

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11617-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NEIL IAN BENSON

Respondent

Before:

Miss T. Cullen (in the chair)

Mr J. Evans

Mr M. Palayiwa

Date of Hearing: 28 June 2017

Appearances

The parties were not required to attend as the matter was dealt with on the papers.

JUDGMENT

Allegations

1. The allegations made by the Applicant against the Respondent in a Rule 5(2) Statement dated 27 February 2017 were that:-
 - 1.1 On 29 September 2014 he created 6 false letters addressed to the Welsh Land Registry dated 23 May 2013, 4 October 2013, 2 December 2013, 17 March 2014, 5 September 2014 and 25 September 2014 (“the false letters”) and placed the false letters on a client matter file in order to conceal his failure to issue an application for title based on adverse possession on behalf of his client, in breach of Principles 2, 4 and 6 of the SRA Principles 2011 (“the SRA Principles”).
 - 1.2 Between 20 January 2013 and September 2014, the Respondent failed to materially progress an application for title based on adverse possession on behalf of his client, in breach of Principles 4 and 5 of the SRA Principles.
2. Dishonesty was alleged with respect to the allegation at paragraph 1.1 above but dishonesty was not an essential ingredient to prove that allegation.

Documents

- Application and Rule 5 Statement dated 27 February 2017
- Statement of Agreed Facts and Outcome dated 28 June 2017
- Schedule of Costs dated 27 February 2017
- Letter from the Respondent’s GP dated 2 June 2017
- Email from the Applicant to the Tribunal dated 28 June 2017.

Factual Background

3. The Respondent was born in December 1969 and admitted to the Roll of Solicitors in November 1995. At the date of the hearing, the Respondent’s name remained on the Roll but he did not hold a current Practising Certificate.

Agreed Facts

4. At all material times, the Respondent practised as a member at the firm until his resignation on 25 November 2014. On 26 November 2014, the SRA received a report from the firm and a self-report from the Respondent.
5. At the material time, the Respondent acted for an entity client (“the client”) on a matter concerning a claim for adverse possession of land (“the claim”). The client initially instructed the Respondent in January 2013 but subsequently raised concerns with the firm in November 2014 that no progress was being made in connection with the claim.
6. The client reported to the firm that he had contacted the relevant Land Registry who had confirmed that no application had been received by them from the firm. On reviewing the file, the firm noted 6 letters to the Land Registry on various dates between May 2013 and September 2014 (“the 6 false letters”) and a declaration sworn on 29 September 2014 which had been administered by the Respondent in relation to

the claim. The firm also checked the matter financial ledger which indicated that there was no cheque drawing payment of the disbursement for the Land Registry application in support of the claim.

7. The 6 false letters, dated between 23 May 2013 and 26 September 2013, purported to lodge the application for registration based on adverse possession at the Land Registry and then to chase that application. Enquiries made of the firm's document management system confirmed that the 6 false letters were, in fact, created on 29 September 2014. Further, the file time ledger did not contain corresponding entries in relation to the 6 false letters.
8. During a subsequent meeting between the firm and the Respondent, the Respondent admitted that he had actually created the 6 false letters on the morning of 29 September 2014.
9. When creating the letters, the Respondent would have known that their contents were false and would have falsely indicated to anyone reviewing the file that the application had been submitted and chased. In creating and placing the false letters on the file, the Respondent failed to act with integrity, failed to act in the best interests of his client and failed to behave in a way that maintains the trust the public placed in him and in the provision of legal services.
10. In relation to the client matter, the Respondent also failed to materially progress the claim on behalf of his client. The Respondent was instructed on 20 January 2013 and the client provided the necessary applications and statutory declarations to progress the matter. Between 8 February 2013 and 25 August 2014, the client chased the Respondent on 14 occasions for an update on progress in relation to the claim.
11. Despite the numerous correspondence from the client, the Respondent continued in his failure to materially progress the application. The Respondent admits that in September 2014 he arranged for a second application to be signed and sworn which he subsequently still failed to submit to Land Registry. The Respondent admitted that he created the 6 false letters in an attempt to conceal his oversight.
12. The Respondent's actions were dishonest in accordance with the test for dishonesty accepted in Bultitude v Law Society [2004] EWCA Civ 1853 as applying in the context of solicitors disciplinary proceedings i.e. the combined test laid down in Twinsectra Ltd v Yardley and Others [2002] UKHL 12: the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly.
13. In creating and placing the 6 false letters on the file, the Respondent admitted that he acted dishonestly by the ordinary standards of reasonable and honest people and he realised that by those standards he was acting dishonestly.

Application for Proceedings to be resolved by way of Agreed Outcome

14. The Respondent admitted the breaches of the SRA Principles and dishonesty as set out above. The Respondent also admitted the allegations as cited above and accepted

the factual basis of the admitted allegations as set out in the Statement of Agreed Facts and Outcome.

15. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The Tribunal considered it appropriate to proceed in this manner.

Findings of Fact and Law

16. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's right 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.
17. The Tribunal considered all of the material before it. The Tribunal accepted the facts as agreed between the parties. The Tribunal was satisfied beyond reasonable doubt that the allegations, which had been admitted, were proved.

Previous Disciplinary Matters

18. There were no previous matters.

Mitigation

19. The Respondent had admitted the allegations against him. In the Statement of Agreed Facts and Outcome the Respondent's mitigation was set out at paragraph 18. In addition the Tribunal took into account the factors set out at paragraph 21 of that document which were advanced to mitigate the seriousness of the Respondent's misconduct.

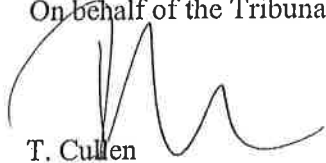
Sanction

20. The Tribunal referred to its Guidance Note on Sanctions (5th Edition- December 2016) when considering sanction. Whilst sanction was a matter for the Tribunal, the Tribunal had read the Statement of Agreed Facts and Outcome document including the section headed "Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance".
21. The Tribunal, having carefully considered the proposal, determined that the terms were proportionate and appropriate. Dishonesty had been alleged and admitted. In the circumstances the Tribunal was satisfied that it was reasonable to make an order on the basis of the Statement of Agreed Facts and Outcome submitted by the parties, namely that the Respondent's name be struck off the Roll of Solicitors.

Costs

22. The Statement of Agreed Facts and Outcome proposed that the Respondent would pay costs to the SRA of £5,429.70. As the parties had agreed this figure the Tribunal was content to order that the Respondent pay the Applicant's costs in the sum of £5,429.70.

Dated this 6th day of July 2017
On behalf of the Tribunal

A handwritten signature in black ink, appearing to be 'T. Cullen', written over the text 'On behalf of the Tribunal'.

T. Cullen
Chair

Judgment filed
with the Law Society
on 06 JUL 2017

Number: 11817-2017

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

and

NEIL IAN BENSON
Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

1. By its application dated 27 February 2017, and the statement made pursuant to Rule 5 (2) of the Solicitors (Disciplinary Proceedings) Rules 2007 which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making a total of 3 allegations of misconduct against Mr Neil Ian Benson ("the Respondent").

Allegations

2. The allegations underlying the applications were as follows and arise out of a complaint received from the Respondent's former firm, Hamlins LLP, Roxburghe House, 273 - 287 Regent Street, London, W1B 2AD ("the firm").
3. The allegations against the Respondent made by the SRA are that:-
 - 3.1. On 29 September 2014 he created 6 false letters addressed to the Welsh Land Registry dated 23 May 2013, 4 October 2013, 2 December 2013, 17 March 2014, 5 September 2014 and 25 September 2014 ("the false letters") and placed the false letters on a client matter file in order to conceal his failure to issue an application for title based on adverse possession on behalf of his client, in breach of Principles 2, 4 and 6 of the SRA Principles 2011 ("the SRA Principles");
 - 3.2. Between 20 January 2013 and September 2014, the Respondent failed to materially progress an application for title based on

adverse possession on behalf of his client, in breach of Principles 4 and 5 of the SRA Principles.

4. It is further alleged that the Respondent was dishonest in relation to the misconduct set out in paragraph 3.1 above. The test for dishonesty to be applied by the Solicitors Disciplinary Tribunal is that set out in *Twinsectra v Yardley [2002] UKHL 12* at [27]: "...before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest...".

Admissions

5. The Respondent admits the breaches of the SRA Principles and dishonesty as set out in paragraphs 3 and 4 above.
6. The Respondent admits the allegations as cited above and accepts the factual basis of the admitted allegations as set out in this document.

Agreed facts

7. At all material times, the Respondent practised as a member at the firm until his resignation on 25 November 2014. On 26 November 2014, the SRA received a report from the firm and a self-report from the Respondent.
8. At the material time, the Respondent acted for an entity client ("the client") on a matter concerning a claim for adverse possession of land ("the claim"). The client initially instructed the Respondent in January 2013 but subsequently raised concerns with the firm in November 2014 that no progress was being made in connection with the claim.
9. The client reported to the firm that he had contacted the relevant Land Registry who had confirmed that no application had been received by them from the firm. On reviewing the file, the firm noted 6 letters to the Land Registry on various dates between May 2013 and September 2014 ("the 6 false letters") and a declaration sworn on 29 September 2014 which had been administered by the Respondent in relation to the claim. The firm also checked the matter financial ledger which indicated that there was no cheque drawing payment of the disbursement for the Land Registry application in support of the claim.
10. The 6 false letters, dated between 23 May 2013 and 26 September 2013, purported to lodge the application for registration based on adverse possession at the Land Registry and then to chase that application. Enquiries made of the firm's document management system confirmed that the 6 false letters were, in fact, created on 29 September 2014. Further, the file time ledger did not contain corresponding entries in relation to the 6 false letters.
11. During a subsequent meeting between the firm and the Respondent, the Respondent admitted that he had actually created the 6 false letters on the morning of 29 September 2014.
12. When creating the letters, the Respondent would have known that their contents were false and would have falsely indicated to anyone reviewing the file that the application had been submitted and chased. In creating and placing the false letters on the file, the Respondent failed to act with integrity, failed to act in the best interests of his client and failed to behave in a way that maintains the trust the public placed in him and in the provision of legal services.

