Respondent acknowledged what had happened and the fact that the AN1 had not been registered. Other fee earners had also been working on the file, there had been a lack of supervision of the file and the registration never took place. The Respondent's mistake had been not to pick the file up himself and pay some attention to it. He should have done the work and he did not. He had learnt by his mistakes. However, the Respondent submitted that this did not mean that he had failed to comply with his legal and regulatory obligations.
- 19.8 The factual matrix was straightforward. The Respondent gave an undertaking on a file he was ultimately responsible for and he did not comply with that undertaking. In not complying with his undertaking the Tribunal was satisfied that the Respondent had not complied with his legal and regulatory obligations. The Respondent had denied allegation 1.1.2. The Tribunal found the allegation proved beyond reasonable doubt.
- 19.9 Having found that the Respondent breached Outcome 11.2 and Principle 7 the Tribunal decided that the Respondent had failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6. A solicitor who gave an undertaking with which they did not comply could not be said to have behaved in a way that maintained the trust the public placed in the solicitor and the provision of legal services. Allegation 1.1.3 had been admitted and was proved.
- 19.10 The Tribunal found the allegations 1.1, 1.1.1, 1.1.2 and 1.1.3 were proved beyond reasonable doubt.
20. **Allegation 1.2 - By failing to ensure that accurate information was provided to Drysdales, instructed on behalf of Mr JM, in a letter dated 2 April 2015 regarding the registration of the form AN1, he failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles.**
- 20.1 The Respondent admitted allegation 1.2. There had been a telephone conversation between the Respondent and Drysdales between the 25 March 2015 and 2 April 2015. There was no note of the conversation but this conversation was followed up by letter

dated 2 April 2014 from the Respondent to Drysdale's. The contents of that letter were untrue. The fact that the contents of the letter of 2 April was untrue was clear from the email from H M Land Registry dated 9 April 2015 which confirmed that no application to note the agreement between NVCL and Mr JM was ever submitted for registration against the title in question. The Respondent was confused between the position in respect of Mr JM and the position in respect of Ms JC. The Applicant accepted that the Respondent had been confused and for that reason had proceeded with an allegation of breach of Principle 6 rather than anything more serious.

- 20.2 The Respondent had failed to protect Mr JM. The undertaking had not been fulfilled. Mr JM had lost out. The Respondent had provided inaccurate information in his letter of 2 April 2015. The Respondent should have ensured he provided accurate information to Drysdale's. In providing inaccurate information, albeit believing it to be correct, the Respondent had failed to behave in a way that maintained the trust the public places in him and the provision of legal services. The Tribunal found allegation 1.2 proved beyond reasonable doubt.

Previous Disciplinary Matters

21. None

Mitigation

22. The Respondent provided two character references to the Tribunal. Both referees were aware of the Respondent's appearance before the Tribunal, expressed their surprise at the Respondent's error and their belief that the Respondent would ensure that a similar mistake did not occur in future.
23. The Respondent had accepted his failings at an early stage. He was not making excuses for what had happened. He worked in a busy practice with a caseload of one to two hundred files and thirty to forty completions a month between three fee earners with assistance from secretarial staff and the Respondent's father. The Respondent's reputation at work had suffered and this was doubly difficult as it was his father's firm. The Firm had a case management system, although this transaction differed from a standard conveyancing transaction. The Firm had held Lexcel accreditation since 2010.
24. The Respondent assured the Tribunal that this would not happen again. He had not paid as much attention to this matter as he should have done. He was responsible for the file and should have made sure things were done. Now he worked in a different way. He closely supervised, made sure that he was fully aware of what other people were doing on his matters and that he knew what was going on with his files.
25. The Respondent acknowledged that he had a duty to Drysdale's and to Mr JM. Mr JM had suffered financial loss. Had the AN1 been registered he would have received the monies due when the Property was sold. A claim had been made against the Firm's insurers, this was at an early stage but there was some suggestion that the insurers were defending the claim. It was unclear as to why this was although the Respondent was aware that NVCL had subsequently gone into liquidation and other investors in

other properties had not been paid out. The Respondent's view was that Mr JM had a legitimate claim and the Firm's insurance should cover it.

26. The Respondent was aware he was facing a costs application as well as his own costs for legal representation. The Respondent had apologised to the Tribunal, Drysdales and Mr JM in his witness statement. He was ashamed to be a Respondent in proceedings before the Tribunal.

Sanction

27. The Tribunal referred to its Guidance Note on Sanctions (4th Edition) when considering sanction. The Respondent was completely responsible for his misconduct. There had been a substantial loss to the individual who had invested in the Property and harm to the reputation of the profession. On the evidence before the Tribunal this was a one-off, where the registration of the agreed notice had been overlooked. The Respondent had a previously unblemished record.
28. The Respondent had made a mistake, he did not profit from this mistake. His actions were neither planned nor spontaneous. He had acted in breach of a position of trust but no more so than the average solicitor who made an error. Drysdales were acting for Mr JM, the Respondent's client was NVCL but he should have ensured the AN1 was registered. The Respondent had direct control over the circumstances giving rise to the misconduct. He was an experienced solicitor, working in a busy practice with over seven years post qualification experience at the time these events occurred. The harm caused was reasonably foreseeable. It included harm to Mr JM, who had suffered a quantifiable financial loss, harm to the reputation of the profession and to the reputation of the Respondent's father's firm.
29. The Respondent's misconduct was towards the lower end of the scale. However neither the Applicant nor the Respondent had been able to tell the Tribunal the extent of the harm caused to Mr JM. An aggravating factor was the fact that a solicitor's undertaking has to be able to be relied on and is central to the conveyancing process. The Respondent's failure to comply with his undertaking was in material breach of his obligations to protect the public and the reputation of the profession.
30. There was no evidence that the misconduct resulted from deception or otherwise by a third party. Mr JM's claim was being dealt with by the Firm's insurers and at the date of the hearing the loss had not been made good. The Respondent had shown insight, regret and embarrassment. He had made open and frank admissions at an early stage, save for the breach of Principle 7, and had co-operated with the Applicant.
31. The Tribunal considered the range of sanctions available to it, commencing with 'No Order'. Without being able to rely on a solicitor's undertaking the conveyancing process would grind to a halt. For this reason 'No Order' was not an appropriate sanction and nor was a Reprimand. The Respondent, and the profession, had to understand that a breach of an undertaking was a serious matter. A financial penalty was appropriate. In these circumstances nothing would be gained by suspending the Respondent and an order striking him off would be too draconian. The Respondent had not submitted any information as to his means. The Tribunal fixed the Fine at

£5,000 being the level it considered reflected the seriousness of and was proportionate to the misconduct in question.

Costs

32. The Applicant applied for its costs, supported by a schedule totalling £4,885.90. The Applicant's starting point was that the costs should be reduced as the time for preparation was less than the seven hours claimed and the hearing had not lasted a whole day. Mr Bullock was at the Tribunal on a separate matter the next day and the time claimed for travel and related disbursements needed to be apportioned between the two cases. This reduced the amount claimed to £3,452.00. The Respondent recognised he had costs to face. He had seen the costs schedule and invited the Tribunal to make an order in the sum it considered appropriate.
33. The Tribunal carefully considered the costs schedule, which included SRA Supervision Costs of £472.50. The Applicant had reduced the amount of costs sought as set out above. No further reductions were required to the amount claimed and the Tribunal assessed the Applicant's costs at £3452.00.

Statement of Full Order

34. The Tribunal Ordered that the Respondent, KIM SINGH LANDA, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,452.00.

Dated this 31st day of May 2016
On behalf of the Tribunal

N. Lucking
Chairman