

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11789-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

GREGORY CRAIG DAVIES

Respondent

Before:

Mr B. Forde (in the chair)
Ms A. E. Banks
Mrs L. McMahon-Hathway

Date of Hearing: 20 September 2019

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations contained in the Rule 7 Statement against the Respondent made by the Solicitors Regulation Authority (“SRA”) were that by virtue of his conviction on 28 January 2019 upon indictment of attempting to commit fraud by abuse of position and of dishonestly making false representations to make a gain for himself/another or cause loss to another/expose another to risk of loss he failed to:
 - 1.1 uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 (“the Principles);
 - 1.2 act with integrity in breach of Principle 2 of the Principles; and/or
 - 1.3 behave in a way that maintains the trust the public places in her and the provision of legal services, in breach of Principle 6 of the Principles.
2. The Respondent admitted all allegations.

Documents

3. The Tribunal had before it the following documents:-
 - Rule 7 Statement dated 18 April 2019
 - Statement of Agreed Facts and Proposed Outcome dated 16 September 2019
 - Respondent's financial and health documents
 - Applicant’s Statement of Costs dated 21 June 2019

Factual Background

4. The Respondent was admitted to the Roll of Solicitors in January 2014. His name remained upon the Roll of Solicitors but he did not hold a current practising certificate.
5. At the material time, the Respondent was a director of Catherine Higgins Law Limited (“the Firm”). On 28 January 2019 at the Crown Court in Liverpool, the Respondent was convicted upon indictment of attempting to commit fraud by abuse of position and of dishonestly making false representations to make a gain for himself/another or cause loss to another/expose another to risk of loss.
6. The Respondent was sentenced to 12 months imprisonment in respect of attempting to commit fraud by abuse of position, and 12 months imprisonment in respect of dishonestly making false representations to make a gain for himself/another or cause loss to another/expose another to risk of loss, such sentences to run concurrently.

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

7. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Proposed 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.
10. The Tribunal considered its Guidance Note on Sanction (December 2018). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal noted that the Respondent had admitted all the allegations. He had been convicted of serious criminal offences. Those offences included the Respondent making fraudulent documents and dishonest false representations. Further, the offences had been committed by the Respondent within the context of his acting as a solicitor.
11. Given the serious nature of the Respondent's misconduct, the Tribunal considered that the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.
12. Having determined that the proposed sanction was appropriate and proportionate, the Tribunal granted the application for matters to be resolved by way of the Agreed Outcome.

Costs

13. The parties agreed that the Respondent should make a contribution to costs in the sum of £4,000.00. The Tribunal considered the costs application to be appropriate and proportionate, and ordered that the Respondent pay a contribution to the costs in the agreed amount.

Statement of Full Order

14. The Tribunal Ordered that the Respondent, GREGORY CRAIG DAVIES, 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 £4,000.00.

Dated this 3rd day of October 2019

On behalf of the Tribunal



B. Forde
Chairman

Judgment filed
with the Law Society
on 03 OCT 2019

IN THE MATTER OF THE SOLICITORS ACT 1974

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

GREGORY CRAIG DAVIES

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

Background

1. By its application dated 19 February 2018 , and the statement made pursuant to Rule 5(2) Solicitors (Disciplinary Proceedings) Rules 2007 which accompanied that application ("the Rule 5 Statement"), the Solicitors Regulation Authority ("SRA") brought proceedings before the Solicitors Disciplinary Tribunal ("SDT") concerning the conduct of Gregory Craig Davies.
2. The SRA made an application to the SDT to amend the Rule 5 Statement at a Case Management Hearing on 31 October 2018. Leave to amend was not granted and the question of the proposed amendments was adjourned until the Respondent's representative had obtained instructions from the Respondent on the SRA's application. The SDT listed the matter for a further Case Management Hearing so further medical evidence could be produced by the Respondent and the SDT could be updated on the criminal proceedings against the Respondent as the Respondent had been charged with matters relating directly to these disciplinary proceedings.
3. The Respondent was convicted of criminal offences on 28 January 2019. The SRA was granted permission by the SDT at a Case Management Hearing on 30 April 2019 to issue a Supplementary Statement dated 18 April 2019 in respect of the Respondent's conviction.
4. On 30 April 2019, the SDT allowed the allegations in the Rule 5 Statement to lie on file with the exception of allegation 1.5 of the Rule 5 Statement which the SRA was granted leave by the SDT to withdraw.

5. There was a substantial overlap in the factual basis for the allegations in the Rule 5 Statement and for the Respondent's conviction. The application to amend the Rule 5 Statement was not resurrected by the SRA as it was not proportionate given the seriousness of the allegations in the Supplementary Statement.
6. With leave of the SDT, the SRA are now only proceeding with the allegations set out in the Supplementary Statement.

