SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12208-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

KEYVAN ZAMANPOUR Respondent

Before:

Mr D Green (in the chair)
Ms A Kellett
Dr S Bown

Date of Hearing:
26-27 October 2021

Appearances

Michael Collis, barrister of Capsticks LLP, 1 St George's Road, London SW19 4DR for the Applicant.

Geoffrey Williams QC, barrister of Farrar's Building, Temple, London EC4Y 7BD for the Respondent

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JUDGMENT

Allegations

The allegations against the Respondent were that whilst in practice as Director and sole owner of Pennine Kennedy Limited ("the Firm"), in respect of the misappropriation of client monies of up to £669,902.47 by Person A (an employee of the Firm):

1. Between May 2019 and 3 January 2020, he:

1.1 did not report the misappropriation of client monies to the SRA;

1.2 by email dated 9 October 2019, falsely stated to the SRA and/or its Forensic Investigation Officer that to the best of his knowledge there were no issues or qualifications to be reported to the SRA in respect of the Firm as a partnership entity, when he knew this was not the case;

1.3 on or around 2 January 2020, falsely stated to the SRA and/or its Forensic Investigation Officer words to the effect that he was not aware of any misuse of client money and/or that he was not aware of any problems with the Firm's books of account, he knew when this was not the case. This was in breach of:

Prior to 25 November 2019;

Principles 2, 6 and 7 of the SRA Principles 2011 and Rule 8.5(e) of the Authorisation Rules 2011.

From 25 November 2019;

Principles 2, 4 and 5 of the SRA Principles 2019, Paragraphs 7.3, 7.4(a), 7.7 and 7.8 of the Code of Conduct for Solicitors 2019 and Paragraphs 3.9, 3.10, 9.1, 9.1(d) and (e), and 9.2 (b) and (c) of the Code of Conduct for Firms 2019.

2. On or around 6 September 2019, he made false statement(s) in the Firm's Professional Indemnity Proposal Form to the effect that there were no material circumstances to be disclosed, when this was not the case. And in doing so breached Principles 2 and 6 of the SRA Principles 2011.

3. By reason of the conduct referred to at Allegations 1 and/or 2 above, the Respondent acted dishonestly, but dishonesty is not a necessary ingredient to Allegations 1 and/or 2 being found proved.

Documents

4. The Tribunal considered all the documents in the case, which were contained within an agreed electronic hearing bundle.

Preliminary Matters

5. Application to sit in private

Respondent's Submissions

5.1. Mr Williams told the Tribunal that the Respondent's case overwhelmingly relied on detailed discussion of health issues relating to himself and to Person A, as detailed in a medical report that he had placed before the Tribunal. He therefore invited the Tribunal to hear the Respondent's case in private as to protect the privacy of the Respondent and Person A. Mr Williams did not seek to have any of the Applicant's case heard in private.

Applicant's Submissions

5.2 Mr Collis told the Tribunal that he agreed that the health issues of the Respondent and Person A should not be aired in open Court and he did not have any objection to sitting in private while those matters were referred to. Mr Collis submitted that as much of the hearing should be in public as possible, but he recognised that the vast majority of the Respondent's case related to those matters and further accepted that it was unlikely to be satisfactory to continually go in and out of public and private hearings.

The Tribunal's Decision

5.3 Rule 35 of the SDPR 2019 stated:

> "35.—(1) Subject to paragraphs (2), (4), (5) and (6), every hearing of the Tribunal must take place in public.
> (2) Any person who claims to be affected by an application may apply to the Tribunal for the hearing of the application to be conducted in private on the grounds of—
> (a) exceptional hardship; or
> (b) exceptional prejudice
> to a party, a witness or any person affected by the hearing.
> (3) Any person who makes an application under paragraph (2) must serve a copy of that application and a Statement in support on all parties to the proceedings. If there is no objection to the application from any of the parties, the Tribunal will consider the application on the papers unless it considers that it is in the interests of justice for the application to be considered at an oral hearing.
> (4) If the Tribunal decides that the application made under paragraph (2) is to be considered at an oral hearing, that hearing will take place in private unless the Tribunal directs otherwise.
> (5) The Tribunal may, before or during a hearing, direct without an application from any party that the hearing or part of it be held in private if—
> (a) the Tribunal is satisfied that it would have granted an application under paragraph (2) had one been made; or
> (b) the Tribunal considers that a hearing in public would prejudice the interests of justice.
> (6) The Tribunal may give a direction excluding from any hearing or part of it any person—

