SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12335-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

MATTHEW CONWAY LEDVINA Respondent

Before:

Ms A Kellett (in the chair)
Mr R Nicholas
Mr R Slack

Date of Hearing:
26 September 2022

Appearances

Michael Collis, barrister of Capsticks Solicitors LLP, 1 St Georges Road, Wimbledon, London, SW19 4DR, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegation against the Respondent, Matthew Conway Ledvina, was having been admitted as a Solicitor of the Senior Courts:

1.1. On dates between approximately 2013 and 2018, he conspired with others to commit securities fraud in the United States of America and, in doing so:

1.1.1. failed to achieve Outcome 11.1 under the SRA Code of Conduct 2011 (the "Code");

1.1.2. breached Principle 2 and/or Principle 6 of the SRA Principles 2011 (the "Domestic Principles"); or, alternatively,

1.1.3. breached Principle 2 and/or Principle 6 of the SRA Overseas Principles 2013 (the "Overseas Principles").

2. Dishonesty was alleged in relation to the Mr Ledvina's conduct referred to at 1.1 above but proof of dishonesty was not required to establish that the Respondent has been duly convicted of the offence in question under the law of the United States.

Executive Summary

3. Mr Ledvina was admitted as a solicitor in England and Wales in 2007. He was struck off the Roll for his involvement in a fraudulent investment scheme in the United States of America (USA/US).

4. In 2019 Mr Ledvina pleaded guilty to one count of conspiracy to commit securities fraud before a court in Massachusetts, USA. It was found he assisted his co-conspirators by creating nominee entities used to hold shares in a publicly traded company. These entities allowed the true owners of the shares to mask their identities and secretly sell large quantities of shares and artificially inflate the price in a scheme known as *'a pump and dump'*.

5. He was sentenced by the US court to 30 months' probation and fined $50,000.

6. Mr Ledvina did not attend the Tribunal hearing and he made written submissions to the Tribunal setting out his denial of the misconduct and of the allegation of acting dishonestly. He also submitted that it had not been in the public interest for the Applicant to have pursued the case against him and that it delayed in doing so.

7. The Applicant did not accept that it had delayed and that it had been correct to pursue the case against him for his role in the conspiracy with which he had been knowingly involved.

8. The Tribunal found all allegations proved against Mr Ledvina on the balance of probabilities including that of dishonesty. He was struck off and ordered to pay £3,675 in costs.

The facts can be found here.

The Applicant's case can be found here.
Mr Ledvina's case can be found here.
The Tribunal's Findings can be found here.
The Tribunal's Decision on sanction can be found here.

Preliminary Matters

9. Mr Ledvina did not attend the hearing and was not represented. He had not applied to adjourn or vacate the hearing.

10. Mr Collis submitted that there was evidence before the Tribunal that Mr Ledvina had been served correctly with the proceedings and notified of the date of the hearing. It was clear from the recent e-mail correspondence coming from Mr Ledvina that he was in fact aware of the date of the hearing.

11. Mr Ledvina had informed the Tribunal by e-mail that he would not be attending the hearing as he had been advised by his US attorneys not to do so. However, he had submitted written representations to the Tribunal for its consideration regarding the allegations he faced.

12. Mr Collis applied for the substantive hearing to proceed in Mr Ledvina's absence and he placed reliance upon the decisions in General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 16231 which in turn approved the principles set out in R v Hayward, R v Jones, R v Purvis QB 862 [2001], EWCA Crim 168 [2001] namely that proceeding in the absence of a respondent was a discretion which a Tribunal should exercise with the upmost care and caution bearing in mind the following factors:

- The nature and circumstances of the respondent's behaviour in absenting himself from the hearing;
- Whether an adjournment would resolve the respondent's absence;
- The likely length of any such adjournment;
- Whether the respondent had voluntarily absented himself from the proceedings and the disadvantage to the respondent in not being able to present their case.

13. It was held in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the respondent, the following factors should be borne in mind by a disciplinary tribunal:-

- the Tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;
- the fair, economical, expeditious and efficient disposal of allegations was of very real importance;

- it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and

- there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.

14. In Mr Collis' submission the Tribunal had evidence that Mr Ledvina had been correctly served and that he was aware of the hearing date but that he had voluntarily absented himself.

The Tribunal's Decision

15. In this case, the Tribunal was satisfied that Mr Ledvina was aware of the proceedings and he had made no application to adjourn, there was nothing therefore before the Tribunal to consider regarding adjourning the case. The Tribunal decided not to adjourn the hearing as there was no evidence for it to reasonably do so.

16. With respect to proceeding in Mr Ledvina's absence the Tribunal was mindful that it should only decide to proceed in his absence having exercised the utmost care and caution.

17. The Tribunal considered the factors set out in Jones and Adeogba in respect of what should be considered when deciding whether to exercise the discretion to proceed in the absence of a respondent. The Tribunal noted that Mr Ledvina had been served with notice of the hearing under Rule 13(5) SDPR 2019 and the Tribunal had the power under Rule 36 SDPR 2019, if satisfied service had been affected, to hear and determine the application in his absence.

