

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11949-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ELIOT LOPIAN

Respondent

Before:

Mr P. Lewis (in the chair)

Mr R. Nicholas

Dr S. Bown

Date of Hearing: 24 July 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 5 Statement against the Respondent made by the Solicitors Regulation Authority (“SRA”) were that:
 - 1.1 On or around 13 September 2017, without their knowledge or authority, he entered the signatures of MR P, Mr HS and Mr GS on a Form TR1, transferring the title land identified as Plot A from Mr P, Mr HS and Mr GS to his clients. In doing so he breached all or alternatively any of Principles 2 and 6 of the SRA Principles 2011 (“the Principles”).
 - 1.2 On or around 13 September 2017, he submitted an application to Her Majesty’s Land Registry which contained information which he knew, or should have known, to be untrue. In doing so he breached all or alternatively any of Principles 2 and 6 of the Principles.
 - 1.3 In a telephone conversation on 13 April 2018, he informed the solicitors acting for Mr P, Mr HS and Mr GS that he was unaware as to how the Form TR1 dated 13 September 2017 had been executed, when he had entered the signatures of Mr P, Mr HS and Mr GS himself. In doing so he breached all or alternatively any of Principles 2 and 6 of the Principles.
2. Dishonesty was alleged in respect of all the allegations.
3. The Respondent admitted all allegations including that his conduct was dishonest.

Documents

4. The Tribunal had before it the following documents:-
 - Rule 5 Statement dated 18 April 2019
 - Statement of Agreed Facts and Proposed Outcome dated 21 July 2019

Factual Background

5. The Respondent was born in 1983 and was admitted to the Roll in October 2009. He did not hold a practising certificate.
6. The Respondent was a Principal at Gunnercooke LLP from 21 December 2015 to 7 August 2018. Gunnercooke LLP acted for the sellers of Plot A.

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 their 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 including that his conduct was dishonest. He had forged the signatures on official documents and submitted them to HMLR. That such conduct was dishonest was plain. Given the serious nature of the Respondent's misconduct, in that it involved admitted dishonesty, the Tribunal considered that the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.
11. 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

12. The parties agreed that the Respondent should make a contribution to costs in the sum of £2,500.00. 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

13. The Tribunal Ordered that the Respondent, ELIOT LOPIAN, 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 £2,500.00.

Dated this 29th day of July 2019

On behalf of the Tribunal



P. Lewis
Chairman

**JUDGMENT FILED WITH THE
LAW SOCIETY
31 JULY 2019**

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

ELIOT LOPIAN

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 18 April 2019, 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 three allegations of misconduct against Eliot Lopian.

The allegations

2. The allegations against Mr Lopian, made by the SRA within that statement were that:
 - 2.1. On or around 13 September 2017, without their knowledge or authority, he entered the signatures of Mr P, Mr HS and Mr GS on a Form TR1, transferring the title land identified as Plot A from Mr P, Mr HS and Mr GS to his clients. In doing so he breached all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.
 - 2.2. On or around 13 September 2017, he submitted an application to Her Majesty's Land Registry which contained information which he knew, or should have known, to be untrue. In doing so he breached all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

- 4.5. Plot A formed part of a larger plot of land, identified as Plot B. Plot A was to be sold separately from it, with the title in Plot A being transferred out of the title in Plot B.
- 4.6. Due to an error by Gunnercooke and not identified by the parties, the transaction was registered at Her Majesty's Land Registry (HMLR) using a Form TR1, dated 31 July 2017. The parties had also signed a Form TP1 in relation to the same title, however it was the Form TR1 that was filed at HMLR.
- 4.7. As a result of the above error, the entirety of the title to Plot B was registered in the names of the Purchasers.
- 4.8. On or around 4 September 2017, Mr Lopian contacted TFP and advised them of the error.
- 4.9. Over the period 4 September 2017 to 12 September 2017 there was correspondence between Mr Lopian and TFP about transferring the title in Plot B back to L Limited and then transferring the title in Plot A to the Purchasers (correctly using a TP1 Form).
- 4.10. Due to issues with access to Plot A, the Purchasers resisted signing any rectifying TR1 Form until these had been resolved.
- 4.11. On or around 13 September 2017 Mr Lopian signed a TR1 Form in the names of the Purchasers using each of the Purchasers' respective names. He was not their representative and did not have their authority to do so.
- 4.12. Neither TFP nor the Purchasers had any knowledge of this transfer.

