SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12497-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

AMJAD ELIAS SALFITI First Respondent

MARTINA JOVOVIC Second Respondent

Before:

Ms A Horne (in the Chair)
Ms H Hasan
Mr B Walsh

Date of Hearing: 26 February 2024

Appearances

There were no appearances as the matter was considered on the papers.

MEMORANDUM OF DECISION: APPLICATION TO WITHDRAW PROCEEDINGS

Note: The name of the witness referred to in this Memorandum is Mr Saddiq Omar Abuseedo. This is taken from his witness statement in these proceedings dated 14 January 2024. However, he is also referred to as Mr Abu Seedo in other documentation, including in witness statements made in the civil proceedings relevant to the Allegations contained in the Rule 12 Statement. The Tribunal has chosen to refer to him as Mr Abuseedo in this Memorandum, but where he has been referred to as Mr Abu Seedo in quoted documents, this has been left unamended. The Tribunal emphasises that no discourtesy is intended to Mr Abuseedo by the use of alternative iterations of his surname in this Memorandum.

The Rule 12 Statement in this matter was dated 4 September 2023. The case had been set down for a substantive hearing to commence on 26 February 2024 with a time estimate of five days.

Allegations

First Respondent

1. The Allegations set out in the Rule 12 Statement against the First Respondent were that, while in practice as a solicitor, he:

1.1 Having entered into a joint venture agreement with Mr Abu Seedo for the two of them to purchase 306 - 308 Elgin Avenue ("the Property") jointly, between approximately 2 June 2004 and 13 January 2005, he failed to:

1.1.1 Inform Mr Abu Seedo that Mr El Gamal had become involved in the purchase of the Property; and

1.1.2 Inform Mr Abu Seedo that the Property was to be registered in Mr El Gamal's name only and in doing so breached any or all of Rules 1 (a), (c) and (d) of the Solicitors' Practice Rules 1990 ("the Practice Rules").

1.2 On dates between or around June 2004 to 8 August 2004, made the following representations to Mr El Gamal which were false and/or misleading:

1.2.1 That he would contribute half of the deposit payable for the purchase of the Property by way of a loan; and

1.2.2 That Mr El Gamal would be the sole legal and beneficial owner of the Property, and in doing so breached any or all of Rules 1 (a), (c) and (d) of the Practice Rules.

1.3 On or around 15 November 2006, created or caused to be created a false Power of Attorney document purporting to give him power of attorney in relation to Mr Abu Seedo, and in doing so breached any or all of Rules 1 (a) and (d) of the Practice Rules.

1.4 On or around 4 May 2016, issued a claim in Mr Abu Seedo's name against Mr El Gamal and El Gamal and Company Limited without Mr Abu Seedo's authority, and in doing so breached any or all of and Principles 1, 2 and 6 of the SRA Principles 2011 ("the 2011 Principles") and failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011 ("the 2011 Code").

1.5 On or around 14 September 2020, made any or all of the statements set out in Schedule A in a witness statement for Central London County Court which were false and/or misleading, and in doing so breached any or all of Paragraph 1.4 of the Code of Conduct for Solicitors, RELs and RFLs ("the SRA Code") and Principles 1, 2, 4 and 5 of the SRA Principles ("the SRA Principles").

1.6 On or around 23 October 2020, made any or all of the averments set out in Schedule B in an "Amended Defence" document for Central London County Court which were false and/or misleading, and in doing so breached any or all of Paragraph 1.4 of the SRA Code and Principles 1, 2, 4 and 5 of the SRA Principles. The facts and matters in support of this Allegation are set out in paragraphs 8 to 75 and 105 to 110 below.

1.7 On or around 4 December 2020, made any or all of the following statements in oral evidence to Central London County that were false and/or misleading:

1.7.1 That the Trust Deed, dated 6 August 2004, had not been registered with the Land Registry in 2004 at the request of Mr El Gamal, or words to that effect; and

1.7.2 That he had instructed counsel in 2016 to draft Particulars of Claim on behalf of Mr Abu Seedo on the basis of instructions he had received from Mr Abu Seedo, with his full authority, or words to that effect, and in doing so breached any or all of and in doing so breached any or all of Paragraph 1.4 of the SRA Code and Principles 1, 2, 4 and 5 of the SRA Principles.

