

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11798-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NATHAN JOHN ASH

Respondent

Before:

Ms N. Lucking (in the chair)

Mr G. Sydenham

Mrs L. McMahon-Hathway

Date of Hearing: 30 May 2018

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

The allegations made against the Respondent by the Applicant were set out in a Rule 5 Statement dated 13 March 2018 and were that:

1. By making client to office transfers totalling £12,590, between June 2016 and December 2016, in relation to costs which were not properly due, the Respondent:
 - a. breached Principles 2, 6 and 10 of the SRA Principles 2011 (the "Principles")
 - b. breached Rules 7, 14.3 and 20.1 of the SRA Accounts Rules 2011 (the "Accounts Rules")
2. By authorising improper transfers of client monies, totalling £248,698 for his own benefit and for the benefit of unconnected clients, and by causing a minimum cash shortage on client account, the Respondent:
 - a. breached Principles 2, 6 and 10 of the Principles
 - b. breached Rules and 20.1 and 7 of the Accounts Rules
3. The Respondent obtained a personal loan from his client, without informing him to take independent legal advice, and therefore acted where there was a conflict of interest, and therefore:
 - a. breached Principles 3, 4 and 6 of the Principles
 - b. failed to achieve Outcomes 3.4 of the SRA Code of Conduct 2011 (the "Code").
4. When acting for Mr & Mrs B, in relation to their purchase of a property the Respondent:
 - a. failed to notify his clients of material information, and provided misleading information to both his clients and third parties relating to the purchase;
 - b. served three Notices to Complete knowing that the information was incorrect;
 - c. exchanged contracts and paid the 5% deposit without funds on client account, using monies from another, unconnected, matter;
 - d. agreed to make payments in the event of non-completion, without the authority or knowledge of his clients;
 - e. failed to comply with an undertaking to pay the deposit.

In acting in this way he breached:

- a. Principles 2, 4, 5, 6 and 10 of the Principles

- b. Rule 20.1 of the Accounts Rules
5. He failed to comply promptly with an undertaking, and in doing so:
 - a. breached Principles 4, 5 and 6 of the Principles
 - b. failed to achieve Outcome 11.2 of the Code
6. In relation to allegations 1, 2 and 4 above it was alleged the Respondent acted dishonestly.

Documents

7. The Tribunal had before it the following documents:-
 - Rule 5(2) Statement dated 13 March 2018
 - Applicant's Statement of Costs dated 13 March 2018
 - Proposed Statement of Agreed facts, Admissions and Outcome

Factual Background

8. The Respondent was born in January 1977 and was admitted to the Roll of Solicitors on 1 August 2002. At the date of the Rule 5 Statement the Respondent held a current practising certificate, free from conditions, however the Respondent was no longer employed as a solicitor.
9. The allegations arose out of a complaint to the SRA dated 20 January 2017 received from the Respondent's former firm, Allens ("the Firm") which traded from offices in Southsea, Hampshire. At the material times, the Respondent was a partner at the Firm. On 20 January 2017, Mr Daniel Gresswell, another partner at the Firm sent a report to the SRA in relation to the conduct of the Respondent. The report alleged that the Respondent had admitted to Mr Gresswell that he had used client money for improper purposes.
10. The SRA's Supervision department commissioned a Forensic Investigation in order to investigate the concerns and on 31 January 2017, an inspection of the firm's accounts was undertaken by Ms Sarah Taylor, Forensic Investigation Officer ("FIO"). The FIO interviewed the Respondent on 19 July 2017 with an Investigation Manager. The investigation culminated in a forensic investigation report ("the FIR") dated 24 July 2017.

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

11. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts, Admissions 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

12. 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.
13. The Respondent admitted all of the allegations against him. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.
14. The Tribunal considered the Guidance Note on Sanction (December 2016). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Respondent had faced allegations of dishonesty and had admitted dishonesty. Whilst he advanced health issues by way of mitigation he did not seek to establish that there were exceptional circumstances. The proposed sanction was that the Respondent be struck off the Roll of Solicitors and the Tribunal considered that this was the appropriate sanction and made the order sought.

Costs

15. The parties agreed that the Respondent should pay costs in the sum of £2,904. The Tribunal considered this to be appropriate and proportionate and ordered that the Respondent pay costs in the agreed amount.

Redaction of the Statement of Agreed Facts, Admissions and Outcome

16. The Tribunal had before it an un-redacted version of the Statement of Agreed Facts, Admissions and Outcome. At the end of paragraph 9 this contained personal information in relation to a third party which the Tribunal did not consider should be in the public domain. Accordingly the Tribunal directed that this information should be redacted prior to publication.

Statement of Full Order

17. The Tribunal Ordered that the Respondent, NATHAN JOHN ASH, 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 £2904.00.

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

Nicola Lucking

N. Lucking
Chair

Judgment filed
with the Law Society

on 12 JUN 2018

IN THE MATTER OF THE SOLICITORS ACT 1974
and
IN THE MATTER OF NATHAN JOHN ASH (A SOLICITOR)
BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NATHAN JOHN ASH

Respondent

STATEMENT OF AGREED FACTS, ADMISSIONS AND OUTCOME

1. By its application dated 13 March 2018, 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 6 allegations of misconduct against Mr Nathan John Ash ("the Respondent").