(a) whose conduct the Tribunal considers is disrupting or likely to disrupt the hearing;
(b) whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
(c) whose attendance at the hearing would otherwise prejudice the overriding objective of these Rules.
(7) Other than a party to the proceedings, a factual witness is excluded from the hearing until their evidence has been given, unless the parties agree or the Tribunal directs otherwise.
(8) Save in exceptional circumstances, where the Tribunal disposes of proceedings following a hearing held in private, it must announce its decision in a public session.
(9) The Tribunal may make a direction prohibiting the disclosure or publication of any matter likely to lead to the identification of any person whom the Tribunal considers should not be identified.
(10) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if it is satisfied that—
(a) the disclosure would be likely to cause any person serious harm; and
(b) it is in the interests of justice to make such a direction".

5.4 The Tribunal noted the starting point was the requirement for open justice as affirmed in SRA v Spector [2016] EWHC 37 (Admin).

5.5 The Tribunal had read the papers in this case, including a medical report, and it was clear that the entire basis of the Respondent's case related to his health and that of Person A.

5.6 [REDACTED]

5.7 The Tribunal was satisfied that it was in the interests of justice to hear the Respondent's case in private. It was not feasible to try to carve out the small parts of the Respondent's case that might not relate to health issues and sit in public for those. The result of attempting to do so would be considerable disruption to the hearing and it would not be in the interests of justice to break up the flow of the Respondent's case in this way. If, at the end of the hearing, there had been matters raised in private that could have been dealt with in public then the Tribunal would hear submissions from the parties as to whether those matters should appear in the published written judgment.

5.8 The Tribunal was mindful of the principle of open justice and would seek to explain as much of its decision-making as possible in the published written judgment, while taking care not to disclose details of Person A's health or that of the Respondent.

5.9 The application to hear the Respondent's case in private was granted.

6. Respondent's Application for anonymity of Person A

Respondent's Submissions

6.1 Mr Williams applied for a direction that Person A not be named in the published written judgment for the same reasons as he had applied for the Tribunal to sit in private.

Applicant's Submissions

6.2 [REDACTED]

6.3 [REDACTED]

6.4 Mr Collis therefore queried whether this information needed to be kept private.

The Tribunal's Decision

6.5 The same factors that applied in relation to sitting in private were also relevant to an application to anonymity in the published judgment.

6.6 [REDACTED]

6.7 The Tribunal again noted that Person A was not a party to these proceedings and the significant concerns about his health remained a live issue. There would be little point in sitting in private on the basis that exceptional hardship could be caused to Person A, if he was then named in the published judgment. The Tribunal therefore directed that Person A remain anonymised in the judgment.

6.8 [REDACTED]

Factual Background

7. The parties had served a Statement of Agreed Facts in advance of the start of the substantive hearing. These are summarised below.

8. The Respondent was admitted to the Roll on 1 November 2011. At the relevant time he was Director and sole owner of Pennine Kennedy Limited ("the Firm"). At the time of the hearing the Respondent held a practising certificate with conditions attached. The Respondent's wife was the practice manager. Person A was employed as an unadmitted conveyancer. His employment ceased on 23 December 2019.

9. Following an anonymous complaint, the SRA commenced a forensic investigation into the Firm on 2 January 2020. The Forensic Investigation Office ("FIO") found the following:

- The books of accounts were not in compliance with accounts rules due to multiple incorrect postings on ledgers, inaccurate accounting records, manipulation and falsification of the Firm's accounting records by Person A which had not been rectified;

- Between 24 August 2018 and 20 May 2019, Person A made 64 improper withdrawals from the client account totalling £669,902.47 resulting in a client account shortage;

- The Respondent had become aware of the unauthorised withdrawals on or around 22 May 2019 and Person A had confirmed the withdrawals on or around 26 May 2019;

- The client account shortage had been rectified by the Respondent by 23 August 2019;

- The Respondent had failed to notify the misappropriation to the SRA, the Firm's bookkeeper or the Firm's professional indemnity insurer;

- The Respondent failed to report the improper withdrawals to the FIO in their meetings on 2 January 2020, only disclosing the improper withdrawals on 3 January 2020.

10. Between 24 August 2018 to 20 May 2019 there had been 64 improper withdrawals from the client bank account. The individual amounts ranged from £793.00 to £28,750.00 and totalled £669,902.47. All the improper withdrawals were made from the client bank account and transferred into the personal bank account of Person A without proper reason. Person A concealed all 64 improper withdrawals by altering the client bank account statements. The rectification was made by way of payments from Person A's personal bank account, Person A making transfers from office to client account during the period of improper withdrawals and thereafter the transfer of personal funds of the Respondent.

