

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11594-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

DIANNA LEE (AKA GERALD)

Respondent

Before:

Mr J. A. Astle (in the chair)

Mr L. N. Gilford

Mrs C. Valentine

Date of Hearing: 16 August 2018

Appearances

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

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

The allegations made by the Applicant against the Respondent were set out in a Rule 5 Statement dated 5 January 2017. The allegations were that:

1. By virtue of her conviction for the offence described in paragraph 7 of the Rule 5 Statement she:
 - 1.1.1 failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the SRA Principles 2011 (“the Principles”);
 - 1.1.2 failed to act with integrity and therefore breached Principle 2 of the Principles; and
 - 1.1.3 failed to behave in a way which maintained the trust the public placed in her and in the provision of legal services and therefore breached Principle 6 of the Principles.

Documents

2. The Tribunal considered all the documents in the case which included:

Applicant

- Application and Rule 5(2) Statement dated 5 January with exhibit “KS1”
- The Applicant’s Schedule of Costs dated 5 January 2017 and 15 August 2018

Respondent

- The Respondent’s email dated 29 June 2018.

Preliminary Issues

Application to Proceed in the Absence of the Respondent

3. A case management hearing had taken place on 6 July 2018 and the substantive hearing had been listed for 14 August 2018. The parties were sent the Memorandum of that hearing, including the date of the substantive hearing, on 11 July 2018. The Tribunal had notified the Respondent that the hearing had been re-listed for 16 August 2018 on 18 July 2018.
4. The Respondent had emailed the Tribunal on 29 June 2018 and set out a number of personal circumstances. She informed the Tribunal that she had not won her appeal hearing. She stated that she was not able to participate in the proceedings but invited the Tribunal to continue in her absence.
5. On 16 August 2018 the Respondent did not attend the hearing and the Applicant submitted that the Tribunal should proceed in the Respondent’s absence.

6. At the outset of the proceedings the Applicant had applied to serve the Respondent by email and that application had been granted. The Respondent had acknowledged receipt of the proceedings. There had been a number of case management hearings, the most recent of which had taken place on 6 July 2018. On that date the Respondent had been given a final opportunity to file an Answer by 31 July 2018 but she did not do so.
7. Given that the Respondent had been served with the proceedings and given the contents of her email dated 29 June 2018 Ms Sidhu applied to proceed in her absence. She submitted that under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 (“the SDPR”) the Tribunal had the power, if satisfied service had been effected, to hear and determine the application in the Respondent’s absence.
8. Ms Sidhu submitted that the Respondent had voluntarily waived her right to appear. It was not in the public interest for the hearing to be adjourned and there was no suggestion that a delay would secure the Respondent’s attendance.
9. Ms Sidhu reminded the Tribunal that Rule 19 of the SDPR provided for a re-hearing where the Respondent neither appeared nor was represented and the Tribunal determined the application in her absence.

The Tribunal’s Decision

10. The Tribunal was satisfied that the Respondent had been served with notice of the hearing. The Respondent had invited the Tribunal to proceed in her absence in her email dated 29 June 2018. The Tribunal decided that it should exercise its power under Rule 16(2) to hear and determine the application in the Respondent’s absence. The Tribunal concluded that the Respondent had voluntarily absented herself from the hearing and was unlikely to attend a future hearing if the matter were to be adjourned. In all the circumstances, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent’s absence.

Factual Background

11. The Respondent was born in March 1967 and was admitted to the Roll of Solicitors on 17 December 2007. The Applicant’s records showed that the Respondent was known as Dianna Gerald between February 1999 and September 2012. She was admitted to the Roll of Solicitors under that name, but changed her name to Dianna Lee on 12 October 2012. At the date of the Rule 5 Statement, the Respondent’s name remained on the Roll of Solicitors but she did not have a current practising certificate.
12. In the Manchester Crown Court the Respondent was tried and convicted, after a twelve day trial, of four counts of fraud by false representation on 7 July 2016. The Respondent had appealed her conviction. She had not won her appeal.

Witnesses

13. The written evidence is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case. The Tribunal did not hear any oral

evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

14. 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.
15. **Allegation 1.1 - By virtue of her conviction the Respondent:**
- 1.1.1 failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the Principles;**
- 1.1.2 failed to act with integrity and therefore breached Principle 2 of the Principles; and**
- 1.1.3 failed to behave in a way which maintained the trust the public placed in her and in the provision of legal services and therefore breached Principle 6 of the Principles.**
- 15.1 Ms Sidhu submitted that the Respondent was tried and convicted of four counts of fraud by false representation on 7 July 2016. The mens rea of that offence was dishonesty.
- 15.2 On 9 September 2016, His Honour Judge Steiger QC passed a sentence of twenty one months suspended for a period of eighteen months. He also ordered that in the first twelve months of that period the Respondent carry out unpaid work for the community totalling two hundred hours, to reflect that this was a grave pattern of offending.
- 15.3 The Judge made the following sentencing remarks:

"The gist of the fraud was that she swindled the Revenue out of some £38,000 in tax, which should have been paid on her earnings as a solicitor. In order to effect this fraud, she went to great lengths to construct bogus documents, suggesting that others had been guilty of fraud themselves, she traduced the reputation of [NC] and her former partner and, indeed, so far as that lady was concerned, she, effectively, stabbed her in the back, by taking advantage of her being on holiday. In my judgment, her behaviour throughout, on the face of it, was completely disgraceful. She is, in my view, wholly unsuitable to be a solicitor, whether in sole practice or with others.