Allegations

2. The allegations underlying the applications were as follows and arise out of a complaint to the SRA dated 20 January 2017 received from the Respondent's former firm, Allens ("the Firm") which traded from Pendower House, Northumberland Road, Cumberland Business Centre, Southsea, Hampshire, PO5 1DS.
 1. By making client to office transfers totalling £12,590, between June 2016 and December 2016, in relation to costs which were not properly due, the Respondent:
 - a. breached Principles 2, 6 and 10 of the SRA Principles 2011 (the "Principles")
 - b. breached Rules 7, 14.3 and 20.1 of the SRA Accounts Rules 2011 (the "Accounts Rules")
 2. By authorising improper transfers of client monies, totalling £248,698 for his own benefit and for the benefit of unconnected clients, and by causing a minimum cash shortage on client account, the Respondent:

- c. breached Principles 2,6 and 10 of the Principles
 - d. breached Rules and 20.1 and 7 of the Accounts Rules
3. The Respondent obtained a personal loan from his client, without informing him to take independent legal advice, and therefore acted where there was a conflict of interest, and therefore:
- e. breached Principles 3, 4 and 6 of the Principles
 - f. failed to achieve Outcomes 3.4 of the SRA Code of Conduct 2011 (the "Code").
4. When acting for Mr & Mrs B, in relation to their purchase of a property known as **[ADDRESS REDACTED BY THE TRIBUNAL]**, the Respondent:
- i. failed to notify his clients of material information, and provided misleading information to both his clients and third parties relating to the purchase;
 - ii. served three Notices to Complete knowing that the information was incorrect;
 - iii. exchanged contracts and paid the 5% deposit without funds on client account, using monies from another, unconnected, matter;
 - iv. agreed to make payments in the event of non-completion, without the authority or knowledge of his clients;
 - v. failed to comply with an undertaking to pay the deposit.

In acting in this way he breached:

- c. Principles 2, 4, 5, 6 and 10 of the Principles
 - d. Rule 20.1 of the Accounts Rules
5. He failed to comply promptly with an undertaking, and in doing so:
- g. breached Principles 4, 5 and 6 of the Principles
 - h. failed to achieve Outcome 11.2 of the Code
6. In relation to allegations 1, 2 and 4 above it is alleged the Respondent acted dishonestly.

Admissions

3. The Respondent admits all of the breaches of the SRA Principles and Outcomes, SRA Accounts Rules alleged, including the allegation of Dishonesty as set out in paragraph 2 (sub-paragraphs 1 – 6) above.

Agreed facts: The following facts and matters are agreed between the SRA and the Respondent:

4. At the material times, the Respondent was a partner at Allens ("the Firm") which traded from Pendower House, Northumberland Road, Cumberland Business Centre, Southsea, Hampshire, PO5 1DS.
5. The Respondent is no longer employed as a solicitor.
6. On 20 January 2017, Mr Daniel Gresswell, a partner at Allens Solicitors sent a report to the SRA in relation to the conduct of the Respondent. The Report alleged that the Respondent had admitted to Mr Gresswell that he had used client money for improper purposes.
7. The SRA's Supervision department commissioned a Forensic Investigation in order to investigate the concerns and on 31 January 2017, an inspection of the firm's accounts was undertaken by Ms Sarah Taylor, Forensic Investigation Officer ("FIO"). The FIO interviewed the Respondent on 19 July 2017 with her colleague, Nick Ireland, an Investigation Manager.
8. The investigation culminated in a final investigation report ("the FIR") dated 24 July 2017. The allegations against Mr Ash arise out of the content of the FI Report.

Mitigation: The following mitigation is advanced by the Respondent.

9. The Respondent has provided a statement from his ex-wife and medical evidence. He states that during the period of the misconduct he was extremely stressed and depressed and had suffered from panic attacks following the break up of his marriage. He states he was placed on anti-depressants but had failed to take them **[REDACTED BY THE TRIBUNAL]**.

10. The Respondent 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).
11. The Respondent accepts and admits the misconduct and has apologised for his actions.

Agreed Outcome

12. The Respondent accepts that the seriousness of his admitted misconduct is such that neither a reprimand, a fine, or being suspended from practice would be a sufficient sanction.
13. The Respondent accepts that the protection of the public and the protection of the reputation of the profession justifies him being struck off the Roll of Solicitors.
14. The SRA and the Respondent submit to the Tribunal that the following are appropriate outcomes and are consistent with the seriousness of the matters admitted and with the Tribunal's Guidance Note on Sanctions:
- 14.1. An Order that Mr Ash be struck from the Roll of Solicitors; and
- 14.2. Further Ordering that Mr Ash do pay the SRA costs of £2904.00

Signed: J E DUNLOP
Jennifer Elizabeth Dunlop
Legal Adviser
On behalf of the Solicitors Regulation Authority
Date:24.05.2018

Signed: N J ASH
Nathan John Ash
Respondent
Date: 12.05.2018