18. The Tribunal considered that, given the information it had been provided regarding his decision not to attend, an adjournment would not resolve his absence and there was nothing to suggest that he would attend a hearing on a future date. The Tribunal concluded that following the advice given to him by his American attorneys he had voluntarily absented himself.

19. The Tribunal also considered the serious nature of the allegations made against Mr Ledvina and it decided it was in the public interest that this case should be concluded expeditiously and without further delay, particularly given the strong indication from Mr Ledvina himself that he would be taking no active part.

20. The Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence and the Tribunal decided that it should exercise its power under Rule 36 SDPR to hear and determine the application in the Respondent's absence.

Documents

21. The Tribunal considered all the documents in the case which were contained in the electronic bundle which included Mr Ledvina's written representations.

Factual Background

22. Mr Ledvina was admitted to the Roll of Solicitors on 15 March 2007 and his areas of practice were (i) private client, trusts; and (ii) tax.

23. At all relevant times he lived and worked outside the jurisdiction. Mr Ledvina did not hold a current practising certificate but he remained on the Roll as a non-practising solicitor.

Findings of Fact and Law

24. 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 Mr Ledvina'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.

25. **Allegation 1.1 - On dates between approximately 2013 and 2018, he conspired with others to commit securities fraud in the United States of America and, in doing so:**

1.1.1. failed to achieve Outcome 11.1 under the SRA Code of Conduct 2011 (the "Code");

1.1.2. breached Principle 2 and/or Principle 6 of the SRA Principles 2011 (the "Domestic Principles"); or, alternatively,

1.1.3. breached Principle 2 and/or Principle 6 of the SRA Overseas Principles 2013 (the "Overseas Principles").

<u>The Applicant's Case</u>

25.1 The alleged conduct initially came to the Applicant's attention on 12 December 2018 when it received a report about Mr Ledvina from Harbottle & Lewis LLP. In material part, this stated:

> *"Matthew Ledvina is a lawyer qualified under Swiss, US, English and Irish law. He was a partner with the Swiss law firm Anaford AG. His SRA ID is 446524. Matthew Ledvina has filed a guilty plea in relation to a charge of conspiracy in relation a securities fraud in the USA. I attach a corroborating news report found online. He has now left Anaford AG".*

25.2 The Applicant subsequently obtained documentary evidence including the US court papers, which establish the following facts and matters.

The US court proceedings

> *"Allegation 1.1: On dates between approximately 2013 and 2018, he conspired with others to commit securities fraud in the United States of America".*

25.3 On 7 November 2018, the Respondent signed a plea agreement with the US Department of Justice (the "DoJ") providing, in material part, as follows:

> *"Change of Plea*
> *At the earliest practicable date, Defendant shall waive indictment and plead guilty to an Information substantially in the form attached to this Plea Agreement charging him with: one count of conspiracy to commit securities fraud, in violation of Title 18, United States Code, Section 371. Defendant expressly and unequivocally admits that he committed the crime charged in Count One of the Information, did so knowingly and willfully, and is in fact guilty of that offense."*

25.4 The plea agreement included an acknowledgement signed by Mr Ledvina and his attorney, indicating that he fully understood the nature of what he was agreeing to and had received legal advice on the same:

> *"ACKNOWLEDGMENT OF PLEA AGREEMENT*
> *I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that (a) it accurately sets forth my plea agreement with the United States Attorney's Office for the District of Massachusetts; (b) there are no unwritten agreements between me and the United States Attorney's Office; and (c) no official of the United States has made any unwritten promises or representations to me, in connection with my change of plea. In addition, I have received no prior offers to resolve this case. I understand the crime to which I have agreed to plead guilty, the maximum penalty for that offense, and the Sentencing Guideline penalties potentially applicable to it. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charge against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Plea Agreement freely, voluntarily, and knowingly because I am guilty of the offense to which I am pleading guilty, and I believe this Plea Agreement is in my best interest."*

25.5 This document bore Mr Ledvina's signature, and it was dated *November 19 2018*. Under this, was certification by Mr Ledvina's attorney, Mr Thomas E Zehnele, dated *November 20 2018* that:

> "*… Matthew Ledvina has read this Plea Agreement and that we have discussed its meaning, I believe he understands the Plea Agreement and is entering into the Plea Agreement freely, voluntarily, and knowingly. I also certify that the U.S. Attorney has not extended any other offers regarding a change of plea in this case."*

25.6 On 27 November 2018 the DoJ produced an *'Information'* document setting out the particulars of the case against Mr Ledvina, culminating in the following charge:

> *"From in or about 2013 through in or about 2018, in the District of Massachusetts and elsewhere, the defendant, MATTHEW LEDVINA, conspired with and others known and unknown to the United States Attorney to commit an offense against the United States, specifically, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.106-5, that is, to knowingly and wilfully, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of a national securities exchange, directly and indirectly use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities in contravention of Rule 10b-5 of the Rules and Regulations promulgated by the Securities and Exchange Commission, by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of circumstances under which they were made, not misleading, and (e) engaging in acts, practices and courses of business which would and did operate as a fraud and deceit upon any person in connection with the purchase and sale of securities, specifically various microcap stocks traded on the OTC market, including, but not limited to, EPTL."*

25.7 On 31 January 2019, Mr Ledvina appeared before Judge William G. Young (the "Judge") and formally entered his plea of guilty to the offence. The Judge first ascertained that the Mr Ledvina understood his rights, and the nature and elements of the offence with which he had been charged; that he was pleading guilty of his own free will, and he understood the possible consequences that might follow. The Judge also asked the prosecutor to outline the facts of the case before asking Mr Ledvina to confirm whether they were *"all true"*.

