

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11545-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NAOMI JANE BARNES

Respondent

Before:

Mr A. N. Spooner (in the chair)

Mr H. Sharkett

Dr P. Iyer

Date of Hearing: 15 February 2017

Appearances

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

The Respondent appeared in person.

JUDGMENT

Allegations

1. The allegation against the Respondent was that:

1.1 By virtue of her convictions at Harrow Crown Court on 23 December 2015 for:

- (i) One count of acquiring criminal property, contrary to section 329(1) of the Proceeds of Crime Act 2002 in that between 1 June 2014 and 18 May 2015 the Respondent acquired criminal property, namely £36,000, knowing or suspecting it to represent in whole or part and whether directly or indirectly, the proceeds of criminal conduct; and
- (ii) One count of transferring criminal property, contrary to section 327(1)(d) of the Proceeds of Crime Act 2002 in that between 1 June 2014 and 18 May 2015 the Respondent transferred criminal property, namely £8,000, knowing or suspecting it to represent in whole or part and whether directly or indirectly, the proceeds of criminal conduct

the Respondent failed to:

- uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Principles 2011
- act with integrity contrary to Principle 2 of the SRA Principles 2011
- behave in a way that maintained the trust the public placed in her and in the provision of legal services contrary to Principle 6 of the SRA Principles 2011.

Documents

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

Applicant:

- Application dated 22 August 2016 together with attached Rule 5 Statement and all exhibits
- Applicant's Statement of Costs
- Applicant's Response to Answer dated 17 October 2016

Respondent:

- Respondent's Answer to the Applicant's Rule 5 Statement dated 25 September 2016
- Personal Financial Statement dated 15 January 2017

Factual Background

3. The Respondent, born in April 1988, was admitted to the Roll of Solicitors on 3 September 2012. She did not hold a current practising certificate.
4. On 23 December 2015, at the Harrow Crown Court, after a trial, the Respondent was convicted on indictment of the following offences:
 - (i) One count of acquiring criminal property, contrary to section 329(1) of the Proceeds of Crime Act 2002 in that between 1 June 2014 and 18 May 2015 the Respondent acquired criminal property, namely £36,000, knowing or suspecting it to represent in whole or part and whether directly or indirectly, the proceeds of criminal conduct; and
 - (ii) One count of transferring criminal property, contrary to section 327(1)(d) of the Proceeds of Crime Act 2002 in that between 1 June 2014 and 18 May 2015 the Respondent transferred criminal property, namely £8,000, knowing or suspecting it to represent in whole or part and whether directly or indirectly, the proceeds of criminal conduct.
5. On 12 February 2016, the Respondent was sentenced to 6 months imprisonment suspended for 12 months on suspended sentence with an unpaid work requirement for 200 hours and a Rehabilitation Activity requirement for a maximum of 10 days. She was also required to pay a Victim Surcharge in the sum of £80.
6. The Sentencing Judge's remarks set out the background to the conviction. The Respondent was charged on the same indictment as RC, her partner, who pleaded guilty to an offence of fraud which reflected his involvement in the dishonest appropriation and disposal of about £300,000 belonging to company S. The Respondent's convictions reflected the fact that she had acquired around £36,000 of the sum that RC had stolen and that she then went on to transfer around £8,000 of that criminal property back to him.
7. Company S was a small company who employed RC as an in-house accountant in September 2012. He was responsible for all of the financial transactions made by the business including their banking and filing of accounts.
8. Between 1 June and 27 October 2014 RC made unauthorised payments from S's company account into his own bank account totalling £298,270. During this period RC transferred £36,610 to the Respondent's personal account.
9. On 24 October 2014 RC called in sick and failed to attend work thereafter. On the same day the Respondent advised her employer, a solicitors' firm, that she could not attend work due to a family emergency. The Respondent was working as a solicitor and had received training on anti-money laundering.
10. On 27 October 2014 both RC and the Respondent flew to Thailand, the Respondent having advised her employers that she needed compassionate leave for a period. RC's offending first came to light on 31 October 2014 when it was noticed that around £200,000 was missing from S's bank account.