11. In the course of replacing the cash shortage the Firm did not correct the ledgers which Person A had falsified, such that the accuracy of the accounting records could not be relied on. The Applicant pursued no allegation in relation to the accounting records.

12. The Respondent confirmed in his witness statement to the SRA dated 24 January 2020 that he first became aware of Person A' s improper withdrawals of client money on 22 May 2019 following a telephone conversation with the Firm's relationship manager at its bank. Person A confirmed the fact of the improper withdrawals to the Respondent on 26 May 2019. The Respondent accepted that he was aware of the requirement to report the misappropriation to the SRA, but had chosen not to do so. The Respondent identified several factors which led to his decision not to notify the SRA. These included:

- concern that the Firm would be intervened into by the SRA which would have caused disruption to clients, not allowed them time to replace the missing money and caused their staff to lose their jobs;

- serious concerns as to Person A's health [REDACTED], and

- the risk that Person A would be prosecuted [REDACTED].

13. The Respondent did not notify the SRA of the misappropriation until 3 January 2020. Prior to that he had taken steps to conceal the misappropriation. On 9 October 2019, the Respondent emailed the SRA and stated "However, as discussed, I confirm that to the best of my knowledge there is [sic] no issues or qualifications to be reported to the SRA in respect of Pennine Kennedy as a partnership entity."

14. When the investigation commenced, on 2 January 2020, the Respondent told the FIO on two occasions that he was not aware of any misuse of client funds. On 3 January 2020, however, the Respondent and his wife asked to meet with the FIO

again. At this meeting the Respondent and his wife acknowledged that, contrary to their previous comments, they were aware of misappropriation of funds from the Firm's client account and had become aware of this on 22 May 2019.

15. On 6 September 2019, the Respondent had completed a professional indemnity insurance proposal form ("The Proposal Form") and signed a declaration on this form. The Respondent had answered "no" to the following questions:

> "Have any circumstances or claims reported by your practice, or any prior practice, arisen as a result of the dishonesty of any Principal/Partner/Director/Member or Person of the Practice?" and;
>
> "After making a full enquiry of all Principals/Partners/Members/Directors and Persons in your practice are you aware of any circumstances or claims that you have not reported to, or which have not been accepted as an effective notification by, your current or any prior insurers?"

16. The Proposal form included the statements:

> "Please note that you have an obligation under your current Professional Indemnity Insurance policy to notify these matters to your current Insurer ... "

and;

> "All material information must be disclosed as part of the proposal and before insurance commences. Material information includes any fact which we may reasonably wish to know in relation to our assessment of the risk ... You must disclose all such information whether or not a specific question has been included in this application form.".

The Respondent had ticked the box marked "no" to confirm that there was no other material information that may be relevant to the application.

17. The Respondent admitted all the Allegations in full, including the aggravating factor of dishonesty. In his witness statement made to the SRA dated 24 January 2020 the Respondent had explained the reasons behind his actions. The following sections of the statement were of particular relevance:

> "3. At the time of the events, [REDACTED] we employed several conveyancing fee earners. One of those fee earners was [Person A] who worked out of the office just opposite to mine, where I had a clear view of him. He had been training to become a Licensed Conveyancer. He worked at the Firm as a paralegal for some 6 or 7 years and had become a very competent conveyancer. He is not working for the Firm at all now.
>
> [REDACTED]
>
> [REDACTED]
>
> [REDACTED]"

18. The Respondent went on to explain how he was notified of irregular transactions by the bank in May 2019. He then set out the circumstances in which Person A confessed to the misappropriations and the following paragraphs were of particular relevance:

> [REDACTED]
>
> [REDACTED]
>
> 16. In order for us to assess the damage, it was necessary for [Person A] to help us identify where the client monies had been misappropriated. Over the next few days we checked over the accounts and considered what would happen next.
>
> 17. I was extremely conscious of my responsibility as a solicitor to replace ac [sic] the missing money immediately and report the breach to the SRA. [REDACTED] The easiest option would have been to report everything to the SRA and claim the loss from our indemnity insurers. However, I was acutely aware of the potential outcome of doing so and I felt overwhelmed and afraid of all the negative consequences. I envisaged that reporting the breach could only result in negative outcomes, which were:
>
> The Firm would be intervened by the SRA
>
> Total disruption and loss to clients
>
> Our staff would lose their jobs, through no fault of theirs
>
> [Person A] would be prosecuted.
>
> [REDACTED] With all of this weighing heavily on my mind and after consulting with my wife, I took the decision not to self-report the breach with the intention of replacing all of the missing money by selling assets and using savings and pensions."
>
> [REDACTED]"

Witnesses

19. The evidence of the live witnesses is summarised below under "Mitigation".

Findings of Fact and Law

20. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with 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.