2. In addition, Allegations 1.1 - 1.7 were advanced on the basis that the First Respondent's conduct was dishonest.

<u>Second Respondent</u>

3. The Allegations made against the Second Respondent, Martina Jovovic, who was not and has never been a solicitor, were that, whilst working as a Senior Compliance Officer for John Street Solicitors LLP, she was guilty of conduct of such a nature that, in the opinion of the SRA, it would be undesirable for her to be involved in a legal practice going forward, including by reason of the following matters or any of them:

3.1. On or around 4 December 2020, she made the following statements in oral evidence to Central London County Court that were false and/or misleading:

3.1.1 That she would have seen some form of ID from the person signing the Power of Attorney document on 15 November 2006 before she signed to confirm witnessing their signature, or words to that effect, and in doing so breached any or all of Paragraph 1.4 of the SRA Code Principles 1, 2, 4 and 5 of the SRA Principles."

4. In the alternative to the dishonesty allegation above (the breach of Principle 4 of the SRA Principles), Allegation 3.1 was advanced on the basis that the Second Respondent's conduct was reckless.

5. Both Respondents denied all the Allegations made against them and it was anticipated that the substantive hearing would be fully contested.

6. On 21 February 2024, the SRA applied to withdraw all the Allegations against both Respondents.

7. Case Management Hearing ("CMH") – 6 February 2024

7.1 The background to the application to withdraw the Allegations was the outcome of a CMH that had taken place on 6 February to address an issue with the availability of one of the SRA's witnesses, Mr Abuseedo, who resided in the United Arab Emirates (UAE). Mr Abuseedo was required by both Respondents to attend for the purposes of cross-examination at the substantive hearing. The full details of the CMH are set out in the Memorandum that was issued following it. The key points are summarised below.

7.2 At a previous CMH on 23 November 2023 the Tribunal had made the following direction in relation to Mr Abuseedo's evidence:

> *"The substantive hearing will take place as a hybrid hearing (the parties attending in person and one witness giving evidence remotely from abroad, subject to the requisite permissions)."*

7.3 The matter was to be listed for a further CMH on 29 January 2024. On 24 January 2024 the SRA's representatives, Capsticks LLP, had written to the Tribunal in response to a request from the Tribunal for an update ahead of the CMH.

7.4 The relevant passages for these purposes stated as follows:

> *"As the Tribunal may be aware, Mr Seedo is required to attend for cross examination by those representing Mr Salfiti. He is resident in Dubai, is elderly and faces health difficulties. As agreed at the last CMH, the SRA have been making enquiries with the Foreign Commonwealth and Development Office (FCDO) on the question of whether permission is required for Mr Seedo to give evidence remotely from Dubai. The FCDO have raised enquiries of UAE [sic]. Currently, no response has been given by the UAE to the FCDO. We have further queries of the FCDO outstanding at this stage. We also have enquiries made in relation to whether Mr Seedo would be able to travel more locally to other states where potentially the position as to permission is clearer. If so, we would the [sic] need to confirm the position with the FCDO. There are therefore further enquiries which may assist the parties and the Tribunal determine the appropriate way forward and which we hope to finalise."*

7.5 Capsticks sought a short adjournment of the CMH. This was granted and the CMH was listed for 6 February 2024.

7.6 On 5 February 2024, Capsticks served written submissions in advance of the CMH the following day. These submissions invited the Tribunal to consider three propositions, which are set out below. The context of these submissions was that Capsticks had made enquiries with the Taking of Evidence Unit at the Foreign, Commonwealth and Development Office ("FCDO"), who had advised that the UAE had yet to respond to the FCDO's enquiry.

