

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12069-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JOHN MARTIN LEWIS

Respondent

Before:

Mr D. Green (in the chair)

Mr P. Booth

Mrs C. Valentine

Date of Hearing: 13 July 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 Respondent made by the Solicitors Regulation Authority (“SRA”) were that, while in practice as a Solicitor at Allington Hughes Limited (“the Firm”):
 - 1.1 On 15 January 2019 the Respondent caused and/or permitted the wrong completion date to be reported to the Welsh Revenue Authority to avoid a late registration penalty, he therefore breached any or all of Principles 2, 6 and 7 of the SRA Principles 2011 (“the Principles”).
2. In addition, the allegation above was advanced on the basis that the Respondent’s conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent’s misconduct but was not an essential ingredient in proving the allegations.
3. The Respondent admitted the allegation including that his conduct had been dishonest

Documents

4. The Tribunal had before it the following documents:-
 - Form of Application dated 30 March 2020
 - Rule 12 Statement dated 30 March 2020
 - Statement of Agreed Facts and Proposed Outcome dated 10 July 2020

Factual Background

5. The Respondent was a solicitor having been admitted to the Roll in October 1978. At the time of the allegations the Respondent was employed as a Solicitor at the Firm where he practised in Conveyancing, Landlord and Tenant – Residential and commercial property. The Respondent held a Practising Certificate free from conditions.

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 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

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 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 Tribunal found that the Respondent had knowingly and consciously amended the date on the TR1, following its submission, so as to avoid any penalty. The Respondent knew that the amended date he had provided was incorrect and untrue. The Tribunal agreed that such conduct was in breach of the Principles alleged and was also dishonest. Public confidence in the profession and the reputation of the profession required no lesser sanction than that the Respondent be removed from the Roll. The Tribunal found that the proposed sanction of striking the Respondent from the Roll was appropriate and proportionate in all the circumstances

Costs


10. The parties agreed that the Respondent should pay costs in the sum of £2,979.00. The Tribunal determined that the agreed amount was reasonable and appropriate. Accordingly, the Tribunal ordered that the Respondent pay costs in the agreed sum.

Statement of Full Order

11. The Tribunal Ordered that the Respondent, JOHN MARTIN LEWIS, 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 £2,979.00.

Dated this 3rd day of August 2020

On behalf of the Tribunal



D Green
Chair

JUDGMENT FILED WITH THE LAW SOCIETY

04 AUG 2020

Number: 12069-2020

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

JOHN MARTIN LEWIS

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 30 March 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 two allegations of misconduct against John Martin Lewis ("the Respondent")

The allegations

2. The allegations against the Respondent, made by the SRA within that statement were that:

"While in practice as a Solicitor at Allington Hughes Limited ("the Firm"):

- 1.1 On 15 January 2019 the Respondent caused and/or permitted the wrong completion date to be reported to the Welsh Revenue Authority ("WRA") to avoid a late registration penalty, he therefore breached any or all of Principles 2, 6 and 7 of the SRA Principles 2011 ("the Principles").

Dishonesty

In addition, the allegation above is advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations."

3. The test to be applied by the Tribunal, in considering the allegation of dishonesty, is the test as set out in *Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent)* [2017] UKSC 6. Lord Hughes set out the test for dishonesty at paragraph 74 of the Judgment as follows:
4. "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."
5. There are two issues for the Tribunal to consider. Firstly, the actual state of mind of the Respondent including his knowledge or belief as to the facts and secondly, whether his conduct was dishonest applying the objective standard of ordinary standards of ordinary decent people.

Admissions

6. The Respondent admits the allegation and admits that his conduct in acting as alleged was dishonest.
7. The SRA has considered the admissions made by the Respondent, in light of those admissions, whether the outcome proposed in this document is in the public interest having regard to the seriousness of the matters alleged. The SRA is satisfied that the admissions and outcome proposed are in the public interest and that it is a proportionate and appropriate way of resolving this matter. It is agreed that the necessary and proportionate sanction to protect the public interest and reputation of the profession is for the Respondent to be Struck Off the Roll of Solicitors ("Roll").

Agreed Facts

8. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraph 2 this statement, are agreed between the SRA and the Respondent:

8.1 The Respondent resides at [REDACTED]. He was born on [REDACTED] and was admitted to the Roll of Solicitors on 16 October 1978. He holds a current practising certificate free from conditions.