25.8 Referring to transcript of the court proceedings, Mr Collis submitted that it was clear that Mr Ledvina knowingly accepted that he had:

- "engaged in a deceptive scheme to sell publicly-traded stock to investors";
- assisted "in that fraud by helping" others "to conceal ownership of the shares by creating what's known as "nominee entity companies," one of which was registered in Mr Ledvina's own name, and he did that knowing that [a named individual] controlled the actual shares";
- "had an agreement" that he and another "would be paid approximately 4.5 percent of the group's net-trading proceeds from the pump-and-dump of this and other schemes";
- "created these beneficial ownerships where they transferred the stock into nominee entities and then on to" a named entity. Transferred approximately "8 to 10 million shares" into that entity "that were free trading shares", resulting in an "intended loss of about ... $15 to 16 million" and loss of "about $1.5million".

25.9 The Judge then declared:

> *"I do find that Mr. Matthew Ledvina, knowingly, intelligently, and voluntarily, exercises his right to plead guilty upon arraignment to this one-count information."*

25.10 Mr Ledvina was then formally arraigned, whereupon he pleaded guilty:

> *"THE CLERK: Mr. Ledvina, the United States Attorney has charged you in a one-count information for conspiracy to commit securities fraud in violation of Title 18, United States Code, Section 371. How do you now plead to Count 1, guilty or not guilty?*
> *THE DEFENDANT: Guilty*."

25.11 The conviction was subsequently recorded in an *'Amended Judgment'* dated 8 January 2021, signed electronically by the Judge.

25.12 On 3 June 2020 Mr Ledvina was sentenced to probation for a period of 30 months (including conditions) and ordered to pay a fine of $50,000.00 together with an assessment fee of $100.

25.13 On 8 January 2021, Mr Ledvina was further ordered, jointly and severally with others, to make restitution in the sum of $1,908,583.26 to the victims of his offending.

The status and admissibility of the US conviction

25.14 Mr Collis acknowledged that Rule 32(1) of the Solicitors (Disciplinary Proceedings) Rules 2019 was not engaged because this was not *"a conviction for a criminal offence in the United Kingdom"*.

25.15 The wording of Rule 32(2) was materially different to earlier iterations of the rules (e.g. Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007), which contained no such jurisdictional limitations, such that foreign convictions were automatically admissible as conclusive proof of guilt, at least in the absence of exceptional circumstances.

25.16 Nevertheless, Mr Collis said that it was the Applicant's case that the US conviction was admissible as conclusive proof of Mr Ledvina's guilt and that, absent any exceptional circumstances, the Tribunal should not go behind the findings of the Court but should take them at face value.

25.17 In support of this contention Mr Collis referred to the authorities of Rak-Latos v General Dental Council [2018] EWHC 3503 (Admin) and Shepherd v Law Society [1996] EWCA Civ 977 .The proper way to challenge a criminal conviction is by way of an appeal and the Applicant was not aware that Mr Ledvina had appealed his conviction, however, it was to be noted that he had pleaded guilty following a careful and detailed inquiry by the Judge. Moreover, the plea agreement signed by Mr Ledvina and his attorney expressly provided that the *"Defendant waives any right to challenge Defendant's conviction on direct appeal or in a future proceeding (collateral or otherwise)"*.

25.18 Mr Collis said that the inclusion of the words *"in the United Kingdom"* in Rule 32(1) could not have been intended by Parliament to fetter the Tribunal's long-standing ability to discipline solicitors convicted of serious criminality in respectable jurisdictions as this would lead to absurdity, excluding reliance upon, for example, Manx, Channel Island and Gibraltar convictions (which, prior to 25 November 2019, would have stood as conclusive proof of the facts). Rather, it should be understood as a *'safety valve'*; preventing automatic and unfair reliance on convictions: (i) from jurisdictions of dubious credibility, such as North Korea, the Russian Federation and Iran; and/or (ii) for 'offences' which are no longer offences under domestic law, such as blasphemy.

25.19 Mr Collis next outlined the alleged breaches.

Outcome 11.1

25.20 By conspiring with others to commit securities fraud in the US Mr Ledvina necessarily took unfair advantage of the victims of that fraud. He therefore failed to achieve Outcome 11.1 under the Code.

Domestic Principle 2/Overseas Principle 2

25.21 The Respondent's criminal offending by participating in a conspiracy to commit securities fraud constituted a serious failure to act with integrity, i.e., with "*moral soundness, rectitude and steady adherence to an ethical code"*: Hoodless v Financial Services Authority [2003] UKFSM FSM007. He therefore breached Principle 2 of the Domestic Principles or, alternatively, Principle 2 of the Overseas Principles.