- 4.13. In a letter to HMLR dated 14 September 2017, Mr Lopian (enclosing the TR1 Form dated 13 September 2017) stated that the Purchasers “have agreed to transfer [Plot B] back to our client for no consideration and our client has then granted them the Transfer of Part which is the correct document that should have been issued to them on completion”.
- 4.14. HMLR replied to Mr Lopian by letter dated 15 September 2017. HMLR explained that the transfer could not complete as there was an Official Search in relation to Plot B by M Limited. M Limited had since agreed to purchase the remainder of Plot B from L Limited.
- 4.15. In an email to Mr Lopian dated 17 September 2017, Mr C of M Limited stated “I refer to your telephone call last Thursday [14 September 2017] when you confirmed that [Mr P] (& others) had executed a Transfer of Whole (back) to your clients. In turn I confirm having applied to Land Registry to withdraw my Priority Search of that day”.
- 4.16. The transfer of Plot B to L Limited was completed by HMLR on 20 September 2017.
- 4.17. In an email to Mr Lopian dated 6 November 2017, TFP stated that they had agreed to sign the TP1 Form on the basis of £300 being paid by L Limited to cover the costs of changing the locks on the gate preventing access to Plot A. In subsequent correspondence, Mr Lopian does not refer to the Form TR1 dated 13 September 2017 or its subsequent filing at HMLR.
- 4.18. In a telephone call on 13 April 2018, when asked by a representative of TFP as to how the TR1 dated 13 September 2017 had been executed, Mr Lopian stated that he did not know and that the Official Copies showing L Limited as the owner of Plot B had been given to him by L Limited.

4.19. The registration of Plot A in the name of the Purchasers was completed at HMLR on 26 April 2018.

Non-Agreed Mitigation

5. The following represents some of the mitigation put forward by Mr Lopian, which is not agreed by the SRA:

5.1. Mr Lopian was the only qualified solicitor within his department. L Limited was his department's only client. The transactional nature of the work that he was undertaking meant that he perceived it was necessary to work through his holidays and remain in constant contact with both his employer and L Limited.

5.2. the initial error in transferring the title using a Form TR1 as opposed to a Form TP1 was not made by Mr Lopian, however he had made a similar mistake in June 2017. The fear of admitting to L Limited and Gunnercooke that this mistake had been repeated made him fear the loss of both the client and his position at Gunnercooke.

5.3. as a result of paragraphs 5.1 and 5.2, at the time that he entered the signatures of Mr P, Mr HS and Mr GS on the Form TR1, he was suffering significant stress and strain.

5.4. a close family member had been diagnosed with a serious form of cancer in March 2016 and, around September 2017, was advised that their medication was not working and intense chemotherapy was appropriate.

5.5. Mr Lopian made an early admission as to dishonesty.

5.6. Mr Lopian has shown remorse for his actions and accepts that his conduct means that he should not remain on the Roll of Solicitors.

5.7. Mr Lopian has not sought employment in the legal sector since he left Gunnercooke.

6. However, Mr Lopian does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal in making any order other than that he be struck off the Roll.

Penalty proposed

7. It is therefore proposed that Mr Lopian should be struck off the Roll of Solicitors.

8. With respect to costs, it is further agreed that Mr Lopian should pay the SRA's costs of this matter agreed in the sum of £2,500.00.

Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance

9. Mr Lopian has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (5th edition), at paragraph 47, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see **Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)**).*"

10. In **Sharma [2010] EWHC 2022 (Admin) at [13]** Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:
- “(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...*
- (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...*
- (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others...”*
11. At the time of the matters giving rise to the allegations against him, Mr Lopian was an experienced solicitor. He was directly responsible for the matters which led to the allegations against him and which span a seven-month period.
12. Mr Lopian entered the signatures of Mr P, Mr HS and Mr GS on a Form TR1, transferring the title land identified as Plot A from the Purchasers to his client. He then submitted an application to HMLR which relied on the same TR1, which he knew to be untrue. These actions were designed to conceal an error from his client which would likely be discovered on the transfer of the remainder of Plot B to M Limited. As a result of these actions, the title in Plot A was returned to L Limited and the Purchasers were without title in Plot A, for which they had paid L Limited, until 26 April 2018.

13. In addition, in a telephone conversation seven-months later, he continued to misrepresent the position when he informed the solicitors acting for the Purchasers that he was unaware as to how the Form TR1 dated 13 September 2017 had been executed. This was despite knowing that he had entered the signatures of Mr P, Mr HS and Mr GS himself. These statements were designed to conceal his misconduct and delayed the possibility of the Purchasers rectifying the position of which they were now aware.

14. These were serious acts of dishonesty committed over an extended period which benefitted Mr Lopian to the detriment of the Purchasers and the case plainly does not fall within the small residual category where striking off would be a disproportionate sentence. Accordingly, the fair and proportionate penalty in this case is for Mr Lopian to be struck off the Roll of Solicitors.

S GRIFFITHS

Legal Adviser upon behalf of the SRA

E LOPIAN

Mr Eliot Lopian

21/07/19