

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12404-2022

BETWEEN:

MARCO DELLAPINA

Applicant

and

SOLICITORS REGULATION AUTHORITY LTD

Respondent

Before:

Miss H Dobson (in the chair)

Ms H Appleby

Ms L Hawkins

Date of Hearing: 9 March 2023

Appearances

Mr Dellapina represented himself.

Inderjit Johal, barrister of Solicitors Regulation Authority Ltd, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Respondent

**MEMORANDUM OF DECISION:
APPLICATION TO REMOVE/VARY CONDITIONS**

1. On 9 February 2016, the Tribunal found the following allegations proved against Mr Dellapina. These were that whilst a Partner and Director at Diaz Dellapina Limited (“the Firm”), a recognised body, he:

“1.1 Made unallocated round sum transfers from client account to office account in the sum of £27,078.00 in breach of Rules 1.2 (a), (c), 7.1 and 20.1 of the SRA Accounts Rules 2011 (“SAR 2011”) and in breach of all, or alternatively any, of Principles 4,5,6 and 10 of the SRA Principles 2011 (“the Principles”);

1.2 Caused or permitted 24 client debit balances to exist in client account as at the extraction date of 30 June 2013 totalling £19,383.70 in breach of Rules 1.2 (c), 7.1 and 20.6 of the SAR 2011, and all, or alternatively any, of Principles 4,5,6 and 10 of the Principles and where the Respondent’s conduct pre-dates 6 October 2011, he acted in breach of rules 1(d), 7 and 22(5) of the Solicitors Accounts Rules 1998 (“SAR 1998”) and all or alternatively any of Rules 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 (“SCC 2007”);

1.3 Caused or permitted 30 unallocated transactions (not falling into the category of “unallocated round sum transfers” above) to be made between August 2010 and June 2013 in the sum of £7,329.54 in breach of Rules 1.2 (a), (c), 7.1 and 20.1 of the SAR 2011 and all, or alternatively any, of Principles 4,5,6 and 10 of the Principles and where the Respondent’s conduct pre-dates 6 October 2011, he acted in breach of Rules 1(d), 7 and 22 of the SAR 1998 and all or alternatively any of Rules 1.04, 1.05 and 1.06 of the SCC 2007;

2.1 Acted contrary to Rule 20.6 of the SAR 2011 by causing or permitting 27 client debit balances to exist in client account as at the extraction date of 30 April 2015 totalling £4,470.73 and in breach of all or alternatively any of Principles 4,5,6,8 and 10 of the Principles and failing to achieve Outcomes 7.2, 7.3 and 7.4 of the SRA Code of Conduct 2011 (“SCC 2011”);

2.2 Acted contrary to Rule 29.1 of the SAR 2011 by failing to keep accounting records properly written up, and in breach of all or alternatively any of Principles 4,5,6,8 and 10 of the Principles and failed to achieve Outcomes 7.2, 7.3 and 7.4 of the SCC 2011;

2.3 Acted contrary to Rule 29.12 of the SAR 2011 by failing to carry out client bank account reconciliations every five weeks.”

2. The Tribunal had made the following Order:

“1. The Tribunal Ordered that the Respondent, MARCO DELLAPINA, solicitor, do pay a fine of £3,750.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00, such costs not to be enforced without leave of the Tribunal.

2. The Respondent shall be subject to conditions imposed by the Tribunal as follows:
 - 2.1 The Respondent may not:
 - 2.1.1 Practise as a sole practitioner, partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS); or
 - 2.1.2 Be a Compliance Officer for Legal Practice or a Compliance Officer for Financial Administration
 - 2.1.3 Hold client money.
3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.”

3. In reaching sanction, the Tribunal’s Judgment had recorded its reasons as follows:

“39. The Tribunal referred to its Guidance Note on Sanctions (4th edition). The Tribunal assessed the seriousness of the Respondent’s misconduct. There was no sinister motivation and the breaches had not been planned. The Respondent had not acted in breach of a position of trust. He had ultimate responsibility for the Firm’s compliance with its professional obligations although the Tribunal accepted that he had been let down by his business partner in the London office, his bookkeeper and a degree of naivety. There was no evidence of direct harm caused to any clients but there was the potential for significant harm had the Respondent been unable to rectify the shortfalls in the way that he had. The reputation of the profession was inevitably damaged by a failure to protect client money properly. However there was no suggestion of dishonesty and the Respondent had not lacked integrity.

