

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11804-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

EOIN WILLIAM MACCARTHY

Respondent

Before:

Mr A. N. Spooner (in the chair)

Mrs A. Kellett

Mrs L. McMahon-Hathway

Date of Hearing: 9 July 2018

Appearances

Kiran Sidhu, solicitor of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

Kevin Hopper, solicitor of Phoenix Solicitors & Advocates Ltd, 272 Union Street, Torre Torquay, Devon, TQ2 5QY for the Respondent

JUDGMENT

Allegations

1. The allegation against the Respondent made by the Solicitors Regulation Authority (“SRA”) was that:
 - 1.1 By virtue of his conviction on 9 August 2017 for fraud contrary to section 1 and 2 of the Fraud Act 2006, he:
 - 1.1.1 failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the SRA Principles 2011 (“the Principles”); and/or
 - 1.1.2 failed to act with integrity and therefore breached Principle 2 of the Principles; and/or
 - 1.1.3 failed to behave in a way which maintains the trust the public places in him and in the provision of legal services and therefore breached Principle 6 of the Principles.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included:
 - Notice of Application dated 22 March 2018
 - Rule 5 Statement and Exhibit KS1 dated 22 March 2018
 - Respondent's Answer to the Rule 5 Statement (undated)
 - Applicant’s Schedule of Costs dated 4 July 2018

Factual Background

3. The Respondent was born in 1960 and was admitted to the Roll of Solicitors in January 1986. His name remained on the Roll of Solicitors. He did not hold a current practising certificate.
4. In Swindon Magistrates Court on 9 August 2017 the Respondent pleaded guilty to committing fraud between 30 March 2016 and 11 October 2016 in that he dishonestly made false representations. The Respondent had submitted claims for travel expenses for a series of journeys from his home address to Bristol Crown Court in connection with his official business as a Senior Crown Prosecutor, when he had not undertaken those journeys. When submitting the claims, he knew that they were false and he did so with the intention of making a gain for himself. The Respondent by pleading guilty, accepted that he had acted dishonestly.
5. On 29 September 2017 the Respondent’s Solicitor, Mr Hopper, notified the Applicant of the Respondent’s conviction.

Witnesses

6. None.

Findings of Fact and Law

7. 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. The Tribunal considered all the evidence before it together with the submissions of both parties.
8. **Allegation 1.1 - By virtue of his conviction on 9 August 2017 for fraud contrary to section 1 and 2 of the Fraud Act 2006, he failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the Principles; and/or failed to act with integrity and therefore breached Principle 2 of the Principles; and/or failed to behave in a way which maintains the trust the public places in him and in the provision of legal services and therefore breached Principle 6 of the Principles.**

Applicant's Submissions

- 8.1 By virtue of his conviction the Respondent failed to uphold the rule of law and the proper administration of justice in breach of Principle 1 - the obligation upon a solicitor to uphold the rule of law requires them to refrain from criminal behaviour in both their private and professional life. He has also failed to act with integrity in breach of Principle 2 - by committing fraud, the Respondent failed to act righteously, failed to display rectitude and adherence to an ethical code.
- 8.2 Further, the Respondent failed to behave in a way which maintained the trust the public places in him and in the provision of legal services, in breach of Principle 6. The failure by the Respondent to act with probity and honesty when making fraudulent claims for expenses would cause confidence in the profession to be undermined. Public confidence in a solicitor's honesty was a fundamental part of the work undertaken by solicitors. Accordingly, the offences committed by the Respondent was of the utmost gravity.

Respondent's Submissions

- 8.3 The Respondent admitted the allegation. In a letter to the Applicant dated 14 November 2017 it was accepted that the fraud conviction meant that he had breached Principles 1, 2 and 6 and that his conduct was dishonest. In his Answer to the Rule 5 Statement, all matters were admitted. Further, the Respondent stated that his admitted act of dishonesty at the Crown Court, and his admission of the allegations before the Tribunal would lead to his being struck off the Roll.

The Tribunal's Findings

- 8.4 The Tribunal noted the certified copy of the certificate of conviction provided by the Applicant in relation to the Respondent's conviction. The Tribunal had regards to Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007, which stated: "A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings

of fact upon which the conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances.” There were no exceptional circumstances in this case. Accordingly, the facts upon which the conviction was based were found to be conclusive.

