

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11734-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JOHN MARK O'HARA WALKER

Respondent

Before:

Mr E. Nally (in the chair)
Mr T. Smith
Mrs L. McMahon-Hathway

Date of Hearing: 1 February 2018

Appearances

This matter was considered on the papers so there were no appearances.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations made against the Respondent, John Mark O'Hara Walker, by the Solicitors Regulation Authority were that:
 - 1.1 between 2012 and July 2015, by failing to apply for a Statutory Will on behalf of his client Mrs GH, causing her to die intestate on 20 July 2015 without leaving provision for her two sons who lived in care, he breached or failed to achieve any or all of:
 - 1.1.1 Principle 4 of the SRA Principles 2011
 - 1.1.2 Principle 5 of the SRA Principles 2011
 - 1.1.3 Principle 6 of SRA Principles 2011
 - 1.1.4 Outcome 1.2 of the SRA Code of Conduct 2011.
 - 1.2 Between August 2013 (at the latest) and January 2017, by making misleading and/or untrue statements to Mr RH and others, in respect of the purported Administration of the estate of the Late Mrs GH ("the Estate"), he breached any or all of:
 - 1.2.1 Principle 2 of the SRA Principles 2011
 - 1.2.2 Principle 4 of the SRA Principles 2011
 - 1.2.3 Principle 5 of the SRA Principles 2011
 - 1.2.4 Principle 6 of SRA Principles 2011.
 - 1.3 On or about 8 December 2016, by fabricating a Grant of Probate, purportedly issued out of the High Court of Justice, Brighton District Probate Registry, in respect of the Estate ("the Grant of Probate"), he breached or failed to achieve any or all of:
 - 1.3.1 Principle 2 of the SRA Principles 2011
 - 1.3.2 Principle 4 of the SRA Principles 2011
 - 1.3.3 Principle 5 of the SRA Principles 2011
 - 1.3.4 Principle 6 of SRA Principles 2011.
 - 1.4 On 16 December 2016, by sending a copy of the fabricated Grant of Probate to the Late Mrs GH's son, which he knew or ought to have known would mislead Mr RH that a Grant of Probate had been properly obtained, he breached any or all of:
 - 1.4.1 Principle 2 of the SRA Principles 2011
 - 1.4.2 Principle 4 of the SRA Principles 2011
 - 1.4.3 Principle 5 of the SRA Principles 2011
 - 1.4.4 Principle 6 of SRA Principles 2011.
 - 1.5 Between May 2016 (at the latest) and 16 January 2017, by misleading his employer as to the progress in the administration of the Estate he breached either or both of:
 - 1.5.1 Principle 2 of the SRA Principles 2011
 - 1.5.2 Principle 6 of SRA Principles 2011.
2. While dishonesty is alleged with respect to the allegations at paragraphs 1.2, 1.3, 1.4 and 1.5, proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Documents

3. The Tribunal had before it the following documents:

Applicant

- Rule 5 Statement dated 18 October 2017
- Standard Directions dated 23 October 2017
- Statement of Agreed Facts and Indicated Outcome dated 31 January 2018
- Certificate of Readiness and Hearing Timetable dated 24 January 2018
- Witness statement of Mr MM dated 30 January 2018
- Applicant's Statement of Costs as at date of issue dated 18 October 2018

Respondent

- Letter from the Respondent to the Tribunal dated 24 January 2018

Factual Background

4. The Respondent was born in 1955 and was admitted to the Roll of Solicitors in 1987.
5. At the date of the Rule 5 Statement, the Respondent remained on the Roll but was not practising.
6. At all material times from 1 May until 27 January 2017, the Respondent was employed as a Legal Director in the Private Client department at Morrisons Solicitors LLP ("the firm"), having previously been a member of that firm from 1 May 2006.
7. The Respondent acted in the estate of Mrs GH on behalf of her son Mr H. Mrs GH also had two other sons, both of whom were vulnerable individuals; they were disabled with learning difficulties and lived in care.

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

8. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Indicated 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

9. 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.

10. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made. In considering the allegation of dishonesty, the Tribunal applied the test in the recent case of Ivey (Appellant) v Genting Casinos (UK) LTD t/a Crockfords (Respondents) [2017 UKSC 67] rather than the case law referred to in the Rule 5 Statement. The Respondent's conduct unequivocally passed the threshold to satisfy the test in Ivey.
11. The SRA Principles which the Respondent was alleged to have breached as specified in individual allegations were as follows:

“You must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow your independence to be compromised;
4. act in the best interests of each *client*;
5. provide a proper standard of service to your *clients*;
6. behave in a way that maintains the trust the public places in you and in the provision of legal services;
7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;”

The Respondent was also alleged to have breached Outcome 1.2 of the SRA Code of Conduct 2011:

“you provide services to your *clients* in a manner which protects their interests in their matter, subject to the proper administration of justice;”

12. The Tribunal considered the 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. It was the Respondent himself, a member of the Society of Trust and Estate Practitioners (STEP) who suggested that the application should be made for a Statutory Will for Mrs GH but he then failed to take the necessary steps. He let down all three of Mrs GH's sons and most notably he did not deliver on the deceased's wishes to protect her two sons in care. He then compounded his failure after her death by providing misleading reassurances to his client and then fabricating and providing to the client a grant of probate to indicate that he had made more progress with the Estate than he had. A Grant of Probate was an important public document. What he had done offended his duty as an officer of the court. There were several aggravating factors; dishonesty had been admitted in respect of the four allegations in respect of which it was alleged; the misconduct continued over a period of time from August 2013 until January 2017 when the Respondent admitted what he had done following the firm receiving a complaint. He was dealing with vulnerable people; initially with a client representing his aged mother who lacked capacity and then with an Estate where two of the potential beneficiaries were disabled. The Tribunal noted that representations which the Respondent made to his client and others as set out in the Rule 5 Statement were

elaborate and sophisticated. He was a well-qualified solicitor who could rely on his reputation and experience in this field of law to boost his credibility. The Tribunal did not know what the consequences were for the deceased's sons but they were certainly made more vulnerable by his actions and deceit. They were kept out of the money from their late mother's Estate for at least a couple of years and of the benefits and financial support which they could have derived from it. The Respondent had committed an unforgiveable breach of trust over a period of time. By way of mitigating factors, the Respondent made proper admissions of dishonesty. His letter of 24 January 2018 showed a high degree of insight into what he had done and he had experienced a sense of relief when his misconduct had come to light. He accepted that as a consequence he had to leave the profession he loved. He offered an explanation for his conduct but recognised that it did not constitute exceptional circumstances. It was inevitable that the Respondent's otherwise unblemished career of 30 years would end in this way but that consideration was by far outweighed by his serious misconduct and the duty of the Tribunal to protect the reputation of the profession. Striking off was a proportionate sanction and the only appropriate one in the circumstances.

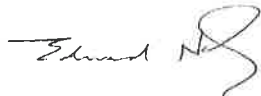
Costs

13. The Tribunal reviewed the schedule of costs as at the date of issue of the proceedings which totalled £2,433.00 and noted that the amount agreed between the parties - £3,000.00- was only a few hundred pounds more than the amount claimed at that point and reflected the additional work undertaken up to the point of the Tribunal's determination today. The Tribunal considered that the costs agreed were reasonable and proportionate and they reflected the prompt admissions which the Respondent had made and the level of co-operation he had shown with the Applicant.

Statement of Full Order

14. The Tribunal Ordered that the Respondent John Mark O'Hara Walker, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £3,000.00.

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



E. Nally
Chairman

Judgment filed
with the Law Society
on 13 FEB 2018

Number: 11734-2017

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

and

JOHN MARK O'HARA WALKER

Respondent

STATEMENT OF AGREED FACTS

AND INDICATED OUTCOME

1. By its application dated 18 October 2017 and the statement made pursuant to Rule 5 (2) Solicitors (Disciplinary Proceedings) Rules 2007 which accompanied that application, the Solicitors Regulation Authority ("SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Mr John Mark O'Hara Walker ("Mr Walker").
2. The allegations made against Mr Walker within that statement are that: -
 - 2.1 Between 2012 and July 2015, by failing to apply for a Statutory Will on behalf of his client Mrs GH, causing her to die intestate on 20 July 2015 without leaving provision for her two sons who lived in care, he breached Principles 4, 5 and 6 of the SRA Principles 2011 and failed to achieve Outcome 1.2 of the SRA Code of Conduct 2011;
 - 2.2 Between August 2013 (at the latest) and January 2017, by making misleading and/or untrue statements to Mr RH and others, in respect of the purported administration of the estate of the Late Mrs GH ("the Estate"), he breached Principles 2, 4, 5, and 6 of the SRA Principles 2011;
 - 2.3 On or about 8 December 2016, by fabricating a Grant of Probate, purportedly issued out of the High Court of Justice, Brighton District Probate Registry, in respect of the Estate ("the Grant of Probate"), he breached Principles 2, 4, 5, and 6 of the SRA Principles 2011;
 - 2.4 On 16 December 2016, by sending a copy of the fabricated Grant of Probate to the Late Mrs GH's son, which he knew or ought to have known would mislead Mr RH that a Grant of Probate had been properly obtained, he breached Principles 2, 4, 5, and 6 of the SRA Principles 2011;
 - 2.5 Between May 2016 (at the latest) and 16 January 2017, by misleading his employer as to the progress of the administration of the Estate he breached Principles 2 and 6 of the SRA Principles 2011;

3. Dishonesty was alleged with respect to the allegations at paragraphs 2.2, 2.3, 2.4 and 2.5.

Admissions

4. In His Answer dated 21 November 2017 Mr Walker admitted the allegations in and contents of the Rule 5 Statement referred to above, (including, for the avoidance of doubt, the allegation of dishonesty).

