

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11718-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

STEVEN ROBERT BARKER

Respondent

Before:

Ms N. Lucking (in the chair)
Mr G. Sydenham
Dr S. Bown

Date of Hearing: 24 November 2017

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent Steven Robert Barker made by the Solicitors Regulation Authority were that by virtue of his convictions at South East Magistrates' Court on 19 September 2016 for the offences particularised below, he failed to:
 - 1.1 uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Principles 2011;
 - 1.2 act with integrity contrary to Principle 2 of the SRA Principles 2011;
 - 1.3 behave in a way that maintains the trust the public places in him and in the provision of legal services contrary to Principle 6 of the SRA Principles 2011.

Documents

2. The Tribunal had before it the following documents:
 - Rule 5 Statement dated 20 September 2017
 - Statement of the Respondent in answer to the Rule 5 Statement dated 24 October 2017
 - Applicant's statement of costs at date of issue 20 September 2017
 - Statement of Agreed Facts and Outcome dated 14 November 2017

Factual Background

3. The Respondent was born in 1991 and was admitted as a Solicitor in February 2016. At the time of receiving the convictions set out below the Respondent was employed as an in-house solicitor at Ageas (UK) Ltd. The Applicant's records showed that the Respondent's employment there was confirmed as having ended on 30 September 2016. The Respondent did not currently hold a practising certificate but remained on the Roll of Solicitors.
4. On 19 September 2016, at South East Magistrates' Court the Respondent was convicted on his own confession of the following offences:
 - Four offences of dishonestly obtaining services contrary to Section 11 of the Fraud Act 2006;
 - One offence of making or supplying articles for use in fraud contrary to Section 7 of the Fraud Act 2006;
 - One offence of dishonestly making a false representation to make a gain for self/another or cause loss to other/expose another to a risk of loss contrary to Section 2 of the Fraud Act 2006.
5. The penalty imposed included a sentence of 6 months imprisonment suspended for 24 months and 150 hours unpaid work.

6. In an Answer dated 24 October 2017, the Respondent admitted allegation 1.1, 1.2 and 1.3.

Application for the matter to be resolved by way of Agreed Outcome

7. The parties invited the Tribunal to deal with the Allegation against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

8. 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.
9. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.

Previous Disciplinary Matters

10. None.

Sanction

11. The Tribunal considered its Guidance Note on Sanctions (December 2016). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. In assessing the seriousness of what the Respondent had done, the Tribunal noted having regard to culpability that the Respondent had benefitted financially by his actions, motivated by personal gain, causing loss of revenue to the local authority. There were aggravating factors in that the Respondent had been dishonest and his misconduct involved the commission of a criminal offence which had been deliberate and occurred over a period. His misconduct involved concealment of his wrongdoing; the Judge said "...you tried to lie your way out repeatedly when you were challenged and there was some hesitation in accepting the full dishonesty of what you did...". In the sentencing remarks there was a reference to "some initial prevarications" before he pleaded guilty at the earliest opportunity. The Tribunal considered that the misconduct was such that the Respondent knew or ought reasonably to have known that it was in material breach of obligations to protect the public and the reputation of the legal profession notwithstanding that he was acting independently of his role as a solicitor. In terms of mitigation, the Respondent lacked experience as a solicitor and made frank admissions but only after he had been found out. He co-operated with the Applicant. The Judge commented "...repetition is highly unlikely, that you have learned your lesson..." However the most serious misconduct involved dishonesty and almost invariably led to striking off, save in exceptional circumstances. In the sentencing remarks the Judge said that the Respondent "may have been suffering from stress and there were certain financial problems" but the Respondent had not pleaded exceptional circumstances and the Tribunal did not consider on the evidence before it

that exceptional circumstances had been established. The Tribunal considered that strike off was a proportionate and appropriate sanction.

Costs

12. The parties had agreed that the Respondent would pay the Applicant's costs fixed in the sum of £1,142.00 which seemed reasonable having regard to the costs claimed by the Applicant to the date of issue of the Rule 5 Statement.

Statement of Full Order

13. The Tribunal Ordered that the Respondent, Steven Robert Barker, 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 £1,142.00.

Dated this 12th day of November 2017

On behalf of the Tribunal



N. Lucking
Chair

Judgment filed
with the Law Society
on 13 DEC 2017

SOLICITORS DISCIPLINARY TRIBUNAL

MATTER NUMBER 11718-2017

IN THE MATTER OF THE SOLICITORS ACT 1974 (AS AMENDED)

AND IN THE MATTER OF

SOLICITORS REGULATION AUTHORITY

Applicant

and

Mr STEVEN ROBERT BARKER

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

1. By a Statement made by Kelly Sherlock on behalf of the Solicitors Regulation Authority (SRA) pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007, dated 20 September 2017, the SRA brought proceedings before the Tribunal making allegations of misconduct against the Respondent.
2. The Respondent is prepared to make admissions to the allegations in the Rule 5 Statement, as set out in this document.
3. The allegations arise out of the Respondent's convictions at Portsmouth Magistrates' Court ("South East Magistrates Court") on 19 September 2016 for four offences of Dishonestly obtaining services contrary to Section 11 of the Fraud Act 2006; one offence of making or supplying articles for use in fraud contrary to Section 7 of the Fraud Act 2006; and one offence of Dishonestly making a false representation to make a gain for self/another or cause loss to other/expose another to a risk of loss contrary to Section 2 of the Fraud Act 2006. The allegations arose from the fraudulent misuse of a parking permit.

