

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12167-2021

BETWEEN:

SHERAZ SULTAN

Applicant

and

SOLICITORS REGULATION AUTHORITY

Respondent

Before:

Mr S Tinkler (in the chair)
Ms B Patel
Mrs C Valentine

Date of Hearing:
17 June 2021

Appearances

Sheraz Sultan appeared in person and represented himself.

Andrew Bullock, barrister, of the Solicitors Regulation Authority Limited, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, appeared for the Respondent.

**JUDGMENT ON AN APPLICATION TO REVOKE AN
ORDER MADE PURSUANT TO SECTION 43 OF THE
SOLCITORS ACT 1974**

Relevant Background

1. The Applicant was the fourth respondent in the first instance proceedings before the Tribunal on 6 – 7 March 2018. The First, Second and Third Respondents were all solicitors. The Applicant was an unadmitted person and a qualified accountant. He was the accounts clerk at Marks and Marks Solicitors (“the Firm”).
2. At all relevant times, the Applicant was the Firm's bookkeeper or accounts clerk, having begun working at the Firm on 8 June 2015. He appeared to be the sole person working in such a capacity at the Firm. He was undertaking the work under the direction of the First and Second Respondents.
3. The Respondent commenced an investigation into the Firm on 20 September 2016 in response to concerns about immigration matters of which the Firm had conduct. The Forensic Investigation Officer (“the FIO”) reviewed the Firm's books of accounts and other documents for the period 29 February 2016 to 31 August 2016. The inspection culminated in a report dated 31 January 2017 (“the FIR”). The FIR confirmed that, as at 31 August 2016, a minimum cash shortage existed upon the client account of £14,311.00.
4. There was a single allegation against the Applicant namely:

Allegation 1.4

The Fourth Respondent had, occasioned or been a party to an act or default in relation to legal practices which involved conduct on his part of such a nature that it would be undesirable for him to be involved in a legal practice in that he, whilst remunerated by and under the direction of solicitors in the firm, allowed debit balances to occur in client account as detailed in allegation 11 above and back dated bills.

5. The Tribunal's found in respect of Allegation 1.4 that:

“The admissions by the Fourth Respondent as to his actions and as to what he knew together with his failure to ensure compliance with the SAR [Solicitors Accounts Rules] meant that the Tribunal found that he had occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that it would be undesirable for him to be involved in a legal practice. A bookkeeper at a solicitor's firm had to ensure compliance with the SAR.”
6. On 7 March 2018 the Tribunal Ordered that:

“The Tribunal ORDERS that as from 7 March 2018 except in accordance with Law Society permission:-

 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor SHERAZ SULTAN;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Sheraz Sultan;

- (iii) no recognised body shall employ or remunerate the said Sheraz Sultan;
- (iv) no manager or employee of a recognised body shall employ or remunerate the said Sheraz Sultan in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit the said Sheraz Sultan to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said Sheraz Sultan to have an interest in the body;

And the Tribunal further Orders that the said Sheraz Sultan do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,500.00.”

7. By way of a written application dated 9 February 2021 the Applicant sought revocation of the s43 Order.

Documents

8. The Tribunal read all of the documents filed and served by the parties which in particular:
 - Application dated 9 February 2021 and supporting statement dated 8 February 2021.
 - Respondent’s Answer to the Application dated 12 March 2021.
 - Applicant’s Reply to the Answer dated 18 March 2021.
 - Respondent’s Statement of Costs dated 10 June 2021.

Applicant’s Submissions

9. Mr Sultan submitted that he had complied with the s43 Order since its imposition and had not been employed by/sought employment with a legal practice to date.
10. With regards to the underlying misconduct Mr Sultan asserted that (a) it was never his intention to benefit from the Firm, (b) he followed the guidance offered by the FIO once given, (c) he was not “subject to any penal offence ... [during] the investigation”, (d) he was allowed to continue working at the Firm during the investigation and (e) the FIO “verified that [he] did not allow the partners of the firm to carry out any premature transfer funds”.
11. Mr Sultan asserted that it was evident that [his] conduct at work safe guarded the public interest and the society's reputation. [He] did not require any satisfactory level of supervision for another 15 months of duration while working as a legal bookkeeper with a solicitor's firm until sanctioned by the SDT Section s43 order.
12. Mr Sultan submitted that the s43 Order was “affecting [his] long term professional career as an accountant” and further restricting him acquiring his “practice license from [his] professional body to setup [his] own business and work as a sole trader.”