It occurred to me, however, at the conclusion of the trial that the defendant's behaviour had been so bizarre, in so many respects, that a medical analysis might be of value and I am deeply grateful to the two doctors, Dr. [H] and Dr. [W], the treating psychologists, for their detailed reports. Unbeknown to counsel (or indeed anybody else in the trial), it turns out the defendant has been suffering gravely from mental health issues for upwards of 20 years. Indeed, in the view of Dr. [W] her score on the Beck scale was such as approached that, which would result in compulsory detention for treatment. Therefore, it is

appropriate to conclude, in my judgment, that the defendant's behaviour, shocking, deceitful, dishonest and discreditable, as it was, may well have been informed by these long standing medical issues, of which people were unaware at the time, including, I may say, counsel."

- 15.4 Under Rule 15 of the SDPR the Tribunal was invited to rely on the Certificate of Conviction dated 14 July 2016, as proof of the Respondent's conviction for the offences. Further the Applicant relied on the Judge's Sentencing Remarks, as conclusive proof of the facts upon which those convictions were based.
- 15.5 Principle 1 required the Respondent to uphold the rule of law and the proper administration of justice and Principle 2 required her to act with integrity. Principle 6 required her to behave in a way that maintained the trust the public placed in her and in the provision of legal services.
- 15.6 Ms Sidhu submitted that by virtue of her conviction the Respondent had breached Principle 1. She had failed to uphold the rule of law and the administration of justice. The public would not expect a solicitor to behave as the Respondent had behaved. She had breached Principle 6.
- 15.7 In Wingate and Evans v the Solicitors Regulation Authority [2018] EWCA Civ 366 Jackson LJ said, in respect of integrity, that:

"93. Let me stand back from the kaleidoscope of the authorities and consider what the law now is. Honesty is a basic moral quality which is expected of all members of society. It involves being truthful about important matters and respecting the property rights of others. Telling lies about things that matter or committing fraud or stealing are generally regarded as dishonest conduct. These observations are self-evident and they fit with the authorities cited above. The legal concept of dishonesty is grounded upon the shared values of our multi-cultural society. Because dishonesty is grounded upon basic shared values, there is no undue difficulty in identifying what is or is not dishonest."

He went on to say:

"97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in *Williams* at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards."

- 15.8 Ms Sidhu submitted that the Respondent had breached Principle 2. The Respondent had been convicted of four counts of fraud. She had received a twenty one month custodial sentence suspended for twelve months and had had to undertake two hundred hours of unpaid work in the first twelve months. Ms Sidhu submitted that no solicitor of integrity would behave in this way. The Respondent had been in a senior position in a law firm and had displayed a clear lack of integrity.

The Respondent's Case

- 15.9 The Respondent's position was set out in her email dated 29 June 2018. She had not filed an Answer. In her email the Respondent had acknowledged that she did not expect to be able to call herself a solicitor again due to her conviction. She had appealed the conviction and there had been a full appeal hearing which she had not won.

The Tribunal's Findings

- 15.10 Rule 15 of the SDPR states:

“15.—(1) In any proceedings before the Tribunal which relate to the decision of another court or tribunal, the following rules shall apply if it is proved that the decision relates to the relevant party to the application.

(2) 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.”

- 15.11 The Tribunal had before it the Certificate of Conviction showing that the Respondent had been tried and convicted in indictment of four counts of fraud by false representation. The Tribunal found allegation 1.1.1 proved beyond reasonable doubt. The very fact of the conviction meant that the Respondent had failed to uphold the rule of law and the proper administration of justice and had breached Principle 1.
- 15.12 The Tribunal found that the Respondent had failed to act with integrity and therefore breached Principle 2. She had not adhered to the higher standards which society expects from professional persons and which the profession expected from its own members. Allegation 1.1.2 was proved beyond reasonable doubt.
- 15.13 The Tribunal found that the Respondent had failed to behave in a way which maintained the trust the public placed in her and in the provision of legal services and breached Principle 6. Allegation 1.1.3 was proved beyond reasonable doubt. In reaching this finding the Tribunal particularly took into account the Certificate of Conviction and the Judge's Sentencing Remarks. He had said that in his judgement, the Respondent's “behaviour throughout, on the face of it, was completely disgraceful. She is, in my view, wholly unsuitable to be a solicitor, whether in sole practice or with others.” This was not how the public expected a solicitor to behave and clearly had not maintained the trust that the public placed in the Respondent and the provision of legal services.

Previous Disciplinary Matters

16. There were no previous appearances before the Tribunal.

Mitigation

17. The Respondent had provided information in respect of her personal circumstances in her email dated 29 June 2018.
18. During the course of the proceedings the Respondent had also provided some information in respect of her health. The Judge had made reference to the Respondent's health in his Sentencing Remarks and this was set out at paragraph 15.3 above.
19. In terms of her financial situation the Respondent had told the Tribunal that she was claiming benefits, had no assets and had no way of contributing. She had not filed a Statement of Means.

