

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12253-2021

BETWEEN:

BABAR KHAN

Applicant

and

SOLICITORS REGULATION AUTHORITY LTD

Respondent

Before:

Mr E Nally (in the chair)

Mr R Nicholas

Mr A Lyon

Date of Hearing:

2 December 2022

Appearances

Mr Babar Khan represented himself.

Mr Joshua Bold, solicitor, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Respondent.

JUDGMENT

Factual Background

1. On 25 August 2017, at Southwark Crown Court, Mr Khan was convicted of advertising/offering to provide immigration advice and services when unqualified. He was sentenced to (a) an 18 month custodial sentence which was suspended for a period of two years, (b) eight year disqualification as a company director and (c) an unpaid work requirement of 200 hours. He was further ordered to pay the prosecution costs and a victim's surcharge.
2. On 24 November 2017, Mr Khan applied to be admitted to the Roll of Solicitors. In his application he disclosed his conviction and the sentence received.
3. On 18 May 2018, an Authorisation Officer ("AO") of the Solicitors Regulation Authority Ltd ("the SRA") refused his application for admission. The AO was not satisfied that Mr Khan had the necessary character and suitability to be admitted following his conviction.
4. On 6 June 2018, Mr Khan lodged his notice to appeal against that decision with the Authorisation Department of the SRA. That appeal was dismissed on 31 August 2018.
5. On 23 November 2020 an investigation commenced into Mr Khan's conduct in relation to his conviction. On 27 January 2021, an Investigation Officer ("IO") wrote to the Applicant to tell him about the investigation into his conduct in connection with his conviction.
6. On 16 July 2021, a Notice was sent to the Applicant in respect of the proposed section 43 order. The Applicant was given the opportunity to make representations before it was sent to an Authorised Decision Maker of the Solicitors Regulation Authority Ltd ("ADM").
7. On 19 August 2021 an ADM made an Order against Mr Khan pursuant to section 43(2) of the Solicitors Act 1974 ("the s.43 Order").
8. On 17 September 2021, Mr Khan applied to the Tribunal for a review of the s.43 Order on the broad ground that the basis for its imposition was flawed.
9. The Tribunal listed the application for a substantive hearing to take place on 16 January 2022. That hearing was adjourned upon Mr Khan's application due to ill health. The substantive hearing was re-listed for 23 February 2022.
10. On 10 February 2022, Mr Khan submitted a further application to adjourn the proceedings on the ground that his criminal appeal against conviction to the Court of Appeal had not yet been determined. That application was supported by the SRA and the substantive hearing was re-listed for 27 May 2022.
11. On 12 May 2022, the parties jointly applied to adjourn the hearing on the basis that the criminal appeal had still not been heard or dealt with, and indeed had not yet been lodged with the Court of Appeal.

12. A Case Management Hearing (“CMH”) was listed on 27 May 2022 at which the parties updated the Tribunal as to the status of the appeal. Directions were issued which included Mr Khan providing the Tribunal and the SRA with an update as to his appeal by 24 June 2022. A further CMH was listed for 23 September 2022.
13. Mr Khan did not attend the CMH on 23 September 2022 nor had he provided the Tribunal or the SRA with an update regarding his appeal as previously directed. The Tribunal re-listed the substantive hearing for 2 December 2022.
14. On 22 November 2022 Mr Khan emailed the Tribunal and the SRA in the following terms:

“...I write to confirm that I want to withdraw my appeal as my criminal case appeal is still not submitted. My counsel Mr Beki has failed to submit the appeal and it will be waste of time to proceed without the criminal appeal outcome. There I give notice to withdraw my appeal in the above matter...”

Applicant’s Application to Withdraw Appeal

15. Mr Khan, in his oral submissions, endorsed the terms of his email set out above. Mr Khan stated that if the position regarding his criminal appeal changed, he would re-apply for a review of the s.43 Order.

Respondent’s Position

16. Mr Bold did not oppose the application.

The Tribunal’s Decision

17. The Tribunal determined that in circumstances where Mr Khan no longer wished to pursue his application and the SRA did not object to the same, the application was GRANTED in the interests of justice.

Costs

Respondent’s Application

18. Mr Bold applied for costs in the sum of £2,249.00 on the basis that the SRA had to prepare for a substantive hearing and two CMH’s. Mr Bold further submitted that the SRA assisted Mr Khan “in chasing his criminal appeal barrister to try and effectively progress the case where little progress was being made”.
19. Mr Bold contended that the costs claimed were reasonable and proportionate given this application had been active for over a year.

Applicant’s Position

20. Mr Khan opposed the application for costs. He submitted that the SRA had not immediately sought a s.43 Order. He remained in employment for four years whilst the criminal proceedings were ongoing following which the “SRA changed its mind”.

21. Mr Khan further submitted that on 16 September 2021, the SRA incorrectly published on its website that he was “prohibited” from being employed by a law firm. Mr Khan referred the Tribunal to an email from an Investigating Officer employed by the SRA dated 20 September 2021 which stated:

“... I can confirm that the Section 43 Order which has been made does not become effective pending determination of your appeal [before the Tribunal] ...”
22. Mr Khan submitted that error resulted in him not being able to gain employment. He informed the Tribunal that he was now self employed, as at the time of the hearing, buying and selling goods via Amazon. Mr Khan was also in receipt of Universal Credit and supported his family and four children. Otherwise he had no other sources of income and was living in rented property
23. Mr Khan submitted that in all the circumstances and given that the lack of progress on his criminal appeal was not his fault, he should not be liable for the SRA costs.

The Tribunal’s Decision

24. The Tribunal carefully considered the submissions made. Whilst the Tribunal was not required to assess the merits of the underlying application for review of the s.43 Order, it considered the same to have been hopeless in circumstances where no appeal had even been lodged in respect of the criminal conviction. In the ordinary course of events, pursuing an application which is destined to fail should render the applicant liable for costs.
25. However, the Tribunal acknowledged the punitive effect of the SRA’s “publishing error” in which the basis and remit of the s.43 Order was plainly misrepresented to the public and the profession. Mr Khan’s ability to secure employment had been adversely affected by the SRA’s misrepresentation as to his practising status. Consequently, Mr Khan found himself in what appeared to be an impecunious position with a family to provide for.
26. Weighing all of the factors set out above in the balance, the Tribunal firstly considered whether costs should be awarded to the SRA in principle. The Tribunal determined that it should not given the injustice caused to Mr Khan by the SRAs “publishing error” and its resultant effect. The Tribunal therefore REFUSED the SRA’s application for costs and in so doing, was not required to assess the reasonableness or otherwise of the quantum claimed.

Statement of Full Order

27. The Tribunal Ordered that the application dated 17 September 2021, of BABAR KHAN for revocation of a S.43 Order dated 21 August 2021 be WITHDRAWN.

The Tribunal Ordered that:

- (i) no solicitor shall employ or remunerate BABAR KHAN in connection with his/her practice as a solicitor;

- (ii) no employee of a solicitor shall employ or remunerate BABAR KHAN in connection with the solicitor's practice;
- (iii) no recognised body shall employ or remunerate BABAR KHAN;
- (iv) no manager or employee of a recognised body shall employ or remunerate BABAR KHAN in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit BABAR KHAN to be a manager of the body; and
- (vi) no recognised body or manager or employee of such a body shall permit BABAR KHAN to have an interest in the body.

Except in accordance with the Solicitors Regulation Authority's permission.

The Tribunal further Ordered that there be NO ORDER FOR COSTS.

Dated this 16th day of December 2022

On behalf of the Tribunal



E Nally
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
16 DEC 2022