The Allegations

7. The allegations made against the Respondent within the Supplementary Statement are that by virtue of his conviction on 28 January 2019 upon indictment of attempting to commit fraud by abuse of position and of dishonestly making false representations to make a gain for himself/another or cause loss to another/expose another to risk of loss he failed to:
 - 7.1 uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011;
 - 7.2 act with integrity in breach of Principle 2 of the SRA Principles 2011; and/or
 - 7.3 behave in a way that maintains the trust the public places in her and the provision of legal services, in breach of Principle 6 of the SRA Principles 2011.

Admissions

8. The Respondent admits all the allegations made against him in the Supplementary Statement and as set out in paragraph 7 above.

Agreed Facts

9. The following facts and matters are agreed between the SRA and the Respondent:
 - 9.1. The Respondent was admitted to the Roll of Solicitors on 16 January 2014. At the date of this Statement, the Respondent remains upon the Roll of Solicitors but does not hold a current practising certificate.
 - 9.2. At the material time the Respondent was a director of Catherine Higgins Law Limited ("the firm") whose office was situated at 45 Allerton Road, Woolton, Liverpool, Merseyside, L25 7RE.
 - 9.3. In the Crown Court at Liverpool on 28 January 2019, the Respondent was tried and upon his own confession convicted upon indictment of attempting to commit fraud by abuse of position and of dishonestly making false representations to make a gain for himself/another or cause loss to another/expose another to risk of loss.
 - 9.4. The Respondent was sentenced by Her Honour Judge Smith in the Crown Court at Liverpool on 25 February 2019. The Respondent was sentenced to 12 months imprisonment in respect of attempting to commit fraud by abuse of position (Count 53), and 12 months imprisonment in respect of dishonestly making false

representations to make a gain for himself/another or cause loss to another/expose another to risk of loss (Count 56), such sentences to run concurrently.

9.5. The indictment was amended to combine all the individual acts of fraud (counts 1 – 52 of the indictment) into a single count (count 56). The Respondent pleaded guilty to count 56 together with an act of attempted fraud (count 53). The prosecution agreed to lie the perverting course of justice allegations (counts 54 and 55 of the indictment) on the file on the basis these allegations were treated as an aggravating feature of the frauds before the Crown Court.

9.6. In passing sentence on 25 February 2019, the learned Judge provided the following factual background to the offences and conviction:

9.6.1. Over the period from 1 September 2015 to 31 July 2016, the Respondent acted fraudulently at his place of work, a solicitor's firm, to obtain sums of money to which he was not entitled on, it seems, forty-five occasions and attempted to do so on another occasion. The total sum defrauded was £13,397.98. [Paragraph 17.5 of the Supplementary Statement].

9.6.2. The fraudulent activity aimed to divert funds from his employer to himself and involved principally the creation and use of false records and documents. Matters therefore arose from the Respondent's role and work as a solicitor. [Paragraph 17.1 of the Supplementary Statement].

9.6.3. Once the investigation into the Respondent's actions started, the Respondent was attempting to delete files by accessing the firm's IT system remotely. [Paragraph 17.7 of the Supplementary Statement].

9.7. During her sentencing remarks, Her Honour Judge Smith stated that:

"Having considered the seriousness of these offences; the aggravating features already referred to, taking into account and giving full effect to all the available mitigation I do not consider that in all the circumstances of this case that this sentence can be suspended. Your fraudulent activity is serious on its own facts. It represents behaviour wholly at odds with the standards of your profession and has had a clear impact on your former employer going beyond purely financial impact. It is capable of affecting the standing of the profession generally and the standing of the firm specifically. Your conduct after the offences began to be uncovered is a serious aggravating feature of your criminality". [Paragraph 17.22 of the Supplementary Statement].

9.8. The learned Judge further stated that, *"In my judgment appropriate punishment can only be achieved by the imposition of an immediate custodial sentence. The sentence is twelve-months' imprisonment. Concurrent on both counts".* [Paragraph 17.5 of the Supplementary Statement].

9.9. The Respondent's conviction was publicised in both the local and legal press, with the reports noting his position as a solicitor.

Mitigation

10. The following mitigation is advanced by the Respondent but is not endorsed by the SRA:

10.1. The Respondent provided the following mitigation during the criminal proceedings:

10.1.1. He asserted that he had not been paid his bonus by his employer and that he had had no support from the firm.

10.1.2. He referred to stress and difficult work conditions.

10.1.3. He also described to the interviewing officers during the police investigation his worries about financial circumstances.

[Paragraph 17.8 of the Supplementary Statement].

10.2. In respect of the Respondent's health, the Respondent has produced two psychological reports by Ms Card dated 16 October 2018 and 22 January 2019. Ms Card's second report dated 22 January 2019 was considered by the Crown Court and referred to in the Sentencing Remarks.

