

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12053-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

KARAMJEET KAUR
YASAR MALIK

First Respondent
Third Respondent

Before:

Mr G Sydenham (in the chair)
Mr P Lewis
Mr S Marquez

Date of Hearing: 21 December 2020

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegation against the Third Respondent made by the Solicitors Regulation Authority (“SRA”) within the Rule 12 statement, was that:
 - 1.1 In his capacity as the COFA at the Firm since 16 October 2017, he failed to ensure or take adequate steps to ensure compliance with the Firm's regulatory obligations under the SAR 2011, in breach of his obligations under Rule 8.5 of the SRA Authorisation Rules 2011 and Principles 6 and 7 of the Principles.
2. In addition, manifest incompetence was alleged as an aggravating factor with respect to the allegation.
3. The Third Respondent admitted the allegation, including that his conduct was manifestly incompetent.

Documents

4. The Tribunal had before it the following documents:-
 - Amended Rule 12 Statement dated 21 May 2020
 - Third Respondent’s Answer dated 11 March 2020
 - Statement of Agreed Facts and Proposed Outcome of 18 December 2020

Background

5. The Third Respondent was not a solicitor. He was employed by Quick Solicitors (“the Firm”) from about 2011 and he was its COFA from 16 October 2017.

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

6. 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 outcome proposed was consistent with the Tribunal’s Guidance Note on Sanctions.

Findings of Fact and Law

7. The Applicant was required to prove the allegations on the balance of probabilities. 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. The Tribunal reviewed all the material before it and was satisfied that the Third Respondent’s admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanction (November 2019). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Third Respondent was aware

both of the Firm's financial position and the SRA investigation when he was appointed as the COFA. He made no enquiries to satisfy himself as to the Firm's financial position or management generally. He was unable to carry out a number of the requirements of a COFA, and failed to ensure the Firm's compliance with the SAR 2011. Further, he failed to report any breaches of the SAR 2011 as he was required to do. The Third Respondent's misconduct continued over a period of time and was in material breach of his obligation to protect the public and the reputation of the profession. The Tribunal found, and the Third Respondent admitted that his conduct had been manifestly incompetent. In the circumstances, the Tribunal found that the Third Respondent was guilty of conduct of such a nature that it was undesirable for him to be involved in a legal practice except in accordance with the permission of the SRA. The Tribunal considered that the sanction proposed by the parties was reasonable and proportionate. Accordingly, the Tribunal approved the proposed sanction.

Costs

10. The parties agreed that the Third Respondent should pay costs in the sum of £2,500. This took into account the Third Respondent's means. The Tribunal considered that agreed amount was reasonable and proportionate in the circumstances. Accordingly, the Tribunal ordered the Third Respondent to pay costs in the agreed sum.

Statement of Full Order

11. The Tribunal Ordered that as from 21 December 2020 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Yasar Malik;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Yasar Malik;
 - (iii) no recognised body shall employ or remunerate the said Yasar Malik;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Yasar Malik in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Yasar Malik to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Yasar Malik to have an interest in the body;

And the Tribunal further Orders that the said Yasar Malik do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,500.00.

Dated this 12th day of January 2021
On behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'G Sydenham', written in a cursive style.

G Sydenham
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
13 JAN 2021

Number: 12053-2020

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

KARAMJEET KAUR

First Respondent

YASAR MALIK

Third Respondent

**STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME
IN RELATION TO THE THIRD RESPONDENT**

1. By its application dated 4 February 2020, and the statement made pursuant to Rule 12(2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making one allegation of misconduct against Mr Yasar Malik.

The Allegations

2. The allegation against Mr Malik, made by the SRA within that statement, was that: -
 - 2.1. in his capacity as the COFA at the Firm since 16 October 2017, he failed to ensure or take adequate steps to ensure compliance with the Firm's regulatory obligations under the SAR 2011, in breach of his obligations under Rule 8.5 of the SRA Authorisation Rules 2011 and Principles 6 and 7 of the Principles.
3. In addition, manifest incompetence was alleged as an aggravating factor with respect to this allegation.
4. Mr Malik admits this allegation. He also admits that his conduct in acting as alleged was manifestly incompetent.

Agreed Facts

5. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 and 3 of this statement, are agreed between the SRA and Mr Malik.
6. Mr Malik was an employee of Quick Solicitors (the Firm) from about 2011 and he was its COFA from 16 October 2017.

7. A Forensic Investigation Officer (FIO) employed by the SRA commenced an investigation into the Firm on 16 August 2017.

8. During the period 16 October 2017 to 31 May 2018, and as identified in both the FIO's Report dated 31 July 2018 and the Firm's Accountant's Report for the period ending 31 May 2018 and dated 19 November 2018:
 - 8.1. although the Firm's client account bank statements and client account cash book reconciled these did not reconcile with the client ledger balances (in breach of Rule 29.12 of the SAR 2011).
 - 8.2. the Firm recorded £15,000.00 on a suspense ledger (first operated in August 2017). The £15,000.00 was used (otherwise in accordance with Rule 29.25 of the SAR 2011) to address a shortage in the funds held by the Firm in the client bank account.
 - 8.3. £247.42 was incorrectly paid from the client account to Virgin Media on 6 December 2017 and repaid on 12 December 2017 (in breach of Rule 20.1 of the SAR 2011).
 - 8.4. £1,024.91 was incorrectly paid from the client account to EDF Energy on 4 May 2018 and repaid on 17 May 2018 (in breach of Rule 20.1 of the SAR 2011).
 - 8.5. as at 30 November 2017, there were 2 client ledgers with debit balances totalling £76. As at 31 May 2018, there were 9 client ledgers with debit balances totalling £2,251. The Firm did not correct these balances promptly.
 - 8.6. interest was paid into the Firm's client account otherwise in accordance with Rule 14.2 of the SAR 2011.
 - 8.7. there were numerous credit balances on the office side of the client ledgers, partly due to costs transfers being completed in advance of the bill of costs being posted to the ledger.
 - 8.8. there were a large number of "correcting" entries on the firm's ledgers as it sought to rectify the above.