Admissions

4. It is alleged against, and admitted by, the Respondent that by virtue of the Respondent's convictions at South East Magistrates Court on 19 September 2016, he failed to:

- 4.1. uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Principles 2011 (the "SRA Principles") (Allegation 1.1);
 - 4.2. act with integrity contrary to Principle 2 of the SRA Principles (Allegation 1.2);
 - 4.3. behave in a way that maintains the trust the public places in him and in the provision of legal services contrary to Principle 6 of the SRA Principles (Allegation 1.3).
5. The SRA is satisfied that the admissions and outcome in respect of the Respondent satisfy the public interest having regard to the gravity of the matters alleged.

Agreed Facts

6. The Respondent was born August 1991 and was admitted as a Solicitor on 1 February 2016. At the time of receiving the convictions at South East Magistrates Court, the Respondent was employed as an in-house solicitor at Ageas (UK) Limited. The Applicant's records show that the Respondent's employment at Ageas (UK) Limited was confirmed as having ended on 30 September 2016.
7. On 19 September 2016, the Respondent was convicted on his own confession at South East Magistrates Court for four offences of Dishonestly obtaining services contrary to Section 11 of the Fraud Act 2006; one offence of making or supplying articles for use in fraud contrary to Section 7 of the Fraud Act 2006; and one offence of Dishonestly making a false representation to make a gain for self/another or cause loss to other/expose another to a risk of loss contrary to Section 2 of the Fraud Act 2006.
8. On 21 October 2016, the Respondent was sentenced to 6 months imprisonment suspended for 24 months. The suspended sentence order included requirements of 150 hours unpaid work to be supervised by the National Probation Services. This sentence was imposed in respect of all six counts to run concurrently. The Respondent was further ordered to pay a victim surcharge of £80.00 and to pay £986.00 towards the costs of the prosecution.
9. In sentencing the Respondent, the learned judge, His Honour Judge Pearson, made the following comments regarding the circumstances of the offence and the aggravating and mitigating factors which were present:

"...I do accept that, at the time of the commission of these offences, you may have been suffering from stress and there were certain financial problems. I do accept that you are ashamed of your behaviour.

You pleaded guilty at the earliest opportunity. There were some initial prevarications but you did plead guilty at the earliest opportunity and, therefore, you are entitled to full credit.

These acts, however, were not just a single act of madness. They carried on over a period of some time, both with the initial altercation to the parking permit, then you tried to lie your way out repeatedly when you were challenged and there was some hesitation in accepting the full dishonesty of what you did. The actual loss is somewhat difficult to quantify. It could be up to £1,000 but it is conceded by your counsel that the loss to Portsmouth City Council would run into several hundred pounds.

I accept that there is no breach of trust involved here, in the sense that you were not defrauding your employers or anything of that nature but, of course; the public expect the highest standards of honesty and integrity from members of the solicitors' profession and acts of this nature, repeated acts of this nature, means that you plainly fail to achieve the high standard that is expected.

There are guidelines that have been referred to... I am of the view that this is serious and so serious, in the context of the repeated dishonesty and the high standards expected of you, that only a custodial sentence may be justified for these offences but I will suspend the sentences that I impose...

I do take account of the fact that you are going to be punished by your professional body. In my view, it is highly unlikely that the regulatory body will deal with you on a summary basis. Where there has been dishonesty of this nature it will go to the tribunal and the virtually inevitable consequences, where someone has been dishonest as a solicitor, is striking from off the Roll. That will have a considerable effect on your professional career forever and, effectively, you are ruined so far as being a solicitor is concerned. It is highly unlikely that you will retain that position.

I do accept and take account of the fact that repetition is highly unlikely, that you have learned your lesson..."

Breach of the SRA Principles 2011

10. Principle 1 places an obligation on a solicitor to uphold the rule of law and the proper administration of justice. That requires solicitors, amongst other things, to refrain from criminal behaviour at all times. As the respondent was convicted of a criminal offence, he has breached Principle 1.
11. Principle 2 requires a solicitor to act with integrity. A solicitor acting with integrity would not engage in criminal activity such that the respondent has been convicted of. A solicitor engaging in such criminal activity may properly be said to lack moral soundness, rectitude and steady adherence to an ethical code so as to lack integrity, in breach of Principle 2.

12. Principle 6 requires solicitors to behave in a way that maintains the trust the public places in them and in the provision of legal services. This trust depends upon the reputation of the solicitors' profession as one in which every member 'may be trusted to the ends of the earth'. The conviction of a solicitor for serious criminal offences leading to the imposition of a custodial sentence, suspended in this case, undermines the trust that the public places in solicitors and the provision of legal services in breach of Principle 6.

Mitigation

13. The following points are advanced by way of mitigation on behalf of the Respondent. Their inclusion in this document does not amount to adoption of such points by the SRA but the SRA accepts that account can properly be taken of the following points in assessing whether the proposed outcomes represent a proportionate resolution of the matter.
14. The Respondent pleaded guilty to the offences at the earliest opportunity.
15. Throughout the SRA's investigation, the Respondent has cooperated with the SRA.
16. The Respondent has made the admissions set out above at the earliest opportunity.
17. At the time of the commission of the offences, the Respondent was suffering from stress relating to his employment.

Agreed Outcomes

18. The Respondent agrees:
 - 18.1. to be struck from the roll of solicitors; and
 - 18.2. to pay costs to the SRA in the sum of £1,142.00.
19. The Parties submit that in the light of the admissions set out above, the proposed outcomes represent a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions 5th Edition.

Signed:

K M SHERLOCK.....

KELLY MARIE SHERLOCK

On behalf of the Solicitors Regulation Authority

On behalf of STEVEN ROBERT BARKER

Date: 14 November 2017