25.22 In assessing whether an individual has shown a lack of integrity, their state of mind is a relevant (but not necessarily determinative) consideration. In Newell Austin v Solicitors Regulation Authority [2017] EWHC 411 (Admin), Morris J said:

> *"At one extreme, if the person is unaware of the relevant conduct, there can be no lack of integrity. At the other extreme, actual knowledge or recklessness in the sense of being aware that the conduct posed a risk and consciously taking it, will be highly likely to give rise to a finding of lack of integrity. However, I accept the SRA's submission that it is wrong to define lack of integrity as requiring recklessness. Lack of integrity does not necessarily involve risk taking. So for example, the solicitor who dips into the client account with the intention of putting the money back lacks integrity because a client account is sacrosanct and regardless of the risk of the money not being repaid."*

25.23 In Wingate v Solicitors Regulation Authority [2018] EWCA Civ 366, the Court of Appeal held that:

> *"Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty ... a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse… The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the*

> *case of solicitors: i) A sole practice giving the appearance of being a partnership and deliberately flouting the conduct rules (Emeana); ii) Recklessly, but not dishonestly, allowing a court to be misled (Brett); iii) Subordinating the interests of the clients to the solicitors' own financial interests (Chan); iv) Making improper payments out of the client account (Scott); v) Allowing the firm to become involved in conveyancing transactions which bear the hallmarks mortgage fraud (Newell-Austin); vi) Making false representations on behalf of the client (Williams) ...*
>
> *... A professional disciplinary tribunal has specialist knowledge of the profession to which the respondent belongs and of the ethical standards of that profession. Accordingly such a body is well placed to identify want of integrity. The decisions of such a body must be respected, unless it has erred in law."*

25.24 It was the Applicant's case that a solicitor who conspires with others to commit securities fraud thereby shows a lack of integrity and while fraud of any kind is a profoundly serious matter it is especially so for a solicitor as a member of a profession whose reputation depends on trust.

Domestic Principle 6/Overseas Principle 6

25.25 Mr Ledvina's offending was also profoundly damaging to public trust in the Respondent and in the profession. Solicitors are officers of the Court. Members of the public do not expect officers of the Court to engage in conspiracies to commit fraud of any kind, either at home or abroad. Doing so is wholly unbefitting of a solicitor and liable to bring the profession into serious disrepute. Mr Ledvina therefore breached Domestic Principle 6 or, alternatively, Overseas Principle 6.

Dishonesty

25.26 Mr Collis said that the Applicant relied on the test for dishonesty confirmed by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings:

> *"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."*

25.27 Mr Collis said that ordinary, decent people would regard Mr Ledvina's conduct giving rise to his conviction for conspiracy to commit securities fraud as dishonest and, accordingly, he invited the Tribunal to find dishonesty as an aggravating feature of the misconduct.

25.28 Mr Collis contended that dishonesty is inherent within and integral to the very concept of fraud and that much was apparent from the Judge's careful explanation of the nature of the offence to which the Respondent subsequently pleaded guilty:

> *"Now this conspiracy, as it is alleged here, is a conspiracy to commit securities fraud. "Fraud" is to make a statement of material fact -- "material" means a statement of a fact that makes a difference to the hearing which you know is untrue, to make a false misstatement of material fact with the intent that the other person, the hearer, part with money or property. That's fraud.*
>
> *THE DEFENDANT: Yes.*
>
> *THE COURT: "Securities fraud" is to make such a statement or to fail to make a statement of material fact in circumstances where an accurate statement is called for, again with the intention that somebody else surrender or turn over or part with money or property in connection with the purchase or sale of securities. And "securities" is a defined term, it covers stock and other instruments of trade."*

25.29 Mr Collis also referred the Tribunal to the following passages of the *'Information'* document which formed the factual basis of Mr Ledvina's guilty plea (he having waived his right to indictment):

> *"As set forth below, from in or about 2013 through 2018,[redacted] LEDVINA, [redacted] and others known and unknown to the United States Attorney, conspired to commit securities fraud by disguising the conspirators' ownership and control of various microcap securities, and employing paid promotional campaigns and manipulative trading techniques to artificially inflate the price and trading volume of those stocks-including, but not limited to, the stock of[redacted] so [redacted] that and others could secretly sell their shares of those stocks at a substantial profit.*
>
> *The object of the conspiracy was for [redacted] LEDVINA [redacted], and their co- conspirators to commit securities fraud by pumping and dumping the shares of publicly traded companies. The principal purpose of the conspiracy was for the defendants and their co- conspirators to make money.*
>
> *Another purpose of the conspiracy was for [redacted] LEDVINA [redacted], and their co-conspirators to conceal their actions from regulators, law enforcement and other investors.*
>
> *Among the manner and means by which [redacted] LEDVINA [redacted], and their co-conspirators carried out the conspiracy were the following:*