11. In respect of the £36,610 transferred by RC to the Respondent, this included a transfer of £19,000 on 15 September 2014 and £10,000 on the morning they left the country on 27 October 2014. The Respondent's bank card was frozen by her bank on 3 November 2014 and reactivated in December 2014. During that time, the Respondent attempted to make transactions in Cambodia which were declined.
12. Once the account was active again, the Respondent made three further transactions transferring the remaining £5,000 balance from her bank account to RC's account. The prosecution's case was that the Respondent knew or suspected that the money transferred into her account totalling in excess of £36,000, was the proceeds of fraud committed by RC and that she also went on to transfer £8,000 of those funds back to him.
13. RC and the Respondent remained in the Far East during which time they were emailed by the police with a request for them to return to the UK. They returned on 18 May 2015.

Witnesses

14. No witnesses gave evidence.

Findings of Fact and Law

15. The Tribunal had carefully considered all the documents provided, and the submissions of both parties. The Tribunal confirmed the allegation had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering the allegation.
16. **Allegation 1.1: By virtue of her convictions at Harrow Crown Court on 23 December 2015 for:**
 - (i) **One count of acquiring criminal property, contrary to section 329(1) of the Proceeds of Crime Act 2002 in that between 1 June 2014 and 18 May 2015 the Respondent acquired criminal property, namely £36,000, knowing or suspecting it to represent in whole or part and whether directly or indirectly, the proceeds of criminal conduct; and**
 - (ii) **One count of transferring criminal property, contrary to section 327(1)(d) of the Proceeds of Crime Act 2002 in that between 1 June 2014 and 18 May 2015 the Respondent transferred criminal property, namely £8,000, knowing or suspecting it to represent in whole or part and whether directly or indirectly, the proceeds of criminal conduct**

the Respondent failed to:

- **uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Principles 2011**
- **act with integrity contrary to Principle 2 of the SRA Principles 2011**

- **behave in a way that maintained the trust the public placed in her and in the provision of legal services contrary to Principle 6 of the SRA Principles 2011.**

- 16.1 Ms Sherlock, on behalf of the Applicant, submitted that a trial had taken place and the jury must have been satisfied that the Respondent at the very least suspected, if not knew, that the sums being paid to her by RC and subsequently transferred by her back to him were the proceeds of criminal conduct.
- 16.2 The Respondent did not dispute the conviction but referred the Tribunal to her Answer to the Applicant's Rule 5 Statement which set out her position. She also asked the Tribunal to bear in mind the remarks of the Sentencing Judge who had made reference to her culpability being "at the lesser end".
- 16.3 In her Answer the Respondent stated she had pleaded not guilty to the charges on the basis that she was not aware that the money placed in her account by her partner RC, was from stolen funds. She stated she was aware her partner had a gambling habit but she was not aware that he had gained the original monies to gamble from criminal sources. She stated she knew of his winnings but not of his losses. The Respondent provided copies of emails between RC and a gambling site as evidence of his "large win". She stated she believed he had won this money not that he had used stolen monies to gamble in the first place. The Respondent stated that she would never have accepted monies in her bank account if she had known where they came from.
- 16.4 The Respondent stated in her Answer that she left the country with RC because she was worried about his mental health as he had brought up thoughts of suicide and deep depression. She did not think it was safe for him to leave alone and she went with him because she loved him. She stated she did not know he was leaving because he had committed a crime.
- 16.5 In her Answer the Respondent submitted that her conduct did not have anything to do with her role as a solicitor or with the firm that she was working for. She stated RC was employed as an accountant and had ample funds of his own so she had no reason to be suspicious of the origin of the sums.
- 16.6 In relation to the specific allegations, the Respondent stated that she accepted that what she was found guilty of was a serious offence. However she submitted she was not acting in her capacity as a solicitor when any of this occurred. She stated she simply made a serious mistake in trusting someone she loved.
- 16.7 The Tribunal considered carefully the documents before it and the submissions of both parties. Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 stated:

"A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances."

16.8 As such, the Tribunal would not, and could not, go behind the Certificate of Conviction from the Harrow Crown Court dated 14 October 2016. That Certificate confirmed that on 23 December 2015 the Respondent was tried and convicted on indictment of;

“Count 2/2: Acquire/use/possess criminal property
Count 2/3: Criminal/disguise/convert/transfer/remove criminal property”.

The Certificate also confirmed the Respondent had been sentenced on 12 February 2016 to:

“Total 6 months imprisonment suspended for 12 months on Suspended Sentence (CJA 2003) with Unpaid Work requirement for 200 hours and Rehabilitation Activity requirement for a maximum of 10 days”

16.9 The Certificate of Conviction also stated the Respondent was ordered to pay a victim surcharge of £80. The Tribunal accepted the Certificate of Conviction as conclusive evidence that the Respondent had been convicted as set out.