8.9. on ten files reviewed by a Forensic Investigation Officer (FIO) employed by the SRA, there was “insufficient narrative and numerous contra entries due to bookkeeping errors”.

8.10. on five files reviewed by the FIO, professional disbursements had not been paid, despite the Firm having received the funds.

9. In February 2018 the FIO spoke to Mr Malik about providing a client account reconciliation statement to her as part of the investigation. Mr Malik stated that he did not know what three-way reconciliations were (as required under by Rule 29.12 of the SAR 2011) as he had always checked entries to the bank statements.

Non-Agreed Mitigation

10. The following mitigation, which is not agreed by the SRA, is put forward by Mr Malik:

10.1. Mr Malik had no experience of this role prior to taking it on. He was not fully aware of previous unresolved accounting issues and this combined with his lack of experience to make his role difficult and stressful. He had underestimated the role and did not fully comprehend the difficulties and challenges associated with accounting procedures. He thought his position as COFA was temporary;

10.2. Mr Malik had wanted to resign as COFA when it became apparent to him it was a role he could not properly fulfil but decided to continue until a replacement was found. A replacement was not found as quickly as he had hoped, and as a consequence his role as COFA continued for longer than he planned. He did recognise he was not qualified to carry out the responsibilities of COFA.

10.3. During his time as COFA he had periods of ill health and these made it difficult at times to respond as much as he would have liked to the SRA’s investigation.

Penalty proposed

11. It is therefore proposed that Mr Malik, except in accordance with Law Society permission:
- 11.1. no solicitor shall employ or remunerate, in connection with his practice as a solicitor Yasar Malik;
 - 11.2. no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Yasar Malik;
 - 11.3. no recognised body shall employ or remunerate the said Yasar Malik;
 - 11.4. no manager or employee of a recognised body shall employ or remunerate the said Yasar Malik in connection with the business of that body;
 - 11.5. no recognised body or manager or employee of such a body shall permit the said Yasar Malik to be a manager of the body;
 - 11.6. no recognised body or manager or employee of such a body shall permit the said Yasar Malik to have an interest in the body;
12. With respect to costs, it is further agreed that Mr Malik should pay the SRA's costs of this matter agreed in the sum of £2,500.00.
13. The SRA's total costs in relation to Mr Malik are agreed as being £10,000.00. Upon consideration of the information provided by Mr Malik to the SRA as to his financial means and his ability to pay, it is further agreed that it is appropriate and proportionate to limit the amount payable by Mr Malik to £2,500.00.

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

14. At the time that Mr Malik was appointed the Firm's COFA, he was aware of the Firm's financial position. He was also aware that the SRA were investigating the Firm's compliance with the SAR 2011 and that Mr H (as the Firm's previous COFA) had raised concerns in respect of the Firm's accounts and its regulatory compliance. However, at the time he became COFA, Mr Malik had no previous experience of undertaking such a role. He made no enquiries as to how the Firm's financial position had developed and did not satisfy himself that the Firm's failure to comply with the SAR 2011, or its financial management generally, had been rectified.

15. In addition, the role of the COFA is to ensure that the firm, its managers and its employees comply with any obligations imposed upon them under the relevant accounts rules (at the time the SAR 2011). The role of the COFA is also to ensure that a prompt report is made to the SRA of any serious breach of the relevant accounts rules. At the time Mr Malik took on the role as COFA, he did so not knowing how to conduct three way reconciliations of the Firm's client account, which is a specific requirement of the SAR 2011 intended to ensure the early identification of errors or issues with the Firm's records of the client money it holds.

16. During the period 1 September 2017 to 31 May 2018, Mr Malik failed to ensure the Firm's compliance with the SAR 2011. He also failed to report the breaches of the SAR 2011, by both the Firm and the First Respondent as well as any identifiable breaches by the Second Respondent as his predecessor, to the SRA. Mr Malik's culpability for his actions was accordingly high.

17. As a result of Mr Malik's failure to take any action, the Firm continued to operate in serious breach of the SAR 2011 placing, amongst other things, client money at risk.

18. The principle factors that aggravate the seriousness of Mr Malik's misconduct are:

18.1. The period of time over which his actions took place (16 October 2017 to 31 May 2018), despite having been forewarned of Mr H's concerns;

18.2. That he knew, or ought reasonably to have known, that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession

19. In all the circumstances of the case, the seriousness of Mr Malik's conduct is such that it is proportionate and in the public interest that Mr Malik should be made subject to an order in the above terms.

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Simon Griffiths, Legal Adviser upon behalf of the SRA

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Mr Yasar Malik