> *a. Taking private companies public through reverse mergers into publicly traded shell companies;*
>
> *b. Concealing their control of the publicly traded companies by using nominee entities, individuals and accounts to hold their shares;*
>
> *c. Engaging in manipulative trading techniques, and paying promoters to tout the stock of the publicly traded companies through the dissemination of false and misleading press releases and other materials, in order to increase investor interest in the companies and thereby artificially bolster their share price and trading volume; and*
>
> *d. Selling their shares (through the nominee entities) during the promotional campaigns."*

25.30 Mr Collis said Mr Ledvina had, in correspondence with the Applicant, denied dishonesty and, in doing so, he had relied on the Judge's description of his actions as a *"knowing misstep"*. Mr Collis said it was clear that this was no answer to the charge of dishonesty and when read in context the phrase *"knowing misstep"* was clearly used by the Judge to distinguish Mr Ledvina's conduct from an *"inadvertent'* misstep. The Judge immediately went on to say *"this wasn't some mistake"* and, later that this was *"a real crime"*.

25.31 Mr Collis refuted the argument that there had been undue delay on the Applicant's part in bringing the matter before the Tribunal such that the delay was a breach of Mr Ledvina's rights under Article 6 of the European Convention for the Protection of Human Rights.

25.32 Whilst a report may have been made to the Applicant in relation to Mr Ledvina's involvement in criminal proceedings in December 2018, Mr Ledvina was not sentenced in respect of those proceedings until 3 June 2020 and the ancillary proceedings in connection with that conviction did not conclude until 8 January 2021.

25.33 Given that Mr Ledvina was now scheduled to face a substantive hearing at the Tribunal in September 2022, it was difficult to understand the basis of his Article 6 complaint when this case related to a prosecution that did not conclude until January 2021.

25.34 Mr Collis said that Mr Ledvina had not identified any basis that it would now be unfair for his regulatory hearing to take place or that he could not receive a fair hearing, because of this alleged breach of the Article 6 requirements. There was no suggestion from Mr Ledvina that he had been prejudiced by the passage of time between the initial reporting of the matter; the conclusion of the criminal proceedings in the US; and the substantive hearing fixed for 26– 27 September 2022.

25.35 Finally, Mr Ledvina's request to be removed from the Roll was submitted after the Applicant had been notified of the criminal proceedings. Regulation 10 of the Solicitors Keeping of the Roll Regulations 2011 expressly states:

> "*The SRA may refuse to remove from or restore to the roll the name of a solicitor or former solicitor against whom there is an outstanding complaint."*

The Respondent's Case

25.36 In his Answer dated 28 June 2022 Mr Ledvina set out the following:

25.36.1 That Rule 32(1) does not permit the Applicant to rely on the US conviction as conclusive proof of any underlying fact.

25.36.2 The US conviction was the result of a plea bargain. Public policy in the United Kingdom is not the same as public policy in the US regarding the negotiability of criminal sentences based on plea bargaining.

25.36.3 The US conviction was not the result of a fact-finding enquiry by the US courts. The only enquiry made by the judge was whether he *"knowingly, intelligently and voluntarily"* exercised his right to plead guilty upon arraignment. This was not the same as finding the facts of the underlying case proven and it would be wrong to treat a conviction in such circumstances as proof of any fact independently found by a competent and independent tribunal.

25.36.4 The threshold for a "conspiracy" charge in the US is low. It does not require, nor imply dishonest intent.

25.36.5 The Tribunal is a disciplinary tribunal with expert knowledge of practice as a solicitor in England and Wales. It is generally authorised by statute to regulate its own procedure. The fact that the Tribunal elected to limit the admissibility of certificates of conviction as conclusive proof of underlying facts to UK judgments as recently as 2019 was both procedurally and legally proper and the Tribunal was invited by Mr Ledvina to reject the Applicant's request for it to go behind its own rules, imposed following public consultation.

25.37 Mr Ledvina said the change in the rules in 2019 recognised that the Tribunal is not qualified to opine on questions of foreign law and that accepting certificates of conviction as conclusive evidence in circumstances where the Tribunal is unfamiliar with relevant law, practice and procedure is inherently unfair.

25.38 In any event, the US conviction went no further than stating that Mr Ledvina's name was used in connection with nominee companies. That was the only fact in the *Information* laid before the US Court. Whilst Mr Ledvina acknowledged that the prosecutor's oral submissions diverged from the *Information*, it was apparent from the oral submissions that the prosecutor was unable to articulate Mr Ledvina's role in the scheme divorced from any other individual.

25.39 Mr Ledvina observed that he was the only defendant who was not also charged with actual securities fraud. Furthermore, it was plain from the transcript that he was not comfortable with the oral submissions made by the prosecutor. It was his understanding that his plea agreement precluded him from putting forward any alternative information.

25.40 Mr Ledvina contended that he should answer to the Tribunal for his own conduct and not that of others. Although the Applicant relied on the fact of the conviction, the matters pleaded were largely taken from the transcript of oral submissions rather than

the information laid before the Court and nowhere in the transcript was the Respondent's own conduct addressed in sufficiently unambiguous terms to enable the Tribunal to take an informed view of what he actually did.