Sanction

20. The Tribunal referred to its Guidance Note on Sanctions (Fifth Edition) when considering sanction.
21. The Tribunal assessed the seriousness of the misconduct in order to determine which sanction to impose. The Respondent's culpability was high. The Respondent's motivation for the misconduct was financial. The misconduct was planned. The Respondent had direct control of or responsibility for the circumstances giving rise to the misconduct at a time when she had some level of experience as a solicitor having qualified in 2007. Harm had been caused by the misconduct. However, the Respondent had not acted in breach of a position of trust and she had not deliberately misled the regulator.
22. The Tribunal assessed the impact of the Respondent's misconduct upon those directly or indirectly affected by the misconduct, the public, and the reputation of the legal profession. The Respondent had caused harm to her former partner and to NC who had been directly affected by her actions. The reputation of the profession had been harmed by her misconduct. The Judge's sentencing remarks referred to her disgraceful behaviour and the Respondent's misconduct was a total and utter departure from the complete integrity, probity and trustworthiness expected of a solicitor. The harm might reasonably have been foreseen to be caused by the Respondent's misconduct.
23. Factors that aggravated the seriousness of the misconduct included the fact that the misconduct involved the commission of a very serious criminal offence; it had been deliberate and calculated; and the Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of her obligations to protect the public and the reputation of the legal profession. In terms of mitigating factors the Judge's Sentencing Remarks referred to the Respondent repaying the tax. The misconduct was very serious.
24. Having determined the seriousness of the misconduct, the Tribunal assessed whether to make an order, and if so, which sanction to impose. The Tribunal, in making this assessment, started from No Order. However in light of the seriousness of the misconduct No Order, a Reprimand and a Fine were clearly insufficient sanction. The misconduct had involved a substantial amount of money. The Respondent's actions had caused harm to the reputation of the profession. The Tribunal considered whether a

fixed term or indefinite suspension was sufficient sanction. However given the nature of the Respondent's offending the Tribunal concluded that the seriousness of the misconduct was at the highest level and that this was insufficient sanction.

25. The Tribunal concluded that the protection of the public and the protection of the reputation of the legal profession required the Respondent's name to be struck off the Roll of Solicitors. Before finalising sanction the Tribunal considered whether there were any exceptional circumstances or personal mitigation that meant that this sanction should be reduced. Whilst the Tribunal was aware of the Respondent's health difficulties as set out in the Sentencing Remarks the Tribunal concluded, having regard to the overall facts of the misconduct, that allowing the Respondent's name to remain on the Roll would have a significantly detrimental effect on the public's confidence in the reputation of the legal profession. The only appropriate sanction was for the Respondent's name to be struck-off the Roll of Solicitors.

Costs

26. The Applicant applied for its costs in the sum of £4,357.99 as set out in a costs schedule dated 15 August 2018. The Respondent had not provided any financial information other than that set out in her email dated 29 June 2018 in which, she had in effect, asked for her financial circumstances to be taken into account.
27. Ms Sidhu submitted that the Applicant's costs were very reasonable. The Applicant had tried to ensure the proceedings were brought in a proportionate manner and focused on the most serious allegations. The Tribunal asked Ms Sidhu to explain the three hours claimed for preparation for the hearing. She responded that the case had been ongoing since January 2017, there had been a lot of correspondence and a number of hearings. This had increased the preparation time for the hearing as it had been necessary to review the matter. Ms Sidhu acknowledged that her time for travelling, waiting and attendance at the hearing could be reduced as the hearing had not lasted as long as expected and her travel time was less than anticipated.
28. Ms Sidhu submitted that the Tribunal should make a fixed order for costs to be paid and that this should not be conditional. The Applicant had a costs recovery department and if an order was made that department would make appropriate arrangements with the Respondent.
29. The Tribunal carefully considered the application for costs. It did not have any evidence to support the Respondent's statements in respect of her finances. The Respondent had faced serious allegations which had been found proved and it was right that she should pay the costs of the proceedings. Having considered the costs schedule the Tribunal assessed the costs at £4,000 to reflect the reduced time for attendance and travelling.
30. The Tribunal then considered whether or not this order should be subject to a provision that it should not be enforced without leave of the Tribunal. Given the lack of evidence as to the Respondent's finances and the assurances the Tribunal had heard from Ms Sidhu as to the approach that the Applicant would take in respect of the enforcement of costs the Tribunal decided that it was not appropriate to impose such a restriction on the costs order. The Tribunal ordered that the Respondent do pay the costs of an incidental to the application and enquiry fixed in the sum of £4,000.

Statement of Full Order

31. The Tribunal ORDERED that the Respondent, DIANNA LEE (AKA GERALD), 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 £4,000.00.

Dated this 13th day of September 2018
On behalf of the Tribunal



L. N. Gilford, Solicitor Member
On behalf of J. A. Astle, Chairman

Judgment filed
with the Law Society
on 13 SEP 2018