- 8.5 The Tribunal found beyond reasonable doubt that in committing a criminal offence, it was evident that the Respondent had failed to uphold the rule of law in breach of Principle 1. No solicitor acting with integrity would dishonestly claim expenses for journeys that he had not undertaken. The Tribunal found beyond reasonable doubt that the Respondent’s conduct lacked integrity in breach of Principle 2. Such conduct, it was plain, diminished the trust place in the Respondent and in the provision of legal services. The Tribunal found that the Respondent had breached Principle 6. Accordingly the Tribunal found allegation 1.1 proved beyond reasonable doubt on the facts and submissions. The Tribunal considered that the Respondent’s admission was properly made.

Previous Disciplinary Matters

9. None.

Mitigation

10. The Respondent was a Senior Crown Prosecutor with the CPS and had worked with the CPS for in excess of 20 years. At his office, all staff were entitled to sign off their own expenses. The Respondent’s fraudulent claims came to light as a result of a routine audit; the Respondent had claimed expenses for travelling to Court on dates when he was on annual leave. It was submitted that the Respondent’s conduct was easily discovered; there was no sophistication in the way in which the offence was committed. When confronted about the claims, the Respondent immediately and readily admitted his wrongdoing. He was immediately suspended from work, and later dismissed for gross misconduct.
11. He pleaded guilty at Court and was sentenced to 6 months imprisonment. As could be imagined, this was extremely difficult for the Respondent, who was ordinarily involved in the prosecution of serious criminal offences. He was hugely embarrassed and remorseful of his criminal conduct, which had serious consequences for his career and had impacted on his familial relationships. The Respondent had not told his wife about the criminal proceedings, she only became aware when he called her from prison after being sentenced.
12. The Respondent accepted that given his conviction, his legal career was over. The impact of his conviction was colossal. The Respondent had voluntarily referred the matter to the SRA. He was aware of the likely sanction to be imposed given the extremely serious nature of his conviction which included admitted dishonest behaviour.

Sanction

13. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.
14. The Tribunal found the Respondent wholly culpable for his misconduct. He had committed a criminal offence, motivated by monetary gain. His actions were planned. He had abused the trust placed in him by his employer to submit truthful expenses claims. He was a hugely experienced lawyer, having worked for the CPS for in excess of 20 years. His role as a prosecutor made his misconduct more serious.
15. Such conduct caused enormous harm to the reputation of the profession. The Respondent, as a prosecutor, was expected, even more than most solicitors, to conduct himself with complete probity, integrity and trustworthiness. It was his role to prosecute criminal acts, not indulge in them himself. The extent of the harm caused by such conduct was obvious to the Respondent at the time.
16. The Tribunal found his misconduct to be aggravated by the commission of a criminal offence, and even more serious as the offence involved admitted dishonesty. He was fully aware that such conduct was in material breach of his obligation to protect the public and the reputation of the profession. In mitigation, the Tribunal noted that the Respondent had self-reported to the SRA, and had made full admissions at the earliest opportunity both to the Court and in these proceedings. He had displayed genuine insight into his misconduct and had co-operated in full with the regulator. The Tribunal found that the Respondent's mitigation did not lessen the seriousness of his misconduct. It considered and rejected the lesser sanctions such as no order, a reprimand or a fine. The Tribunal found that the seriousness of the Respondent's misconduct was at the highest level such that it required his immediate removal from practice. His misconduct was so serious that the protection of the public and the reputation of the profession meant that any sanction lesser than striking the Respondent from the Roll would be inappropriate. The Respondent had been entirely realistic in his expectation that as a result of his conviction he would be struck off the Roll of Solicitors.

Costs

17. The costs schedule estimated costs in this matter to be £2,122.40. Ms Sidhu submitted that that sum should be reduced to reflect the shorter hearing time than had been estimated. Mr Hopper submitted that the Respondent's income was not limited to a reduced pension and any other work he could obtain. He had managed to obtain, and was due to start work, stocking shelves at a local establishment. His pension had been reduced as a result of his dismissal. He was unable to assist the Tribunal as regards any equity in the matrimonial home. The means form completed showed that the Respondent's outgoings exceeded his income. The Tribunal considered that the costs claimed for preparation of this matter were excessive. The Rule 5 Statement was 3 pages long with exhibits running to 22 pages. The minimal documents together with the admissions should not have necessitated the amount of time claimed in preparation.

The Tribunal considered that the appropriate and reasonable amount of costs in this matter was £1,600.00.

Statement of Full Order

18. The Tribunal Ordered that the Respondent, EOIN WILLIAM MACCARTHY, 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 £1,600.00.

Dated this 2nd day of August 2018
On behalf of the Tribunal



A. N. Spooner
Chairman

Judgment filed
With the Law Society
on 02 AUG 2018