8.2 At the material time he was a Solicitor at Allington Hughes Limited ("the firm").

8.3 The conduct in this matter came to the attention of the SRA on 29 January 2019 when the COLP of the Firm submitted a Report in which they informed the SRA that she had received confirmation from the Firm's conveyancing department that the Respondent had deliberately misled the WRA so as to avoid a late penalty notice.

Allegation 1 - The Respondent caused and/or permitted the wrong completion date to be reported to the Welsh Revenue Authority to avoid a late registration penalty

9. The Respondent was instructed to act on a Conveyancing transaction which completed on 14 December 2018 and therefore the TR1 registration form should have been submitted to the WRA no later than 13 January 2019. The return is an online submission of information through the Welsh Revenue Authority portal.

10. The return was submitted by the Respondent's secretary, MA on or around 15 January 2019 with the correct date of completion, namely 14 December 2018.

11. On the same date, namely 15 January 2019 the Respondent contacted the WRA and amended the completion date to 18 December 2018 and then instructed MA to confirm the amendment to avoid a Penalty Charge.

12. During the course of a disciplinary interview with the COLP of the Firm the Respondent was asked "whether he deliberately misled the Welsh Revenue Authority as regards the

date of completion so as to avoid the penalty charge and Martin [the Respondent] said yes he did".

13. The Respondent admits that his conduct was dishonest in accordance with the test for dishonesty laid down in Ivey and he admits that he acted dishonestly according to the standards of ordinary decent people.

14. The Respondent knew that:

14.1 That the WRA was a public authority, entrusted with the collection of revenue for the public purse;

14.2 That statements made to the WRA within the LTT would be relied upon by it for the purposes of computing the charge to tax on a transaction and determining the amount of any penalties owed;

14.3 That the WRA would trust the Respondent to submit an LTT which was truthful and accurate in its contents;

14.4 That completion had taken place on 14 December 2018 as this was evident from the Sale contact. Letter from the seller dated 18 December 2018 and the TR1 signed and completed by the seller;

14.5 That the information he was asking MA to present to the WRA was incorrect;

14.6 That in doing so he was seeking to mislead the WRA ; and

14.7 That the effect of his actions was to the potential benefit of his client (who was primarily liable to pay the penalty) and / or the Firm (which was potentially liable to indemnify the client against the consequences of his mistake) and to the detriment of the public purse which would be deprived of a penalty which was properly payable by the client.

Non-agreed Mitigation

15. The following mitigation, is put forward on behalf of the Respondent:

"We would simply note that events set out are an aberration having successfully practiced for a period in excess of 41 years, no party lost out in this situation (the client did not pay the late payment penalty, Allington Hughes did and always would do when a

fee earner makes an error) and the aberration therefore remains an isolated misjudgement.

Mr Lewis cannot explain his thoughts at the time, but accepted immediately when the firm raised its concerns that his actions were inappropriate (hence their report) that his actions were inappropriate and could not be repeated. Mr Lewis has been candid about the events with the SRA and the firm, it is an isolated aberration in an otherwise long and distinguished career as a solicitor. The firm remains supportive of him as the events were so out of character and the usual practices of Mr Lewis."

16. The Respondent 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

17. It is therefore proposed that the Respondent should be struck off the Roll of Solicitors.
18. With respect to costs, it is further agreed that the Respondent should pay the SRA's costs of this matter agreed in the sum of £2,979.

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

19. The Respondent 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)).*"
20. 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..."

21. By instructing MA to present incorrect information to the WRA, when he knew or should have known that the information being presented was incorrect the Respondent failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. In *Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366*, it was said that integrity connotes adherence to the ethical standards of one's own profession. The Respondent also failed to behave in a way that maintains the trust the public places in him and in the provision of legal services. The public would expect a solicitor, as a member of a profession which is to be trusted "to the ends of the earth" to be strictly truthful and honest in all their dealings with Revenue Authorities on behalf of clients. That expectation was not met by the Respondent, who knowingly caused untrue information to be presented the WRA and the public's trust in him, and in the provision of legal services has consequently been undermined. The obligation upon the Respondent to submit an (accurately completed) LTT to the WRA within 30 days of completion and pay a penalty upon behalf of his client if he did not, arose under the tax legislation applying in Wales. By causing a LTT which contained false information to be submitted he did not comply with his legal obligations in this regard.

22. In light of the misconduct identified and having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions, the SRA contends, and the Respondent accepts, that the proper penalty in this case is an Order that the Respondent be struck off the Roll of Solicitors.

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Kiran Sidhu, Legal Adviser on behalf of the SRA

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10/7/20

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John Martin Lewis

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