21. The Respondent had admitted all the Allegations in full and had accepted that his conduct had been dishonest. The Tribunal was satisfied that the admissions were properly made and were supported by the evidence. The Tribunal therefore found all the Allegations proved on the balance of probabilities, including dishonesty.

Previous Disciplinary Matters

22. There was no record of any previous disciplinary findings by the Tribunal.

Mitigation

23. Mr Williams called two witnesses in mitigation.

24. Dr John Wilkins

24.1 Dr Wilkins had provided a medical report in advance of the hearing and spoke to that during his oral evidence.

24.2 Dr Wilkins is a Consultant Psychiatrist. In his report he set out the background to the Respondent's personal life, including his move to the United Kingdom from Iran, where he and his family had been associated with the Shah regime and had therefore suffered retribution following the 1979 revolution. [REDACTED]

> "[REDACTED]
>
> [REDACTED]
>
> [REDACTED]
>
> [REDACTED]"

24.3 [REDACTED]

24.4 [REDACTED]

24.5 [REDACTED]

24.6 [REDACTED]

24.7 [REDACTED]

24.8 Dr Wilkins was not cross-examined by Mr Collis.

25. The Respondent

25.1 The Respondent told the Tribunal of his personal and professional background. In relation to these matters he told the Tribunal that at the time he made the decisions it never occurred to him that he was acting dishonestly. [REDACTED]. Having taken Person A into the Firm [REDACTED], the Respondent believed he had turned a corner.

The Respondent described discovering Person A's misappropriation as the "Craziest moment of my whole life" when found out what he had done.

25.2 The Respondent told the Tribunal that he knew that the SRA would eventually discover what had happened and he had not corrected the ledgers, so that there would be an audit trail when that investigation did take place.

25.3 [REDACTED]

25.4 The Respondent told the Tribunal that the decision to make the false statement on the insurance form followed a "hypothetical" conversation with his broker. The broker informed him that in circumstances such as these, the insurer would pay out on the claim but would insist that the matter be reported to the Police.

25.5 The Respondent told the Tribunal that if he was not struck off he would wish to practise for a short number of years and retire with dignity.

25.6 In cross-examination, the Respondent told the Tribunal that the decision not to report the matter to the SRA was "immediate" but was not taken lightly. Mr Collis asked the Respondent if, in the intervening seven months, he had considered whether there was a way he could protect Person A and also disclose the matter to the SRA. The Respondent told the Tribunal that with the benefit of hindsight maybe he would have done so, but at the time not reporting it was something he felt he had to do.

Submissions

26. Mr Williams relied on the evidence of Dr Wilkins and of the Respondent.

27. Mr Williams submitted that the only person who had suffered was the Respondent and that his insight was complete. Mr Williams submitted that this case was unique. [REDACTED]

28. Mr Williams submitted that the Respondent's life history did him "enormous credit" – noting that he had come to the United Kingdom aged 19 with almost no English. He had qualified as an engineer, run a retail business and set up the Firm. The Respondent had no propensity to act dishonestly and he was ashamed to be before the Tribunal and he deeply apologised.

29. The background to the Respondent's dishonesty was that Person A stole vast sums and cleverly covered his tracks. [REDACTED]. He left the audit trail deliberately as he always knew the matter was going to come out. The Respondent replaced every penny of the shortfall. If he had reported the matter there would have been no disciplinary action given that it was not his fault and he had replaced the funds.

30. Mr Williams described this as "perhaps the saddest case the Tribunal will have come across". This was a "thoroughly decent man suffering your worst nightmare". [REDACTED]. Mr Williams submitted that in these unique circumstances the Tribunal did not need to strike off the Respondent. Any informed member of the public knowing the facts would not suffer a lack of confidence if more lenient action was taken.

Sanction

31. The Tribunal had regard to the Guidance Note on Sanctions (December 2020). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

32. In assessing culpability, the Tribunal found that the Respondent's motivation was a desire to protect Person A. [REDACTED]. The Respondent made an immediate decision not to report the matter and continued not to do so for seven months. The initial decision was spontaneous but thereafter he undertook a series of actions to perpetuate that concealment. The Respondent, by his own admission, had direct control and responsibility for the decision not to report and to mislead the SRA and the insurers. The Respondent was experienced, having been admitted to the Roll in 2011.