Agreed Facts

5. The following facts and matters are agreed between the SRA and Mr Walker:

- 5.1 Mr Walker was born June 1955 and was admitted to the Roll of Solicitors on 1 October 1987. His last known address was Shere, Guildford, Surrey, GU5 .
- 5.2 Mr Walker remains upon the Roll of Solicitors, but he does not have a current practising certificate.
- 5.3 At all material times, from 1 May 2012 until 27 January 2017, Mr Walker was employed as a Legal Director in the Private Client department at Morrisons Solicitors LLP ("the Firm"), having previously been a Member at that Firm from 1 May 2006.
- 5.4 Mr Walker acted in the Estate of Mrs GH on behalf of her son Mr H. Mrs GH had two other sons, both of whom were vulnerable individuals; they were disabled with learning difficulties and lived in care.
- 5.5 In 2012, Mr RH instructed Mr Walker to apply to the Court of Protection for a Statutory Will because Mrs GH lacked capacity. Under this Will, Mrs GH intended to make provision for the two sons who lived in care.
- 5.6 Mr Walker failed to apply for a Statutory Will as instructed or at all, and subsequently failed to apply for a Grant in respect of Ms GH's Estate.
- 5.7 On various dates between August 2013 (at the latest) and January 2017, Mr Walker gave misleading information to Mr RH, suggesting that work had been done in respect of his mother's Estate and that progress was being made with the subsequent application for a Grant of Probate, when he knew that was not true.
- 5.8 On or around 8 December 2016 Mr Walker created a false Grant of Probate which he sent to Mr RH to mislead him that the Grant of Probate had been obtained, when he knew this was not true.
- 5.9 On various dates between 17 May 2016 (at the latest) and 16 January 2017 Mr Walker also gave misleading information to his employers regarding the progress of the administration of the Estate.
- 5.10 On 19 January 2017 the Firm received a complaint regarding the administration of Mrs GH's Estate.
- 5.11 On 25 January 2017, Mr Walker approached Mr MM, the Firm's COLP and Ms HC, the Head of the Firm's Private Client department, to inform them that he had not

applied for a Statutory Will as per Mr RH's instructions. Instead, he informed them that "he had been dishonest, he had misled clients ... as to the progress of matters".

5.12 Mr Walker resigned from the Firm on 26 January 2017.

5.13 The Firm reported Mr Walker's conduct to the SRA on 26 January 2017, and provided further information and documentation to the SRA in an email dated 7 February 2017.

5.14 The allegations against Mr Walker arise out of the content of the information and documentation provided by the Firm.

Mitigation

6. The following mitigation is advanced by Mr Walker and is not endorsed by the SRA.
7. Mr Walker practised as a solicitor for over 30 years with an unblemished record prior to the events described at paragraph 5 above.
8. Mr Walker was unknowingly suffering from stress and an inability to cope with his overall workload at the time the misconduct took place, which was directly responsible for his misconduct. However, he does not seek to contend 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 Sharma (*supra*).
9. Mr Walker received no financial gain as a result of his misconduct; his actions were motivated by a desire to be seen to be able to cope.
10. Mr Walker felt an overwhelming sense of relief when his misconduct came to light. He made full admissions to his employer on discovery of the same and immediately offered his resignation. He feels a sense of loss in no longer being able to perform the role he so enjoyed and separately to feel remorse.
11. He also made full and frank admissions to the SRA, and also to the allegations that were made against him in the current proceedings before the Solicitors Disciplinary Tribunal.

Outcome

12. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions the SRA contends and Mr Walker accepts that the proper penalty in this Case is that Mr Walker is struck off the Roll of Solicitors.
13. With respect to costs, Mr Walker agrees to pay the SRA costs of the application in the sum of £3,000.

Dated this 31st day of JANUARY 2018

E PRIEST

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Emma Priest - Legal Adviser
On behalf of the SRA

J M O'HARA WALKERMr John Mark O'Hara Walker