40. Matters were aggravated by the fact that they had continued over a significant period of time. The Respondent ought to have known that his failure to have effective systems in place was a material breach of his obligations.

41. The breaches were mitigated by the fact that the Respondent had been given incomplete and misleading information by HD. He had made considerable efforts to make good the shortfall at his own personal expense. He had worked co-operatively with the Applicant throughout two detailed investigations and in the wind-down of the practice. He had made early admissions to the breaches of the SAR 2011 and 1998. The Tribunal was impressed by the insight demonstrated by the Respondent. His evidence had been credible and he had told the Tribunal that he did not wish to run a business again as he recognised his managerial limitations.

42. The Tribunal found that a Reprimand was not an appropriate sanction. The sums of money involved, the time-span of the breaches and the potential for harm to an individual were too great for the public or reputation of the profession to be protected.

43. The misconduct was not so serious as to require a Suspension or a Strike Off. Taking into account the facts of this case the appropriate sanction was a Fine in the sum of £7,500 and the imposition of a Restriction Order on the Respondent. The Tribunal took account of the Respondent's limited means, partly brought on by his rectification of the breaches. In light of his financial circumstances the Tribunal decided it was appropriate to reduce the fine to £3,750.

44. The Tribunal decided that in order to protect the public from any future harm it was necessary to impose restrictions on the Respondent's future practice. The Tribunal determined that the Respondent should not be a sole practitioner, partner or member of a Limited Liability Partnership, or Alternative Business Structure. In addition he should not handle client money."

4. On 20 January 2023, Mr Dellapina had lodged an application to vary/remove the conditions on practice. His application had also referred to varying the Tribunal's Order in respect of costs and penalties. The Tribunal did not have jurisdiction to vary the Order save in relation to the conditions and so that was the part of the application that the Tribunal heard.
5. The application had initially been opposed by the SRA, though it had been indicated that it would keep the position under review. Following service of additional material, the SRA supported Mr Dellapina's application.

Mr Dellapina's Submissions

6. Mr Dellapina told the Tribunal that in addition to the training he had undertaken, he had reflected on what had happened that led to the 2016 appearance before the Tribunal. He had recognised the mistakes he had made and had grown since 2016. Mr Dellapina told the Tribunal that his circumstances were very different to those that existed in 2016. He and his family had moved to Italy and he worked remotely as a consultant for firms in the UK. There was no possibility of him returning to the UK to set up his own firm again. However, the conditions currently in place were restricting his earning capacity as firms would only engage him if he was able to bring his own work with him at present. Mr Dellapina was currently employed in a consultancy role at FidLaw.
7. Mr Dellapina invited the Tribunal to lift the conditions and he referred to his testimonials, training records and his two witness statements in support of his application.

Mr Johal's Submissions

8. Mr Johal told the Tribunal that the SRA now supported the application. Although it had initially opposed it, the Answer served by the SRA had said that the matter would remain under review if Mr Dellapina provided satisfactory evidence of rehabilitation. He had now provided documentary evidence of his attendance on courses, references from Taylor Rose and, in particular, the reference from FidLaw. Mr Dellapina had attended numerous courses on the Solicitors Accounts Rules and the Solicitors Code of Conduct. He had also provided his Continuing Professional Development record.

9. The SRA was satisfied that Mr Dellapina had provided ample evidence to support his professional rehabilitation. Mr Johal told the Tribunal that the SRA had taken account of the fact that the misconduct found in 2016 was not at the higher end of the spectrum, but moderately serious. There had been no dishonesty or lack of integrity and no direct harm to clients. Mr Dellapina had demonstrated insight at the original hearing in that he did not want to run a business, and that remained the position now.
10. Mr Johal told the Tribunal that the conditions had been in place for seven years and Mr Dellapina had complied with all of them throughout that time. Mr Dellapina had indicated that he had no intention of practising as a sole practitioner or as a partner. If he changed his mind in respect of that then he would still have to satisfy the SRA that he was a fit and proper person to take up a specified role such as COLP, COFA or HOFA.