25.41 Mr Ledvina said that he was obliged to plead guilty to the charge of conspiracy in the US simply because his name was used in connection with nominee companies, and he was advised of a risk that his co-defendants would be offered reduced sentences to testify against him if he did not accept the plea bargain. He was shown an agreement electronically signed in his name. He did not sign it, nor authorise its signature on his behalf and he denied ever being party to an agreement to be a part of the fraudulent scheme.

25.42 Mr Ledvina believed that the US prosecutors would have alleged actual securities fraud had there been any evidence of his involvement beyond the use of his name and that he was not charged with securities fraud because the US authorities accepted that his signature had been used without his knowledge and consent. The conspiracy charge nevertheless allowed the prosecutor to proceed without having to demonstrate knowledge or intent on Mr Ledvina's part.

25.43 He was not, in fact, involved in establishing nominee companies, nor in the fraud at all and he believed that his name, electronic signature and identification were taken from his firm's records and used without his consent by the principal driver of the securities fraud. He did not discover what was occurring until 2018. Nevertheless, he was advised not to challenge the US prosecution and to accept the plea bargain offered during a single interview with prosecutors. He was not and could not have been properly charged with the actual commission of securities fraud.

25.44 That said Mr Ledvina nevertheless accepted that he entered a guilty plea on the conspiracy charge, and he did not seek to challenge the conviction before the Tribunal.

25.45 However, Mr Ledvina submitted that the conviction, and particularly, his own conduct did not amount to the misconduct alleged in the Rule 12 Statement.

25.46 As to allegation 1.1, the Respondent denied that he acted in breach of Outcome 11.1. At no time did he seek to take unfair advantage of any third party, either professionally or personally. He did not, in fact, have contact with any third party about the matters in issue during the time in issue, did not send out or endorse any marketing material and did not personally take any other action designed to take unfair advantage of any person. Further, he did not benefit from the fraud and was not obliged to forfeit any assets in recognition of that fact. Those who were knowingly involved in the fraud forfeited around $4million.

25.47 He did not benefit from the fraud because he was not a party to it, would not have knowingly been a party to it and in fact had no knowledge of the improper use of his name, ID and electronic signature.

25.48 As to Allegations 1.2 and 1.3, these allegations were alternative allegations arising because he did not practice in England and Wales and he had no genuine connection with this jurisdiction other than having been unable to remove his name voluntarily

from the Roll upon his request to do so in 2019 when he reported the outcome of the US proceedings to the Applicant.

25.49 He denied acting without integrity contrary to Principle 2 of the SRA Principles and/or the SRA Overseas Principles. He maintained that he was not an active conspirator, nor did he personally take any action upon which to found this allegation. It was his case that he was unaware of the activities of others until 2018 when it all came to light.

25.50 Mr Ledvina accepted that he pleaded guilty to a charge of conspiring to commit securities fraud in the US and that the act of pleading guilty would tend to undermine public confidence in a legal professional. Accordingly, whilst he acted on advice in accepting a plea bargain, he accepted that pleading guilty to such a charge amounted to a breach of Principle 6 of the SRA and/or Overseas Principles 2011.

25.51 Mr Ledvina denied acting dishonestly as alleged or at all and it was his case that dishonesty was not a necessary ingredient of the US conviction, that there was no evidence to support a charge of dishonesty. It was he, who had been the victim of dishonesty on the part of those engaged in committing fraud who had used his name and documents without consent.

25.52 The Applicant had not conducted a proper investigation and analysis of facts and US criminal law and principles to be able to forensically assess his plea agreement against equivalent UK laws, statutes and policies.

25.53 Mr Ledvina submitted that under US federal conspiracy law, one need not be aware of all the details of the offence, or all the participants, or all the aspects of the offence. He did not enter into any agreement or plead guilty with the US authorities where he admitted to "fraud". A conspiracy charge in the US does not require a high threshold for conviction. Once the underlying crime is established, in essence, anyone involved in any act which has the effect of furthering the conspiracy is caught in the wide net of liability which is cast by the allegation. Mr Ledvina did not believe that the English system had such a low threshold for a criminal matter.

25.54 The restitution was satisfied wholly by the proceeds of the fraud that his two co-accused had committed, both had forfeited around $4 million of their profits to the US authorities, and the payment of restitution was paid from their forfeiture.

25.55 With respect to the decision in Rak-Latos, Mr Ledvina made the following points:

(i) the decision predated the Tribunal's change to its own rules excluding foreign certificates of conviction as proof of the underlying facts. The Tribunal had therefore elected not to follow the reasoning in Rak-Latos when promulgating its own rules a year later.

(ii) the decision in Rak-Latos is a European decision at a time when the UK had mutual recognition treaties in place with the EU. The UK has never had a mutual recognition arrangement in place with the US in relation to criminal matters. Furthermore, on the facts, Rak-Latos was a disparate case from his own as the Respondent in Rak-Latos was charged with multiple counts of principal offences such as tax evasion and tax fraud, and not conspiracy.