16.10 The Tribunal was satisfied that in light of the Respondent’s conviction, evidenced by the Certificate of Conviction, she had failed to uphold the rule of law and the proper administration of justice. She had acquired/used/possessed criminal property which was clearly criminal behaviour contrary to the rule of law and the proper administration of justice. It was irrelevant whether this was done during the course of her duties as a solicitor or not. The Tribunal was satisfied the Respondent had breached Principle 1 of the SRA Principles 2011.

16.11 In relation to the breach of Principle 2 of the SRA Principles 2011, the Tribunal was satisfied that a person acting with integrity would not have allowed herself to become involved with acquiring or transferring criminal property. In this case the Respondent’s own personal bank account had been used and the jury had been satisfied that, at the very least, the Respondent must have suspected the funds to represent the proceeds of criminal conduct. The offences were committed over the period 1 June 2014 to 18 May 2015, which was almost a year. The Tribunal concluded the Respondent’s conduct did not connote moral soundness or a steady adherence to an ethical code. She had therefore breached Principle 2 and had acted with a lack of integrity.

16.12 The Tribunal was satisfied that being convicted of an offence involving the acquisition and subsequent transfer of criminal property did damage the trust the public would place in the Respondent and in the provision of legal services. The Respondent had breached Principle 6 of the SRA Principles 2011.

16.13 The Tribunal found the allegation proved in full.

Previous Disciplinary Matters

17. None.

Mitigation

18. The Respondent had provided some mitigation in her Answer. She had explained the nature of her relationship with RC and stated her life had changed drastically as a result of these offences. She had worked incredibly hard to become a solicitor and thoroughly enjoyed her job. She stated she would have never have knowingly jeopardised this.
19. The Respondent stated in her Answer that she had made a serious mistake in trusting someone she loved. She did not believe she would ever be able to work as a solicitor again and this had been the greatest punishment for her. The Respondent requested the lowest level of sanction that the Tribunal would allow. She wished to avoid the sanction of a fine which she believed would be disproportionate and which she considered she would be unable to pay.
20. The Respondent informed the Tribunal that conditions had been placed on her practising certificate when she returned from the Far East. She had obtained employment working within legal recruitment. However, after she was sentenced, her position was terminated. The Respondent stated she had now started her own legal recruitment company which was going "OK". She referred the Tribunal to her Personal Financial Statement which provided details of her means.

Sanction

21. The Tribunal had considered carefully the Respondent's Answer and her submissions. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.
22. The Tribunal considered the Respondent had been culpable for her actions which had caused harm to the reputation of the solicitors' profession. She had involved herself in the acquisition and transfer of criminal funds which were not of an insignificant amount. She had direct control over the circumstances as she could have made proper enquiries into the source of the funds and she could have refused to accept them. As a result harm had been caused to members of the public and to the reputation of the profession.
23. The Tribunal considered the aggravating and mitigating factors in this case. The Respondent had a criminal conviction, and her actions had been deliberate in that she had accepted funds and subsequently made transfers over a period of almost a year. Furthermore a member of the public had suffered financial losses although the Tribunal accepted this was mainly due to the conduct of RC. However, the Respondent had undertaken anti-money laundering training and therefore she ought reasonably to have made proper enquiries and therefore known that her conduct was in breach of her obligations to protect the public and the reputation of the profession. These were all aggravating factors.

24. The Respondent did have a previously unblemished record and she had co-operated with the regulator. She was also young and relatively inexperienced having been qualified for just over 4 years. These were mitigating factors. However, the Respondent had not expressed any genuine insight or remorse instead stating in her Answer:

“I was not aware that the money my partner placed in my account was from stolen origins. I stand by this, fully, to this day.”

Nor had she apologised for her conduct.

