

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11512-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

STEPHEN JOHN ELLIS

Respondent

Before:

Mr J. A. Astle (in the chair)

Ms A. E. Banks

Mr G. Fisher

Date of Hearing: 21 October 2016

Appearances

Kelly Sherlock, solicitor of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not appear but was represented by Sefton Kwasnik, solicitor of BPS Law LLP, Cardinal House, 20 St Mary's Parsonage, Manchester, M3 2LY.

JUDGMENT

Allegations

1. The allegation against the Respondent was that:
 - 1.1 By virtue of his convictions at the Crown Court in Carlisle on 9 October 2015, the Respondent failed to:
 - (a) uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Principles 2011
 - (b) act with integrity contrary to Principle 2 of the SRA Principles 2011
 - (c) behave in a way that maintained the trust the public placed in him and in the provision of legal services contrary to Principle 6 of the SRA Principles 2011.

The Respondent admitted the allegation.

Documents

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

Applicant:

- Application dated 12 May 2016 together with attached Rule 5 Statement and all exhibits
- Applicant's Statements of Costs dated 12 May 2016 and 10 October 2016

Respondent:

- Reply to Rule 5 Statement dated 12 July 2016
- Email from BPS Law LLP to the Applicant and the Tribunal dated 30 August 2016
- Respondent's Bundle of Documents

Proceeding in the Respondent's Absence

3. Ms Sherlock, on behalf of the Applicant, submitted that although the Respondent was not present, the hearing should proceed in his absence. He had filed a Reply to the Rule 5 Statement in which he had indicated he would not be attending the hearing. He was represented by his solicitor and there would be no prejudice in proceeding in his absence.
4. Mr Kwasnik, on behalf of the Respondent, confirmed he did not object to the application to proceed in his client's absence. He welcomed the application and indeed, the Respondent had asked the Tribunal to excuse his attendance in person, in his Reply to the Rule 5 Statement.

5. The Tribunal noted the Respondent had made it clear in his Reply to the Rule 5 Statement dated 12 July 2016 that he would not be attending the hearing in person and that he had authorised his solicitor, Mr Kwasnik, to attend in order to represent his interests and present mitigation on his behalf. In the circumstances, the Tribunal was satisfied the Respondent had voluntarily absented himself and waived his right to attend the hearing. It was unlikely that he would attend a future hearing even if the case was adjourned. He was clearly legally represented and there would be no prejudice to him if matters proceeded in his absence. The Tribunal granted the application to proceed in the Respondent's absence.

Factual Background

6. The Respondent, born in 1972, was admitted as a solicitor on 1 July 1999.
7. At the material time the Respondent was a member of Temple Heelis Commercial LLP ("the firm"). He did not currently hold a practising certificate.
8. On 26 February 2014 the Respondent was adjudged bankrupt and his practising certificate was suspended by virtue of the bankruptcy.
9. On 9 October 2015 at the Carlisle Crown Court, the Respondent was convicted upon his own confession upon indictment of:
 - (i) Six counts of fraud by abuse of position;
 - (ii) Three counts of dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk;
 - (iii) One count of false accounting; and
 - (iv) One count of making false representation to creditors of company being wound up so as to obtain their consent to agreement.
10. On 3 December 2015, the Respondent was sentenced to a total of five years imprisonment and was further made subject to an Order under Section 2 Company Directors Disqualification Act 1986 by virtue of which he was disqualified from acting as a company director for a period of 10 years.

Witnesses

11. No witnesses gave evidence.

Findings of Fact and Law

12. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

13. **Allegation 1.1**

- 13.1 The Respondent admitted the allegation. The Tribunal had been provided with a copy of the Certificate of Conviction dated 24 February 2016 confirming the Respondent had, on 9 October 2015, been convicted on his own confession, of six counts of fraud by abuse of position, three counts of dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk, one count of false accounting and one count of making false representation to creditors of company being wound up so as to obtain their consent to agreement.
- 13.2 The Certificate of Conviction also confirmed the Respondent had, on 3 December 2015, been sentenced to:
- 4 years imprisonment concurrent for the false accounting conviction
 - 5 years imprisonment for one count of fraud by abuse of position. He was also disqualified under Section 2 of the Company Directors Disqualification Act 1986 for 10 years.
 - a further five years imprisonment concurrent for each of the other five counts of fraud by abuse of position
 - five years imprisonment concurrent for each of the three counts of dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk
 - four years imprisonment concurrent for the count of making false representation to creditors of company being wound up so as to obtain their consent to agreement.
- 13.3 The Tribunal found the allegation proved both on the Respondent's admissions and also on the Certificate of Conviction and other documents before it.

