

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11878-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

RODNEY WHISTON-DEW

Respondent

Before:

Ms J. Devonish (in the chair)

Mrs A. Kellett

Mr S. Marquez

Date of Hearing: 28 February 2019

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, made by the SRA were that:
 - 1.1. By virtue of his conviction on indictment on 6 November 2017 of conspiracy to cheat the public revenue and of acting with intent to prejudice or defraud HM Revenue and Customs 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.

Factual Background

2. The Respondent was born in 1951 and was admitted to the Roll of Solicitors on 2 May 1988. He had not held a practising certificate since 31 October 2008.
3. On 6 November 2017 the Respondent was convicted at Southwark Crown Court on indictment of one count of conspiracy to cheat the public revenue and of one count of acting with intent to prejudice or defraud HM Revenue & Customs.
4. The Respondent was sentenced, alongside four co-defendants, on 8 and 10 November 2017. He received a 10-year custodial sentence and was disqualified under section 2 of the Company Directors Disqualification Act 1986.

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

5. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the proposed outcome, namely that the Respondent be struck-off the Roll, was consistent with the Tribunal’s Guidance Note on Sanctions.

Findings of Fact and Law

6. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
7. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent’s admissions were properly made.

8. The Tribunal considered the Guidance Note on Sanctions (December 2018). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
9. This Respondent had committed a very serious offence of dishonesty, which was reflected in the significant term of imprisonment that he had received. The sums of money involved were vast and the trial Judge had clearly taken the view that this offence was sophisticated and at the upper end of the scale of seriousness. The Tribunal noted that the Respondent did not agree with the conviction or sentence. That was a matter for him to take up on any appeal he may choose to lodge. However the Tribunal was required to deal with the position as it was at present, which was that he stood convicted and sentenced.
10. The reputation of the profession was inevitably damaged by a solicitor who was convicted of a conspiracy to cheat the public revenue and intending to defraud HMRC. The Crown Court had found him to be fully culpable, as reflected in the conviction and sentence.
11. The Tribunal noted the mitigation provided by the Respondent. The Tribunal was satisfied that had the matter come before it for a full hearing, the only appropriate sanction would have been that the Respondent be struck-off. The Tribunal was satisfied there was nothing in the mitigation that could persuade it that a lesser sanction would be sufficient to protect the public or the reputation of the profession. The Tribunal therefore approved the proposed sanction as agreed by the parties.

Costs

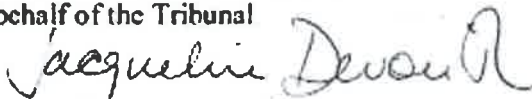
12. The Applicant did not seek costs on the basis of a review of the Respondent's means. The Tribunal noted that he was a serving prisoner and therefore saw no basis to interfere with the Applicant's assessment of the position. It therefore made no order for costs.

Statement of Full Order

13. The Tribunal Ordered that the Respondent, RODNEY WHISTON-DEW, solicitor, be STRUCK OFF the Roll of Solicitors and it makes no order as to costs.

Dated this 12th day of March 2019

On behalf of the Tribunal



J. Devonish
Chair

Judgment filed
with the Law Society

on 13 MAR 2019

IN THE MATTER OF THE SOLICITORS ACT 1974

AND

SOLICITORS REGULATION AUTHORITY

Applicant

And

RODNEY WHISTON-DEW

Respondent

STATEMENT OF AGREED FACTS AND INDICATED OUTCOME

1. By its application dated 10 October 2018 and the accompanying statement made pursuant to Rule 5(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("Statement"), the Solicitors Regulation Authority ("SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Mr Rodney Whiston-Dew ("Mr Whiston-Dew").
2. The allegations made against Mr Whiston-Dew in the Statement were that, by virtue of his conviction on indictment on 6 November 2017 of conspiracy to cheat the public revenue and of acting with intent to prejudice or defraud HM Revenue and Customs, he:
 - 2.1. 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
 - 2.2. failed to act with integrity and therefore breached Principle 2 of the Principles; and/or
 - 2.3. 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.