10.3. During the Sentencing Hearing, Her Honour Judge Smith stated that:

"As to factors reducing seriousness, there will be a downward adjustment to reflect your lack of previous convictions; the diagnoses set out in Dr. Card's reports; the fact that you have taken steps to return to a law-abiding life since these offences. [Paragraph 17.16 of the Supplementary Statement].

"To that credit for your guilty pleas applies". [Paragraph 17.18 of the Supplementary Statement].

"Having reflected on the facts of the case, and on the particular facts of your early admissions and the change of representation, I have reached the conclusion that it is appropriate to give full credit." [Paragraph 17.19 of the Supplementary Statement].

11. There have been no previous disciplinary matters relating to the Respondent before the SDT.

12. The Respondent acknowledges that he has been convicted of multiple offences of fraud involving dishonesty and does not oppose the SDT making an order that his name should be struck off the Roll of Solicitors. The Respondent does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the SDT in making any order other than that his name should be struck off the Roll of Solicitors.

Proposed Sanction

13. The Respondent and the SRA agree that the seriousness of the Respondent's misconduct is such that the SDT should order that he be Struck off the Roll of Solicitors, with any lesser sanction being inappropriate.

14. With respect to costs, the Respondent agrees to pay the SRA's costs of the application fixed in the sum of £4,000.00.

15. The Respondent and the SRA agree that the Respondent should be ordered to pay the SRA's costs of £4,000.00 within 14 days of the SDT's Order. These costs are fixed at this level taking into account the Respondent's financial means.

Explanation as to why the Proposed Sanction is in accordance with the SDT's Guidance Note on Sanctions

16. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions, the Respondent accepts that the level of culpability and harm from his misconduct is high.
17. The Respondent has been convicted of offences of fraud and attempting to commit fraud involving dishonesty.
18. In relation to culpability, the Respondent's conviction arose from matters over which he had direct control, and which took place over a period of time, within his role and actions as a solicitor.
19. Harm was directly caused to the firm and/or to clients on whose matters fraudulent conduct took place, with wider harm to the reputation of the profession arising from the Respondent's conviction for serious offences of fraud.
20. The following aggravating factors apply to the Respondent's misconduct:
- 20.1. It involves the commission of serious criminal offences, including findings that he had dishonestly made false representations and had attempted to dishonestly abuse his position which led to a custodial sentence.
- 20.2. It involved the Respondent creating, presenting and seeking to rely on multiple fraudulent documents in his role as a solicitor and causing a loss of over £13,000.00.
- 20.3. The breaches of the law involved fraudulent actions across multiple files and client matters over a period of time, as referred to in paragraph 9.6.1 above. Her Honour Judge Smith said during the Sentencing Hearing that "*The fraudulent activity was perpetrated in a persistent and sophisticated way, involving principally the creation and use of false records and documents*". [Paragraph 17.6 of the Supplementary Statement].
- 20.4. There were attempts to conceal his offending which aggravated the sentence. The learned Judge said during the Sentencing Hearing that "*There must, however, be an upwards adjustment to reflect the aggravating features of the case, including, principally, your attempts to interfere with and compromise the investigation into your offending*". [Paragraph 17.14 of the Supplementary Statement].
- 20.5. It is misconduct that he knew or ought reasonably to have known was in material breach of obligations to uphold the proper administration of justice and protect the reputation of the legal profession.
21. The Respondent was convicted for serious offences, requiring a dishonesty finding under the same test and standard of proof as currently required before the SDT. Although the SRA's allegations are based on the fact of the conviction, and the Respondent has referred to medical reports prepared for his criminal proceedings, the Respondent agrees that given the nature of his conviction, his circumstances do not fall

into those that would exceptionally mean that striking off would be disproportionate (as discussed in ***Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)*** and in ***Solicitors Regulation Authority v James and Others [2018] EWHC 3058 (Admin)***).

22. The seriousness of the Respondent's misconduct is at the highest level. Protection of the public and public confidence in the provision of legal services require the Respondent to be struck off the Roll. This would be a fair and proportionate penalty in this case.
23. Accordingly, having regard to the Respondent's conviction and admissions to the misconduct charges, the SRA and the Respondent invite the SDT to make an Order that Gregory Craig Davies be Struck off the Roll of Solicitors and pay costs of the SRA's application fixed in the agreed sum of £4,000.00 within 14 days.

Dated this 16th day of September 2019

Name: S ROWE
For and on behalf of the SRA

Name: J HUGHES
John Hughes, Solicitor, John Hughes & Co Solicitors, PO Box 125, Liverpool, L37 2WR
For and on behalf of Gregory Craig Davies