25. The Tribunal also considered the remarks of the Sentencing Judge, who had concluded that had the Respondent not fallen into a relationship with RC, she would not have found herself in her position. He had accepted the Respondent’s position was more remote and that she had no direct contact with Company S. The Tribunal agreed with these comments and found this to be a sad case in light of the Respondent’s young age and the early stage in her legal career.
26. The Tribunal considered carefully all the sanctions available to it. The misconduct in this case was serious and had led to a criminal conviction with a suspended custodial sentence. The Tribunal concluded that it was not appropriate to make No Order or impose a Reprimand. Furthermore, the Tribunal did not consider a fine would be a sufficient sanction to reflect the seriousness of the misconduct and the damage caused to the reputation of the profession. Imposing conditions on the Respondent’s practising certificate was not appropriate as it would be difficult to formulate reasonable workable conditions which would adequately address criminal misconduct whilst also reflect the seriousness of the misconduct.
27. The Tribunal then considered whether to impose a Suspension. The fact that the Respondent had received a suspended custodial sentence was an indication of the gravity of her actions. The Respondent had not expressed genuine insight or remorse and in light of this the Tribunal could not conclude she understood the serious consequences of her actions on the public and on the reputation of the profession. Taking this into consideration the Tribunal was of the view that there was still a risk to the public and it would undermine public confidence in the profession if the Respondent were to be suspended.
28. There was a need to protect the public as well as the reputation of the legal profession and uphold professional standards. The Tribunal concluded that the appropriate and proportionate sanction in this case, to uphold public confidence in the profession, was to strike the Respondent’s name off the Roll. Accordingly, the Tribunal Ordered the Respondent to be struck off the Roll of Solicitors.

Costs

29. Ms Sherlock, on behalf of the Applicant requested an Order for her costs and provided the Tribunal with a breakdown of those costs which came to a total of £3,273.15. She accepted some reduction would need to be made to those costs as the actual hearing had taken less time than anticipated. Ms Sherlock stated the Respondent did not take issue with the costs but she was concerned about how she

would be able to pay them. She further submitted the SRA Costs Recovery team would discuss options with the Respondent.

30. On questioning from the Tribunal as to why the costs had increased quite substantially between the date proceedings were issued and the hearing, Ms Sherlock stated further work had been necessary when the Respondent submitted her Answer as it had transpired the date on the Certificate of Conviction had been incorrect. This had required the Applicant to liaise with the criminal court and subsequently amendments to the Rule 5 Statement had been required. In addition to this work, Ms Sherlock submitted that the Applicant had filed a Reply to the Respondent's Answer and a Certificate of Readiness.
31. In her Answer to the Rule 5 Statement the Respondent stated she had made it clear to the SRA over a year ago that she would have accepted being struck off as a solicitor to avoid having to attend the Tribunal with all the associated costs. The Respondent had informed the Tribunal during her mitigation that she had started her own legal recruitment business. She stated she was renting a property at the moment and her parents were able to assist her financially if necessary. In her Statement of Means the Respondent stated her business was yet to "turnover any money".
32. The Tribunal had considered carefully the matter of costs and was of the view that the costs claimed were too high. This had been a straight forward case involving a criminal conviction and a relatively small bundle of documents. Work had been carried out by paralegals as well as by a solicitor and the Tribunal was not prepared to allow both in a case of this nature. The amendments made to the Rule 5 Statement had been very minor consisting of date changes. Accordingly the costs claimed for the work of paralegals was disallowed.
33. A reduction needed to be made to the time claimed for the hearing as indicated by Ms Sherlock. This was reduced to 1½ hours by the Tribunal and the time spent on preparation for the hearing was also reduced to 2 hours. In addition, the Tribunal did not allow the time claimed of 1 hour for reviewing documents. Having made these deductions, the Tribunal assessed the total costs at £2,000, this being a reasonable sum, and Ordered the Respondent to pay this amount.
34. In relation to enforcement of those costs, the Tribunal noted the Respondent had provided a Statement of Means. She had indicated in that statement that she would be able to pay the costs by way of instalments.
35. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay costs in light of the fact that she had now been deprived of her livelihood as a result of the Tribunal's Order. The Respondent had made significant efforts to become financially independent again. She was in self-employment and had offered to pay the costs by instalments. The Tribunal considered the Respondent was young and, if her current business was not viable, she should be able gain some form of alternative employment. Whilst the Tribunal hoped the SRA would be sympathetic to the Respondent and allow her to make payments by instalments, it did not consider it necessary to impose any restriction on the enforcement of costs.

Statement of Full Order

36. The Tribunal Ordered that the Respondent, NAOMI JANE BARNES, 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 sum of £2,000.00.

Dated this 14th day of March 2017

On behalf of the Tribunal



A. N. Spooner
Chairman

Judgment filed
with the Law Society
on **16 MAR 2017**