Respondent's Submissions

13. Mr Bullock submitted that the s43 Order was properly made, should remain in effect and as such the application was opposed. The s43 Order was not an absolute prohibition on employment but was an order designed to protect the public interest and the reputation of the profession. It was, he submitted, informed by the Applicant's underlying misconduct such that it called into question the fitness of the Applicant to be employed by a solicitor without the necessary level of supervision which the Respondent would have to establish before permission could be given for such employment.
14. Since imposition of the s43 Order the Respondent had not received any applications from solicitors or firms for approval to employ the Applicant. Consequently, Mr Bullock contended, neither the Respondent nor the Tribunal were in a position to assess, and the Applicant was not in a position to demonstrate, his fitness to be employed within the profession without the necessary level of supervision. Mr Bullock further contended that there was no evidence of the adverse effects faced by the Applicant as a consequence of the s43 Order. Mr Bullock added that it was not clear, in the absence of supporting documents, how the s43 Order was preventing him from getting a license from his own professional body.
15. Mr Bullock submitted that the continuation of the s43 Order was necessary for the protection of the public and maintenance of the reputation of the profession. As the Tribunal stated it in its judgment, it "had in mind the protection of the public and the maintenance of the good reputation of the solicitors' profession, rather than a punishment against the Fourth Respondent." Mr Bullock submitted that the substitution of an undertaking in place of the s43 Order would not suffice, would not be practicable and would prevent the Tribunal from taking any action were it breached.

The Applicant's Reply

16. Mr Sultan accepted that it was his decision not to seek employment within a legal practice post imposition of the s43 Order. He further accepted that he was aware that in order to do so, permission from the Respondent for such employment was required. Mr Sultan advised the Tribunal that he had chosen to join an accounting practice and work as an employee as opposed to seeking employment within a legal practice.
17. Mr Sultan acknowledged and accepted the previous Tribunal's conclusions that his:

"actions were misguided and [he] had been made malleable while working as a bookkeeper with Marks & Marks Solicitors." However, he asserted that since the investigation and the previous Tribunal proceedings he became "familiar from the SRA forensic investigation officer about the SAR bookkeeping principles and regulations in protecting client's money, [he] did not allow the partners of the firm to carryout (*sic*) any premature transfer of funds from the client account to the office account. Invoicing was gathered by the partners of the firm for billing before making a transfer. The monthly bank reconciliation statements produced as per SRA regulations were periodically inspected, verified and signed by Marks & Marks Solicitor's COFA (Compliance Officer for Finance and Administration) Ms Amara Shaheen Kayani. There were no

debt balances reported on the reconciliation statements of client account while I was working with the same firm for another fifteen months until I was sanctioned. The record of those reconciliation statements is filed in the accounts department of Marks & Marks Solicitors. The SRA annual accountant's report form for Marks & Marks Solicitors which covers the period from 1st September 2016 till 31st August 2017 [was] an unqualified report... clearly demonstrates that [he] cooperated with the SRA in maintaining effective and necessary measures to protect the public interest and safe guarded the society's reputation.”

18. Mr Sultan submitted that whilst he had no intention of working within a Legal Practice, he was willing to give an undertaking to the Respondent and the Tribunal to that effect. He confirmed that should he wish to provide bookkeeping services to a legal practice he would seek permission from the Respondent in that regard.
19. Mr Sultan stated that his accounting body rejected his “license application” as a consequence of the Tribunal’s sanction which essentially amounts to having been disciplined by another regulatory body. He further stated that he will not be granted an “accounting license” until the s43 Order was revoked and removed from the Respondent records. In that regard, Mr Sultan submitted that he did not want to surrender his membership to the accountancy body and hoped to benefit from being issued with a “license” from them so that he may “offer [his] accountancy services under their [Anti Money Laundering] supervision, professional support in accounting procedures and their code and conduct regulations.”

The Tribunal’s Decision

20. The Tribunal had regard to Section 43 of the Solicitors Act 1974 which provides:

“Control of solicitors’ employees and consultants

...

- (1) Where a person who is or was involved in legal practice but is not a solicitor –

...

- (b) has, in the opinion of the Society, occasioned or been party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be involved in legal practice in one or more of the ways mentioned in subsection (1A), the Society may either make, or make an application to the Tribunal for it to make, an order under subsection (2) with respect to that person.

- (1A) A person is involved in legal practice for the purposes of this section if the person –

- (a) is employed or remunerated by a solicitor in connection with the solicitor's practice;
- (b) is undertaking work in the name of or under the direction or supervision of a solicitor;

...

(3) Where an order has been made under subsection (2) with respect to a person by the Society or the Tribunal –

- (a) That person or the Society may make an application to the Tribunal for it to be reviewed, and
- (b) whichever of the Society and the Tribunal made it may at any time revoke it.

(3A) On the review of an order under subsection (3) the Tribunal may order –

- (a) the quashing of the order;
- (b) the variation of the order; or
- (c) the confirmation of the order

and where in the opinion of the Tribunal no prima facie case for quashing or varying the order is shown, the Tribunal may order its confirmation without hearing the applicant.

...”