33. In assessing the harm caused, the Tribunal noted that as a result of the Respondent replacing the funds taken by Person A, no clients lost out as a result of his failure to report the matter. There was reputational harm caused in circumstances where a solicitor did not report serious misconduct to the regulator and made false statements. However the Respondent did not intend or foresee harm by his failure to report because he anticipated that matters would come to light eventually and he had promptly made good the loss.

34. The misconduct was aggravated by the Respondent's dishonesty and the fact that over a period of seven months he made misrepresentations to different audiences so as to delay any investigation. The Respondent had acknowledged that he knew he was in material breach of his professional obligations.

35. The misconduct was mitigated by a number of important factors. The Respondent had made good the loss by September at personal cost to himself, rather than, for example, making a claim on his insurance. Although there were a number of instances of concealment and misrepresentation, they all arose out of a single event in a previously unblemished career. The Tribunal accepted that the Respondent had shown genuine insight and remorse. He had made open and frank admissions and, once he had come clean to the SRA, had co-operated with the investigation.

36. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

37. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off and the Tribunal had regard to Sharma. The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as "a small residual category where striking off will be a disproportionate sentence in all the circumstances ...".

38. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:

> "First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty."

39. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James. The Tribunal had read all the evidence and had listened carefully to the oral evidence of the Respondent and Dr Wilkins. The Tribunal noted that the evidence of Dr Wilkins had not been challenged at all and the cross-examination of the Respondent had not involved a dispute as to the facts. Dr Wilkins had given impressive, cogent and convincing evidence and had set out the circumstances with clarity.

40. The Respondent had made a choice not to report in full knowledge of the consequences that would follow when his false statements to the SRA and the insurers came to light.

41. [REDACTED].

42. The Respondent and his wife had engaged Person A to work in the Firm [REDACTED], this was shattered in 2019 when the Respondent discovered the unauthorised payments. [REDACTED] In that context, the Respondent took a decision not to report the matter, for which he accepted personal responsibility.

43. The Tribunal recognised that any misconduct involving dishonesty was very serious and that any departure from the usual sanction of strike-off had to be exceptional. The evidence given by Dr Wilkins in particular, persuaded the Tribunal that the circumstances were exceptional and were inextricably linked to the dishonesty, as required by James. The Tribunal concluded that it would be disproportionate in the particular circumstances of this case to impose the ultimate sanction of a strike-off. The reputation of the profession did not require it as it was not what public would expect if it was appraised of the unique circumstances that existed at the time of the misconduct.

44. The Tribunal concluded that the Respondent was not a risk to the public as the circumstances of his failure to report the misappropriate were highly unlikely ever to be repeated. He had also taken immediate and decisive action to ensure that no clients lost out as a result of Person A's actions. There was harm to the reputation of the profession and the misconduct had to be marked so as to indicate the Tribunal's disapproval of the Respondent's actions in misleading the regulator and the insurers and to act as a deterrent to others. The appropriate sanction was an immediate fixed-term suspension for six months. The Tribunal saw no need to impose conditions on the Respondent as these were not necessary for the protection of the public.

Costs

45. Mr Collis applied for costs in the sum of £32,141.54, which included a fixed fee to Capsticks LLP of £18,500 plus VAT. He acknowledged that there would be some reduction as the case had taken less time than anticipated. Mr Collis reminded the Tribunal that an order for costs was an order in principle and that the Applicant took a reasonable approach to enforcement.

46. Mr Williams did not take issue with the level of costs and accepted that the Respondent should pay some costs. He referred the Tribunal to the statement of means that had been served and he explained that the Respondent would have to sell some of the properties referred to therein to pay off the loans he had taken out to replace the shortage on the client account.

The Tribunal's Decision

47. The Tribunal noted that the case has gone short and that the Respondent had admitted all the Allegations in advance of the hearing. It was appropriate to make a reduction to reflect those matters and the Tribunal assessed the cots at £30,000.00.

48. The Tribunal reviewed the Respondent's statement of means and noted that he had a number of properties from which he still received income. There were no details of mortgages or other charges and so there was no basis to reduce the costs further.

Statement of Full Order

49. The Tribunal Ordered that the Respondent, KEYVAN ZAMANPOUR, solicitor, be suspended from practice as a solicitor for the period of SIX MONTHS to commence on 27 October 2021 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £30,000.00.

Dated this 23rd day of November 2021
On behalf of the Tribunal

D Green
Chair