The Tribunal's Decision

11. The Tribunal had regard to the Guidance Note on Other Powers of the Tribunal (6th edition). Although the factors set out there addressed other applications, some of the principles relevant to determination of indefinite suspensions were relevant to this application.
12. The Tribunal had regard to the two witness statements of Mr Dellapina and all the material he had produced in support of his application. The Tribunal also read the 2016 Judgment.
13. The Tribunal noted that there had been no dishonesty and no lack of integrity in the 2016 matters. There had been no breach of trust and Mr Dellapina had made good the shortfall. He had co-operated fully with the SRA and had demonstrated impressive insight both at the time and now.
14. The Tribunal considered that a key issue was the fact that the SRA now supported Mr Dellapina's application. There had been full compliance with the conditions since their imposition and Mr Dellapina had produced evidence of the courses he had attended, together with his references. The Tribunal could infer that he had operated very well at a senior level in the profession. He had been involved in managing and training younger people as well as he could within the restrictions under which he was operating.
15. Taken together, these factors suggested that there was no evidence of any risk of harm to the public. The Tribunal noted that even if the restrictions were lifted, Mr Dellapina would still be subject to regulatory oversight, particularly if he applied for a position that required SRA permission.
16. In all the circumstances, the Tribunal was satisfied that it would be disproportionate to refuse the application and it was therefore granted. The Tribunal ordered that the conditions be removed in their entirety with effect from 9 March 2023.

Costs

Mr Johal's Submissions

17. Mr Johal sought an order for costs in the sum of £1,435. This figure represented a reduction in the estimate to take account of the fact that the hearing was now remote (saving approximately £815) and had taken less than a full day. Mr Johal submitted that even though Mr Dellapina had been successful, the SRA had been required to respond to the application as the regulator as it related to the misconduct which had resulted in the conditions being imposed in 2016.
18. Mr Johal told the Tribunal that he opposed any application that the costs not be enforced without leave of the Tribunal on the basis that Mr Dellapina was employed and would now have the opportunity to earn more, the conditions having been lifted by the Tribunal. Mr Dellapina had not provided evidence of inability to pay, as required by Rule 43(5) of the SDPR.

Mr Dellapina's Submissions

19. Mr Dellapina told the Tribunal that he was already in potential dispute with the SRA regarding the costs from the previous occasion. The parties submissions on this dispute are not set out here, as the Tribunal had no jurisdiction to make a finding in respect of that matter. The Tribunal could only determine the application for costs in respect of the matter before it now. Mr Dellapina confirmed that his request that costs not be enforced without leave of the Tribunal did not relate to his ability to pay, but rather to this ongoing issue with the SRA.
20. Mr Dellapina told the Tribunal that he was not sure if the SRA was entitled to its costs on this type of application and had hoped there would be no costs to pay.

The Tribunal's Decision

21. The Tribunal was satisfied that it was appropriate to make an order for costs even though Mr Dellapina's application had succeeded. The SRA was required to respond to such applications and it had done so in a proportionate way. The costs claimed were entirely reasonable and there was no basis to reduce them further.
22. Mr Dellapina had not submitted that he could not pay the costs, rather that he wished the enforcement to only take place without leave of the Tribunal. The Tribunal noted that any such application to enforce would, in itself, generate further costs which would be disproportionate to the sum involved. The Tribunal therefore ordered that Mr Dellapina pay the SRA's costs and did not defer enforcement.

Statement of Full Order

23. The Tribunal Ordered that the application of MARCO DELLAPINA for the removal of all the conditions imposed by the Tribunal on 9 February 2016 be **GRANTED** and it further Ordered that the Applicant do pay the costs of the response of the Solicitors Regulation Authority Ltd to this application fixed in the sum of £1435.00.

Dated this 20th day of March 2023
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
20 MAR 2023

A handwritten signature in black ink that reads "H. Dobson". The signature is written in a cursive style with a large, looped 'H' and a clear 'Dobson'.

H Dobson
Chair