25.56 Mr Ledvina disputed the Applicant's reasoning for bringing the proceedings. He submitted that there were three essential reasons for bringing disciplinary proceedings as follows:

(i) Protecting the public: As a US tax adviser outside of the UK, the Applicant had no jurisdiction over any part of the public which might have been affected by his actions. Insofar as it is necessary for the protection of the public this purpose could have been wholly and expeditiously achieved in early 2019 by allowing his application to be removed from the Roll.

(ii) Deterrent: All the Applicant achieved by pursuing this matter was to highlight delay and unfairness in comparison to other regulatory regimes e.g., the Tennessee bar. His actions, had they been carried out in the UK, would not be a crime.

(iii) Punishment: He had already been fined $50,000 and had to close his firm in early 2019. He had been suspended from the Tennessee bar and he questioned on what basis should the authorities in England impose an additional punishment when his life and actions had no connection to the jurisdiction?

25.57 The proceedings were disproportionate and unnecessary. Mr Ledvina pointed to the unexplained delay on the part of the Applicant in bringing the proceedings and he had requested to be removed from the Roll when he self-reported in January 2019, more than three years ago.

25.58 Despite there being no connection between him and the United Kingdom (other than his name remaining on the Roll), the Applicant had refused his request to remove his name from the Roll and instead it initiated disciplinary proceedings.

25.59 The delay was unconscionable and represented a breach of his Article 6 ECHR rights. By way of comparison, the criminal proceedings had lasted around 3 months and the US disciplinary proceedings were concluded more than two years ago, such that he was entitled to apply to return to practice in the US should he so wish.

25.60 The plea agreement was also the subject of extensive publicity in 2019 and 2020 and the proceedings represented a serious and unnecessary setback in rebuilding his life and reputation following the US conviction.

The Tribunal's Findings

25.61 The Tribunal noted that the Applicant was required to prove the allegations on the balance of probabilities.

25.62 The Tribunal had carefully listened to Mr Collis' submissions and read the Answer and correspondence provided by Mr Ledvina.

The status and admissibility of the US conviction

25.63 The Tribunal noted that the status of foreign convictions before the General Dental Council ("the GDC") was considered by the High Court in Rak-Latos v GDC [2018]

EWHC 3503 (Admin). As with the Tribunal, the GDC's comparable rules also referred exclusively to domestic convictions (see paragraph 24 of Rak-Latos). However, in response to the argument that as a result these rules did not apply, Pepperall J stated:

> *"Nevertheless, in my judgment, the PCC was right to take the conviction at face value and to reject evidence in which Mrs Rak-Latos sought to present an account of events that was inconsistent with her conviction. Further, it was right to characterise Mrs Rak-Latos's approach to the case as an attempt to minimise her involvement and to identify her clear lack of insight into the seriousness of her conviction" (paragraph 27)*

25.64 The Tribunal considered that Mr Ledvina's written submissions were an attempt to obfuscate the circumstances of the conviction and to minimise the significance of the guilty plea he had entered voluntarily.

25.65 This amounted to *'going behind the conviction'*. Mrs Rak-Latos' arguments had been rejected by the High Court as would Mr Ledvina's by the Tribunal. Regulatory hearings before a Tribunal are not the appropriate forum to challenge the validity of a conviction or the basis for it.

25.66 Notwithstanding Mr Ledvina's attempt to imply that he was wrongly implicated in the conspiracy and the implicit assertion of his innocence the Tribunal had before it his clear and unequivocal acceptance of the facts as opened by the prosecutor to the court.

25.67 The Judge in the criminal proceedings took obvious pains to establish with Mr Ledvina that he understood the significance of his guilty plea to the charge of conspiracy to commit securities fraud and that, by pleading guilty, Mr Ledvina accepted without demur the conduct attributed to him by the prosecutor.

25.68 The Tribunal was aware that Rule 32 (1) of the Solicitors (Disciplinary Proceedings) Rules 2019 specifies that a conviction for a criminal offence in the United Kingdom may be proved by the production of a certified copy of the certificate of conviction relating to the offence. The Tribunal noted that this was a deliberate decision to prevent automatic and unfair reliance on convictions from jurisdictions of dubious credibility for 'offences' which are no longer offences under domestic law. There was nothing to suggest, however, that the USA was a jurisdiction which should cause the Tribunal any concern.

25.69 The Tribunal considered that it could assume with sufficient certainty that the offence of fraud under US Federal Law contained at its core the essential elements which the public, either here or in USA would recognise, namely, deception, deceit and deliberate misrepresentation.

25.70 In all the circumstances, the Tribunal considered it was entitled to treat the conviction for the US offence as conclusive proof of the facts upon which it was based.

Breaches of the Principles and failure to achieve Outcomes

25.71 The Tribunal found that by reason of his conviction he was in breach.

25.72 The Tribunal adopted the reasoning set out by Mr Collis in his submissions which it found unassailable given the intrinsic nature of the offence to which Mr Ledvina had pleaded guilty.

25.73 The Tribunal therefore found on the balance of probabilities a failure by Mr Ledvina to achieve:

- Outcome 11.1

And breaches of:

- Domestic Principle 2/Overseas Principle 2
- Domestic Principle 6/Overseas Principle 6

Dishonesty

25.74 In reaching a determination on whether Mr Ledvina had been dishonest the Tribunal applied the test set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67.