13. In relation to the client matter, the respondent also failed to materially progress the claim on behalf of his client. The Respondent was instructed on 20 January 2013 and the client provided the necessary applications and statutory declarations to progress the matter. Between 8 February 2013 and 25 August 2014, the client chased the Respondent on 14 occasions for an update on progress in relation to the claim.
14. Despite the numerous correspondence from the client, the Respondent continued in his failure to materially progress the application. The Respondent admits that in September 2014 he arranged for a second application to be signed and sworn which he subsequently still failed to submit to Land Registry. The Respondent admits that he created the 6 false letters in an attempt to conceal his oversight.
15. The Respondent's actions were dishonest in accordance with the test for dishonesty accepted in **Bullitudo v Law Society [2004] EWCA Civ 1853** as applying in the context of solicitors disciplinary proceedings i.e. the combined test laid down in **Twinsectra Ltd v Yardley and Others [2002] UKHL 12**: the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly.
16. In creating and placing the 6 false letters on the file, the Respondent admits that he acted dishonestly by the ordinary standards of reasonable and honest people and he realised that by those standards he was acting dishonestly.

Agreed Outcome

17. The Respondent agrees to:
 - a. be struck off the Roll of Solicitors. The Applicant submits and the Respondent accepts that this sanction is consistent with the seriousness of the matters admitted and with the Tribunal's Guidance Note on Sanctions (5th edition), in circumstances in which admissions have been made to dishonestly creating the 6 false letters and placing the letters on a client matter file in order to conceal his failure to issue an application for title based on adverse possession on behalf of his client;
 - b. pay costs to the SRA in the sum of £5,429.70.

Mitigation

18. The Respondent asserts that he was dealing with extremely challenging personal circumstances at the time of the events in question and that those circumstances affected his decision making and he was suffering from stress and depression. The Respondent has provided medical evidence to the SRA in this regard. However, he does not seek to contend that his circumstances affected his decision making to the extent that he did not appreciate that his actions were dishonest. Further, the Respondent does not assert that there are exceptional circumstances in this case which would justify the Tribunal in finding that it fell into the "...small residual category where striking off will be a disproportionate penalty..." identified by Mr. Justice Coulson in **Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)**.

Explanation as to why such an order would be in accordance with Tribunal's sanction guidance

19. The Respondent was a member of a firm and failed to progress a client's matter

despite numerous correspondence from the client indicating the urgency of the matter. The Respondent chose to deliberately conceal his failure to progress the matter by retrospectively creating the 6 false letters and placing them on the file to provide the impression that the matter had been properly progressed. The public expects solicitors to act with integrity, to act in the best interests of each client, to provide a proper standard of service to clients and to behave in a way that maintains the trust the public places in them and in the provision of legal services. The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (**Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)**).

20. The following factors aggravate the seriousness of the Respondent's misconduct:

20.1. the misconduct involves dishonesty;

20.2. the misconduct in relation the breach of the SAR 2011 was deliberate and repeated;

20.3. the misconduct continued over a period of time;

20.4. the misconduct involved the concealment of wrongdoing;

20.5. the misconduct occurred where the Respondent knew or ought to reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

21. The following factors mitigate the seriousness of the Respondent's misconduct:

21.1. the Respondent voluntarily notified the SRA of the facts and circumstances giving rise to the misconduct;

21.2. the Respondent made open and frank admissions at an early stage and has cooperated with the SRA;

21.3. save for the misconduct highlighted the Respondent has no regulatory disciplinary history.

22. Taking all of the above together, the seriousness of the Respondent's misconduct is such that a Reprimand or a Fine is not a sufficient sanction or in all the circumstances appropriate. The seriousness of the misconduct is at the highest level, such that a lesser sanction is inappropriate and the protection of the public and the protection of the legal profession requires that the Respondent's name is struck off the Roll. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions the SRA contends, and the Respondent accepts, that the proper penalty in this case is an Order that the Respondent be struck off the Roll of Solicitors.

Signed:

Shaun O'Malley

Shaun O'Malley
Legal Adviser
On behalf of the Solicitors Regulation Authority

Date: 28 June 2017

Neil Ian Benson

Neil Ian Benson
Respondent

Date:

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