

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11919-2019

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

OMER MIAN

Respondent

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Before:

Mr D. Green (in the chair)  
Mr A. N. Spooner  
Mr S. Marquez

Date of Hearing: 11 July 2019

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## **Appearances**

Shaun Moran, solicitor of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent appeared and represented himself.

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## **JUDGMENT**

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## **Allegations**

1. The allegation made against the Respondent, unadmitted, was that he had been convicted of a criminal offence which was such that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in Section 43(1A) of the Solicitors Act 1974, as amended by the Legal Services Act 2007.
2. Further, the SRA invited the Tribunal, if it considered it appropriate, to impose on the Respondent a financial penalty payable to HM Treasury using its powers under Schedule 2, paragraph 18A of the Administration of Justice Act 1985.

## **Factual Background**

3. The Respondent was born in 1973 and was an unadmitted individual.
4. At all material times, he was employed as a legal cashier by Albany Solicitors partnership at 16 Park Grove, Cardiff, CF10 3BN. Alongside his employment, the Respondent also operated his own bookkeeping and accounting business through a company called TWM Associates.
5. In the Crown Court at Cardiff on 24 July 2017 the Respondent was convicted of one count of Conspiracy to Defraud, contrary to Common Law. On 12 March 2018, the Respondent was sentenced to 29 months imprisonment.
6. The Crown Court found that several mortgage applications had been submitted fraudulently by a co-defendant of the Respondent with the intention to defraud lenders as to the true financial circumstances of the applications. On approximately eight of those applications the Respondent was directly involved by providing fraudulent employment references on behalf of TWM Associates or certifying mortgage applications for individuals he later accepted to have never met.

## **Findings of Fact and Law**

7. The Applicant was required to prove the Allegation 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.
8. **Allegation 1 - The allegation made against the Respondent, unadmitted, was that he had been convicted of a criminal offence which was such that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in Section 43(1A) of the Solicitors Act 1974, as amended by the Legal Services Act 2007.**

## Applicant's Submissions

- 8.1 The Certificate of Conviction dated 30 May 2018 was relied upon by the Applicant as proof of the Respondent's conviction. The Judge's Sentencing Remarks were relied on as conclusive proof of the facts upon which this conviction was based. Mr Moran

submitted that it was appropriate to impose a fine in all the circumstances as well as a section 43 order.

- 8.2 The Respondent had entered a plea of guilty and had not lodged an appeal against his conviction or sentence.

#### Respondent's Submissions

- 8.3 The Respondent had admitted the Allegation.
- 8.4 The Respondent did not oppose the making of a section 43 order. The Respondent had, however, opposed the imposition of a financial penalty and set those reasons out when he gave evidence.
- 8.5 When giving evidence the Respondent told the Tribunal that submitted that he could not afford to pay a financial penalty. He explained that he had been released from prison in January 2019, having served the operational part of a 29-month sentence. He told the Tribunal that he had been punished already and the effect on his family was significant.
- 8.6 He was unable to work in a legal practice in any event as he would not be employed upon disclosure of the criminal conviction. The Respondent told the Tribunal that the matter could have been dealt with internally by the SRA without the need to bring matters before the Tribunal.
- 8.7 The Respondent told the Tribunal that he had started up a new business with his wife but this was slow to succeed as he lived in a small town and it was hard to get clients. The family home had a mortgage and other charges against it and he was in such difficult circumstances that the SRA had paid for his train fare to come to London.

#### The Tribunal's Findings

- 8.8 The Tribunal was satisfied that the admission was properly made and found it proved beyond reasonable doubt.
- 8.9 The Tribunal was satisfied that in light of the nature of the conviction it would be undesirable for the Respondent to be involved in a legal practice. It therefore granted the section 43 order.
- 8.10 The Tribunal considered the submission of the parties and the nature of the conviction in relation to the question of whether to impose a fine.
- 8.11 There was no doubt that the Respondent had been convicted of a serious criminal offence and this was reflected in the length of his custodial sentence.
- 8.12 The criminal offences had not taken place in the context of his work in a legal practice. It was entirely right and proper that the public be protected and this was achieved by the imposition of the section 43 order. The Tribunal did not consider that a further sanction was necessary and it noted that he had served a significant period of time in custody as part of his sentence.

- 8.13 The Tribunal did not consider that it was proportionate to impose a fine in circumstances where the criminal activity and conviction were unconnected to his work in the firm and where a custodial sentence had been served. There had been no detriment to the clients of the firm and the reputation of the profession was protected by the imposition of the section 43 order.
- 8.14 The Tribunal therefore declined to impose a financial penalty in this matter.

### **Costs**

#### Applicant's Submissions

9. Mr Moran applied for the Applicant's costs in the sum of £6,086.37. There had been an abortive substantive hearing in this case which had been as a result of the non-attendance of the Respondent and that led to this hearing today. That had increased the costs to an extent.
10. Mr Moran denied the suggestion from the Tribunal that 455 pages of documents were "excessive" or that there had been any duplication of work. He accepted that the only live issue after the Answer was served in April 2019 was the question of the financial penalty. He also conceded that the Applicant had initially, wrongly, alleged breaches of the SRA Code of Conduct.

#### Respondent's Submissions

11. The Respondent told the Tribunal that he could not afford to pay costs and that he was not earning. His wife's job was due to come to an end as it was a fixed term contract and she would not be able to work again until September as she was a teaching assistant. The Respondent had not filed a statement of means. He offered to send details of his income and expenditure to the Tribunal after the hearing.
12. The Respondent reminded the Tribunal that he had pleaded guilty in the Crown Court and had not disputed the making of a section 43 order. In the circumstances he submitted that the work and been unnecessary and the case a "waste of time".

#### The Tribunal's Decision

13. The Tribunal considered that this had been a straightforward conviction case that had initially been put on a misplaced basis. The Respondent had been successful on the disputed issue. However it was right that the case be brought and the Tribunal had imposed a section 43 order as part of its duty to protect the public. The Applicant had needed to obtain and review documents from the Crown Court and prepare the Rule 8 statement. The Tribunal noted that the Applicant, quite properly, not claimed for any of the work involved in the amendments to that document.
14. The appropriate and proportionate level of costs in this case, taking into account the above factors, was £4,086.37. The Respondent had not served a statement of means as required in the directions and therefore there was no basis to reduce this further.

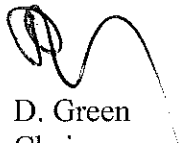
**Statement of Full Order**

15. The Tribunal Ordered that as from 11 July 2019 except in accordance with Law Society permission:-

- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Omer Mian;
- (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Omer Mian;
- (iii) no recognised body shall employ or remunerate the said Omer Mian;
- (iv) no manager or employee of a recognised body shall employ or remunerate the said Omer Mian in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit the said Omer Mian to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said Omer Mian to have an interest in the body;

And the Tribunal further Ordered that the said Omer Mian do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,086.37.

Dated this <sup>24<sup>th</sup></sup>~~22<sup>nd</sup>~~ day of July 2019  
On behalf of the Tribunal



D. Green  
Chairman

JUDGMENT FILED WITH  
THE LAW SOCIETY

24 JULY 2019