Admission

3. Mr Whiston-Dew admits the allegations made in the Statement.

Agreed Facts

4. The following facts and matters are agreed between the SRA and Mr Whiston-Dew:

- 4.1. The Respondent was born 1951 and was admitted to the Roll of Solicitors on 2 May 1988. The Respondent has not held a practising certificate since 31 October 2008.
- 4.2. The Respondent is currently a serving prisoner.
- 4.3. On 6 November 2017 the Respondent was convicted on indictment of one count of conspiracy to cheat the public revenue and of one count of acting with intent to prejudice or defraud HM Revenue & Customs. He was convicted in the Southwark Crown Court.
- 4.4. The Respondent was sentenced, alongside four co-defendants, on 8 and 10 November 2017. He received a 10-year custodial sentence and was disqualified under section 2 of the Company Directors Disqualification Act 1986.
- 4.5. The background to the conviction was referred to in the learned judge's sentencing remarks as follows:
 - 4.5.1. Between 2004 and July 2007 the Respondent was involved in a sophisticated and fraudulent tax evasion scheme.
 - 4.5.2. The premise of the scheme was a purported investment in an environmental project involving reforestation in Brazil. The scheme offered a tax incentivised investment for high net-worth individuals to create a claim for sideways loss relief against income tax due on the investors' other income streams. The relief was available to them because of the incentives in the tax system for supporting environmentally beneficial projects.
 - 4.5.3. The scheme created the premise for investors to claim tax relief on £269.8m of purported expenditure, even though they had only contributed £64.6m to the scheme.
 - 4.5.4. Of that £64.6m only £16m went towards the reforestation project. £23.5m of the balance was diverted to the five defendants, via a Swiss bank account, into a variety of trusts set up by the defendants to obfuscate the proceeds of the fraud. Mr Whiston-Dew was responsible for establishing these trusts.
- 4.6. Mr Whiston-Dew is appealing both the conviction and the sentence applied.

Mitigation

5. The following mitigation is advanced by Mr Whiston-Dew but is not endorsed by the SRA:
 - 5.1. Mr Whiston-Dew considers that the conviction was incorrectly reached.
 - 5.2. Mr Whiston-Dew does not accept that the remarks of the sentencing judge accurately reflect his involvement in the scheme.
 - 5.3. Further details of mitigation, prepared by Mr Whiston-Dew, are appended to this statement.

Outcome

6. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions the SRA contends and Mr Whiston-Dew accepts that the proper penalty in this case is that Mr Whiston-Dew's name is struck off the Roll.
7. On account of Mr Whiston-Dew's limited means, the SRA seeks no order as to costs.

Dated this 27 day of February 2019

~~John Quentin~~ - Legal Adviser
On behalf of the SRA

Mr Whiston-Dew

APPENDIX

Mr Whiston-Dew's further mitigation



1. The Principles on which the SRA relies are defined as coming into force in 2011. The actions which gave rise to charges took place in 2004/5, some 6/7 years before these Principles came into existence in current form, so to rely on them is retrospective action;
2. The work upon which I was instructed in 2003/4/5 was to establish family discretionary trusts under the then trust laws of Nevis, and to establish corporate entities under the laws of British Virgin Islands and Isle of Man. None of the Structures was governed by the laws of England & Wales;
3. To my knowledge none of my clients, whether corporate, private or trust has ever made any complaint about my work;
4. The HMRC took actions against the LLPs structured by other firms of solicitors acting pursuant to advice and opinions received from leading Counsel. The entities in England & Wales were formed by major law firms. I had no part in giving any advice, receiving any advice, nor other involvement in the Scheme itself, or any of the LLPs, their managers, promoters or investors;
5. While I was accused, and found guilty of, acting as part of a conspiracy, there was no conspiracy entered into of which I was a conspirator, whether in England & Wales, or elsewhere, to defraud HMRC;
6. In a career spanning over 36 years (up to 2007 after which I did NOT seek to renew my practising certificate, and which involved me in a working knowledge of over 20 jurisdictions, no client has had cause to complain about my work to any regulatory authority - it was always carried out to the clients' satisfaction. If Principles 1, 2 and 6 apply, I do not believe they have been breached, but in order to permit the Agreed Outcome to apply, ~~and~~ I have agreed to have my name removed from the Roll. As the correspondence shows, I have been applying to have my name removed from the Roll of Solicitors since it came to my attention that for technical reasons such action was NOT permitted;
7. I have agreed to the Agreed Outcome despite the filing of appeals against both convictions and sentences, with the benefit of supportive opinion from Queen's Counsel of high repute. With regard to para. A.5.4 any funds involved were transferred to companies over which Mr Whiston-Dew had no control whatsoever;
8. Having admitted the Agreed Outcome, I would reflect that whatever actions I took would be taken everyday in practice by major English law firms in acting for their international clientele, both private and corporate, in advising on tax efficient Structures. Just as it was my duty, it is the lawyer's duty to act in the best interests of his/her client, sometimes at the risk of upsetting HMRC, who are programmed to deem any tax avoidance scheme to be aggressive.

I apologise to the Tribunal, and the SRA, for any logistical difficulties caused by my restrictive locations. In order to have this matter disposed of with the least possible inconvenience to this Tribunal and the SRA, I am prepared to accept that whatever rule of the applicable Code of Ethics may have preceded the 2011 Principles may have been technically breached, though not deliberately.