Previous Disciplinary Matters

14. None.

Mitigation

15. Mr Kwasnik, on behalf of the Respondent, referred the Tribunal to the Respondent's bundle which had been provided to Mr Kwasnik when he had attended the Respondent in prison recently. In that bundle the Respondent confirmed he was now 44 years old. He made reference to his personal circumstances and his ill health. He fully recognised he would be struck off the Roll of Solicitors and he did not wish to challenge this inevitable outcome. The Respondent had requested he be removed from the Roll prior to any charges brought by the police as he did not wish to practise as a solicitor ever again. The Respondent accepted his guilty plea was deemed to have brought the profession into disrepute. He stated he had not made any attempt to conceal matters and following the police raid, he single-handedly arranged for the orderly closure of the firm, transferring live files to other solicitors and ensuring

professional indemnity insurance was in place. The Respondent had funded this himself following which he had become bankrupt.

16. Mr Kwasnik also referred the Tribunal to a letter from the Liverpool Crown Court to the Respondent dated 13 October 2016 which confirmed a Confiscation Order had been made at the Carlisle Crown Court on 28 August 2016 for £1.00. Mr Kwasnik stated the amount of the financial losses of around £215,000 referred to in the Judge's sentencing remarks did not represent only client funds. There were also loan arrangements included in this amount. He also stated that whilst various specific clients were mentioned in the judgment, there had been many other clients who were properly served.
17. Mr Kwasnik reminded the Tribunal that the Respondent's personal and professional reputation had been permanently destroyed. The Respondent had suffered significant health complaints which led to his hospitalisation in September 2015, after which he entered into a negotiated position with his QC in order to resolve the contested criminal trial which was due to take place over a period of 12 weeks.
18. Mr Kwasnik referred the Tribunal to the Respondent's CV which showed that he had a previously long unblemished history during which he had undertaken complex work. The Respondent's earliest release date from prison was summer 2018 and even then it was highly unlikely he would be able to gain any well remunerated employment.

Sanction

19. The Tribunal had considered carefully the Respondent's submissions and documents. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
20. The Tribunal also considered carefully the sentencing remarks of His Honour Judge Peter Hughes QC which provided some background to the convictions. His Honour Judge Hughes had stated:

"It's all too apparent that your ambitions for your new venture far exceeded its legitimate income and capital resources. Put simply, the business was underfunded and operating beyond its means. From early 2011, little more than a year after the company was formed, and continuing until concerned employees reported their concerns to the Police and the Solicitors Regulatory Authority in September 2013, you resorted to a variety of fraudulent means to keep it afloat and to fund your comfortable lifestyle.....

The misuse of client funds to support the running costs of the office in the hope that the fortunes of the business would improve and that the client account can be replenished in due course is commonly a way that solicitors in private practice become involved in fraud. That feature is present in this case. You did raid the client accounts of a number of your customers like [SB].

But a distinctive feature of the case is the fact that your fraudulent conduct went much further. Not only did you wrongfully transfer client funds from established clients such as , you also created wholly fictitious invoices for

work done. This was not done simply to cover the money taken out of the client's account, the figures in the invoices bore no resemblance to reality and were designed grossly to inflate your ageing debt to support applications for loans and factoring.....

What makes it even worse, sadly, is that you even went so far as to take steps to try to recover unpaid fictitious bills.....

The fact is that you not only threatened [clients] with legal proceedings but actually instituted proceedings against them in the County Court, proceedings that were only resolved after your arrest.....

Sadly, it does not stop there as you created invoices showing that you personally had done work on behalf of the action group to a value of over £283,000 and that you were owed this amount..... You used the fictitious debt as part of an aged debtor report submitted to [LC], a firm of insolvency practitioners, in September 2013. That was for the purpose of entering into a Company Voluntary Arrangement, which is Count 20 on the indictment.

As a solicitor, you would be well aware of the importance of the information supplied in support of a CVA. The obligation to ensure that the information is true, accurate and reliable is a duty reinforced by the Insolvency Act.....

I regard the attempt to abuse the process of the court, as a solicitor, by pursuing a bogus claim through court proceedings... and by providing false information in support of a CVA as a seriously aggravating feature of the case.

There are other examples of out and out dishonesty, such as Count 8, where you obtained a short term loan of £70,000 from [PB] on the strength of a solicitor's undertaking, dishonestly representing that the money was to be used to pay for renovations to your house; and Count 18, where you dishonestly obtained loans intended to be used for training purposes but never actually used for that purpose.....

What you cannot claim credit for, regrettably, is prompt and sincere regret for the harm that you caused to so many people and ready acceptance of your guilt by an early plea of guilty. Through lengthy interviews, you sought to deny any wrongdoing and you tried to bluff your way out of it. You knew the truth yet sought to blame the accounting system for misrecording work done, and in the face of overwhelming evidence to the contrary you claimed in all other respects the invoices were genuine.....”

21. The Tribunal also considered the aggravating and mitigating factors in this case. The Respondent had a number of convictions which related to his fraudulent dishonest conduct. That conduct had been deliberate, calculated and repeated over a period of time. The Respondent had created fictitious invoices and then had issued court proceedings against clients to recover the amounts due under them. He had benefited from defrauding clients of a large amount of money and this had resulted in criminal convictions. The money had been used to fund the Respondent's business and for his own personal purposes. Furthermore, the Respondent had not made admissions in the

criminal proceedings until a relatively late stage, instead seeking to blame the accounting system. These were all aggravating factors.