21. The correct approach to review a s43 Order was set out at p38-39 of Solicitors Regulation Authority (SRA) v Solicitors Disciplinary Tribunal (Arslan) [2016] EWHC (Admin):

“38. I turn to the nature of the Tribunal's task in conducting a review under section 43(3) and an appeal under section 44E. It is not in dispute that the Tribunal was correct to hold that, in both cases, the proper approach was to proceed by way of review and not a re-hearing [*emphasis added*]. As for what such a review involves, the Tribunal accepted submissions made to it by Ms Emmerson that its function was analogous to that of a court dealing with an appeal from another court or from a tribunal and that it should apply by analogy the standard of appeal application to such appeal which is set out in rule 52.11 of the Civil Procedure Rules. Rule 52.11 makes it clear that a court or tribunal conducting a review should not generally receive new evidence that was not before the original decision-maker, although it may do so if justice requires it; and it should interfere with a decision under review only if satisfied that the decision was wrong or that the decision was unjust because of a serious procedural or other irregularity in the proceedings [*emphasis added*].

39. it follows that the Tribunal should not embark on an exercise of finding the relevant facts afresh...”

22. The Tribunal also had regard to the Guidance Note on Other Powers of the Tribunal (4th Edition – December 2020).
23. The standard of proof that the Applicant had to meet to satisfy the Tribunal that the s43 Order was no longer necessary in the public interest was the civil standard namely on a balance of probabilities.
24. Against that legal and procedural framework, the Tribunal carefully considered the Application before it and the submissions of the parties. The Tribunal noted that the Applicant was unable to show that he had worked within a legal practice since the imposition of the s43 Order without incident or concern. Whilst it noted that was a decision made by the Applicant as he wished to work for an accounting firm rather than for solicitors, it hindered his ability to persuade the Tribunal that the s43 Order was no longer required to protect the public from harm if he were to work for a solicitor. Similarly the Tribunal noted the absence of any character references attesting to the Applicant's abilities and/or certification as to any courses undertaken by him to demonstrate a current knowledge of what was needed to ensure compliance with the SRA's Rules and Regulations.
25. Whilst the Tribunal appreciated the rationale underpinning the Applicant's offer to provide an undertaking to the Respondent and the Tribunal, the Tribunal determined that was an inadequate safeguard in respect of the ongoing risk that he presented to the public. In particular, a solicitor who wished to employ the Applicant would not be able to independently discover the undertaking he had given, unlike the s43 order which they could, and indeed on a normal pre-employment search would, independently discover.
26. On the evidence before it and the submissions made, the Tribunal was not therefore satisfied on a balance of probabilities that the Applicant had demonstrated that he could safely work within a legal environment without restriction.
27. The application for revocation of the s43 Order was therefore refused.

Costs

The Respondent's Application

28. Mr Bullock applied for costs in the sum of £2,010.00 as set out in the Schedule of Costs dated 10 June 2021. He submitted that those costs were reasonable, proportionate and should be awarded in full.

The Applicant's Position

29. Mr Sultan advised the Tribunal that when he made his initial enquiries with the Respondent as to revocation of the s43 Order, he was told that he needed to apply to the Tribunal but he was not warned of the costs implications in so doing. Mr Sultan submitted further that he was not told by the Respondent that his application would be opposed and he had not entered into any agreement with the Respondent to meet their costs, which he considered to be "too much". Mr Sultan concluded that had he been made aware of those factors he "wouldn't have made the application".

The Tribunal's Decision

30. The Tribunal firstly considered whether costs should be awarded to the Respondent in principle. Despite the fact that the Applicant was not a solicitor, he had worked within legal practice for a significant period of time and, having appeared before the Tribunal previously (and been ordered to pay costs), he could not have been unduly surprised that there were costs implications as a consequence of bringing Tribunal proceedings. The Applicant had chosen to bring these proceedings, and the Respondent was required to participate in them. The Respondent had been successful in its opposition to his application. Cognisant of those attendant circumstances the Tribunal found that costs were payable to the Respondent for its opposition to the application.
31. The Tribunal considered the quantum of costs claimed by the Respondent. The Tribunal considered them to be broadly reasonable and proportionate save for (a) the 8 hours spent preparing an Answer to the Application and (b) 1 hour and 30 minutes claimed for preparing "Further and Better Particulars" which did not appear in the hearing bundle.
32. The Tribunal therefore reduced the costs which fell to be met by the Applicant to £1,750.00.

Statement of Full Order

33. The Tribunal **ORDERS** that the application of Sheraz Sultan for revocation of a S.43 Order be **REFUSED** and it further Orders that the Applicant do pay the costs of and incidental to the response to this application fixed in the sum of £1,750.00."

Dated this 22nd day of July 2021

On behalf of the Tribunal



S Tinkler
Chair

JUDGMENT FILED BY THE LAW SOCIETY
22 JULY 2021