25.75 With respect to the first limb of the test the Tribunal was satisfied that Mr Ledvina had entered his plea '*freely, voluntarily, and knowingly'* and that the following matters would have been known to him:

- He had engaged in a deceptive scheme to sell publicly traded stock to investors;

- He had assisted in that fraud by helping others to conceal ownership of the shares by creating what's known as "nominee entity companies," one of which was registered in Mr. Ledvina's own name, and he did that knowing that [a named individual] controlled the actual shares;

- He had an agreement that he and another would be paid approximately 4.5 percent of the group's net-trading proceeds from the pump-and-dump of this and other schemes;

- He had created these beneficial ownerships where they transferred the stock into nominee entities and then on to a named entity;

- He had transferred approximately "8 to 10 million shares" into that entity "that were free trading shares", resulting in an "intended loss of about ... $15 to 16 million" and loss" of "about $1.5million".

25.76 Having established his actual state of mind as to the facts the Tribunal applied the second limb of the test, namely whether, by the objective standards of ordinary decent people Mr Ledvina had acted dishonestly.

25.77 Mr Ledvina had pleaded guilty to conspiracy to commit securities fraud, an offence by its nature which required the elements of deceit and deception.

25.78 The Tribunal was satisfied that by involving himself in the offence he would be considered dishonest by the standards of ordinary decent people and the Tribunal found the allegation of dishonesty proved on the balance of probabilities.

25.79 Finally, the Tribunal dismissed Mr Ledvina's submission that he had been prejudiced by delay. The sole evidence in this case was the conviction and the Applicant's explanation of the underlying conduct. This was not a case in which it could be suggested that the quality of the available evidence may have been degraded because of the passage of time.

Previous Disciplinary Matters

26. There were no previous findings.

Mitigation

27. No mitigation was advanced by Mr Ledvina.

Sanction

28. The Tribunal considered the Guidance Note on Sanction (10th Edition June 2022) ("the Sanctions Guidance"). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

29. The Tribunal observed that Mr Ledvina had, by his own plea, been convicted of a serious offence, namely conspiracy to commit securities fraud.

30. In assessing culpability, the Tribunal found Mr Ledvina to be fully culpable as he had been a knowing part of the conspiracy.

31. In assessing harm, the Tribunal noted there was serious harm to individual investors who had lost substantial sums of money having been led to believe that they were involving themselves in an honest scheme. The potential harm to others had also been apparent.

32. The damage to the reputation of the profession was therefore very high as this had the potential to discredit the profession both internationally and domestically.

33. The public would expect that a solicitor's obligations to act honestly, with integrity and to uphold public trust in the profession were not subject to any territorial limitations. The trust the public placed in the profession was shattered when a solicitor engaged in serious criminal activity, particularly in the course of his work.

34. The Tribunal was unable to identify any mitigating factors in this case.

35. 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 harm.

36. Mr Ledvina was found to have been dishonest. The element of dishonesty was therefore an aggravating factor. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> *"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. Also quoting from Sharma, the Sanction Guidance states:

> *"A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances …"* confined to… *"a small residual category where striking off will be a disproportionate sentence in all the circumstances ..."*.

38. The Tribunal did not consider there were exceptional circumstances present in Mr Ledvina's case such that a lesser sanction was warranted. The protection of the public and public confidence in the profession and the reputation of the profession required no lesser sanction than that Mr Ledvina be removed from the Roll.

Costs

39. Mr Collis said the quantum of costs claimed by the Applicant was in the sum of £3,675.00.

40. The proceedings had been correctly brought by Applicant and it was right that it should recover its costs in doing so. The hours claimed by the Applicant were not excessive and were reasonable and proportionate in the circumstances of the case and that the Applicant was entitled to its costs.

The Tribunal's Decision on Costs

41. Having listened with care to the submissions made by Mr Collis with respect to costs the Tribunal considered that it was able to summarily assess costs.

42. The Tribunal noted the following factors:

- The substantive hearing had taken less time than anticipated: half a day instead of a full day.
- There had been dispute of fact between the parties.
- Mr Ledvina had not attended the hearing, having followed the advice given to him by his US attorneys.
- There had been no witnesses.

43. The Tribunal found the case had been properly brought by the Applicant as it had raised serious issues regarding Mr Ledvina's involvement in a conspiracy of some magnitude which had resulted in financial loss to investors. The public would expect the Applicant

to have prepared its case with requisite thoroughness and, in this regard, it had properly discharged its duty to the public and the Tribunal.

44. The Tribunal found that it was appropriate for the Applicant to recover its costs in full. The Tribunal therefore ordered Mr Ledvina to pay the Applicant's costs in the sum of £3,675.00.

Statement of Full Order

45. The Tribunal Ordered that the Respondent, MATTHEW CONWAY LEDVINA, 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 £3,675.00.

Dated this 9th day of November 2022
On behalf of the Tribunal

A Kellett
Chair