22. The Tribunal took into account the Respondent's co-operation with the disciplinary process, his previously long unblemished career and the remorse and contrition expressed on his behalf through his legal representative. These were mitigating factors. The Tribunal also took into account the Respondent's current health and the devastating consequences of his convictions on him, although these had been due to his own behaviour and could not be blamed on anyone else.
23. The Respondent, who was an experienced solicitor, had grossly breached his position of trust. His conduct had caused a great deal of harm to the reputation of the legal profession. He had a number of very serious criminal convictions and had been given concurrent prison sentences for each one. This reflected the gravity and seriousness of his conduct. The Respondent was clearly a risk to the public and could not be trusted to deal with client funds. The Tribunal considered all the sanctions available to it but concluded the only appropriate sanction in this case, in order to protect the public and the reputation of the profession, was to strike the Respondent's name off the Roll of Solicitors. The Tribunal so Ordered.

Costs

24. Ms Sherlock requested an Order for the Applicant's costs in the total sum of £2,223.70. She provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. Ms Sherlock accepted some reduction needed to be made to the costs claimed for the hearing as it had not taken as long as estimated on the schedule. She also reminded the Tribunal that whilst the Respondent had provided a copy of the Insolvency Register indicating he was currently bankrupt, that bankruptcy would be discharged on 26 October 2016. Ms Sherlock reminded the Tribunal that the Respondent had failed to serve a Statement of Means and there was no further information from him save reference to the confiscation proceedings contained within his bundle. Whilst the Confiscation Order was for the sum of £1.00, Ms Sherlock was aware that if further funds became available in the future, that amount could be increased.
25. Ms Sherlock requested the Tribunal make an unrestricted order for costs. She assured the Tribunal that the Applicant would engage in meaningful discussions with the Respondent at the appropriate time and would not seek to enforce the order for costs without these discussions taking place first. She submitted such an order would save costs in the future as it would mean the Applicant would not need to return to the Tribunal for leave to enforce the costs order.
26. Mr Kwasnik, on behalf of the Respondent, confirmed the Respondent had been subject to two bankruptcy proceedings in this matter. The first bankruptcy was declared on 21 February 2014 and the second bankruptcy was on 26 October 2015. The Respondent was still currently adjudicated bankrupt and had no income as he was in prison. Even on his release, which at its earliest was likely to be summer 2018, it was highly unlikely he would obtain well remunerated employment. Mr Kwasnik stated the Respondent had not intended any discourtesy to the Tribunal by failing to complete a Statement of Means Form. He had simply thought that all the relevant

information was available to the Tribunal as a result of the evidence of his bankruptcy and the Confiscation Order.

27. In relation to the Statement of Costs, Mr Kwasnik pointed out there were errors in the calculation of the costs which needed to be considered. He submitted it was not appropriate to impose a costs order in this case given the impact and totality of the proceedings on the Respondent. Ms Kwasnik submitted a costs order would be too onerous, unfair and an additional penalty hanging over the Respondent in the future.
28. The Tribunal had considered carefully the matter of costs. The Tribunal did not accept Mr Kwasnik's submissions that there should be no order for costs. This matter had been properly brought before the Tribunal as a result of the Respondent's own misconduct. Whilst the purpose of a costs order was not to serve as an additional punishment for the Respondent, that may be an unintended consequence. In any event it was not fair or reasonable to expect the profession to meet the costs incurred by his behaviour. This was a case where it was appropriate and reasonable to make an order for the Applicant's costs.
29. The Tribunal noted some amendment was necessary to the schedule as there had been errors in the Applicant's calculation of costs. The Tribunal also made deductions to take into account the actual hearing time which was significantly less than the amount claimed on the schedule. Having considered both these items and made the necessary reductions, the Tribunal assessed the Applicant's costs in the total sum of £2,000 and Ordered the Respondent pay this amount.
30. In relation to the enforcement of that costs order, the Tribunal noted that whilst the Respondent was currently bankrupt, that bankruptcy would be discharged shortly. Furthermore, although a Confiscation Order was currently in place this could be increased should further information come to light in the future. The Respondent had failed to file a Statement of Means in accordance with the Tribunal's directions. The Tribunal had no information as to what the Respondent's financial circumstances would be on his release from custody. It was possible that he may acquire funds such that he would be in a position to pay the costs. The Tribunal was mindful that placing any restriction on the Order for costs would simply increase the costs for which the Respondent was ultimately liable, as the Applicant would be required to return to the Tribunal for permission before any enforcement action could be taken.
31. The Respondent was now 44 years of age and, whilst his livelihood had been taken from him as a result of the Tribunal's Order, it was possible that he could gain some form of alternative employment on his release from prison. In all the circumstances, the Tribunal did not consider this was a case where there should be any deferment of the costs order.

Statement of Full Order

32. The Tribunal Ordered that the Respondent, STEPHEN JOHN ELLIS, 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 £2,000.00.

Dated this 10th day of November 2016
On behalf of the Tribunal

J. A. Astle
Chairman