7.7 The most recent communications before the Tribunal between the FCDO and Capsticks

included an email from the FCDO dated 23 January 2024 which stated:

> *"The Government of UAE have not replied to FCDO enquiries, made on 6th December 2023 asking if they have an objection to a witness giving evidence from the Dubai [sic]. There has long been an understanding among Nation States that one State should not exercise the powers of its courts within the territory of another, without having the permission of that other State to do so. Any breach of that understanding by a court or tribunal in the UK risks damaging UK's diplomatic relations with other States and is contrary to the public interest.*
>
> *Therefore, the FCDO would recommend that the taking of evidence should not take place at this time."*

The Legal Context

7.8 The procedures referred to above followed the issuing of a Practice Note ("the Practice Note") on 11 May 2021 by the Chancellor of the High Court as follows:

> *"1. In a number of cases in the recent past, the issue has come up in relation to witnesses giving evidence by video link or other remote means from a foreign jurisdiction, that permission may be required from the local court or other authority in the foreign jurisdiction for the witness to give such evidence remotely to a Court in England and Wales. It is for the party calling the witness to ensure that such permission, if required, is obtained in good time for the trial or hearing at which the witness is to give evidence and to inform the Court that such permission has been obtained. This is already made clear in Annex 3 to Practice Direction 32 dealing with video conferencing. Paragraph 4 deals specifically with the need to obtain permission from the relevant foreign court or authority.*
>
> *2. In order to avoid unnecessary delays or disruption to trials or hearings, it is directed that, in any case where there is a pre-trial review ("PTR") a party calling a factual or expert witness remotely should have obtained any necessary permission by the date of the PTR and should inform the Court accordingly at the PTR.*
>
> *3. In cases where there is no PTR, a party calling a factual or expert witness remotely should have obtained any necessary permission by the time of filing the pre-trial check list and should record in the pre-trial check list that the permission has been obtained.*
>
> *Sir Julian Flaux*
> *Chancellor of the High Court*
> *11 May 2021"*

7.9 In Secretary of State for the Home Department v Agbabiaka [2021] UKUT 00286 (IAC) this issue was addressed, following guidance issued in Secretary of State for the Home Department v Nare [2011] UKUT 00443 (IAC). In Agbabiaka, the Upper Tribunal stated the following at [12] and [13]:

> *"B. TAKING EVIDENCE FROM ABROAD*
>
> *12. There has long been an understanding among Nation States that one State should not seek to exercise the powers of its courts within the territory of another, without having the permission of that other State to do so. Any breach of that understanding by a court or tribunal in the United Kingdom risks damaging this country's diplomatic relations with other States and is, thus, contrary to the public interest. The potential damage includes harm to the interests of justice since, if a court or tribunal acts in such a way as to damage international relations with another State, this risks permission being refused in subsequent cases, where evidence needs to be taken from within that State.*
>
> *13. As that last point indicates, it has long been accepted between Nation States that a court in one State may have a legitimate need to undertake the examination of a witness who is present in another State, or to inspect documents or other property in that State."*

7.10 After discussion relating to the Hague Convention, the Upper Tribunal held at [19]:

> *"19. We agree. Not all States are signatories to the Hague Convention. Whenever the issue arises in a tribunal about the taking of evidence from outside the United Kingdom, the question of whether it would be lawful to do so is a question of law for that country, whether or not that country is a signatory to the Hague Convention: Interdigital Technology Corporation & Ors v Lenovo Group Ltd & Ors [2021] EWHC 255 (Pat). In all cases, therefore, what the Tribunal needs to know is whether it may take such evidence without damaging the United Kingdom's diplomatic relationship with the other country."*

7.11 At the time Agbabiaka was heard, there had been no procedure for checking the diplomatic position in relation to evidence to be adduced before administrative tribunals. The Upper Tribunal had heard that the Taking of Evidence Unit was being established as of November 2021 to deal with that issue, with a proposed procedure being set out. For the purposes of this Memorandum, these procedures will be referred to as the "Agbabiaka procedures".

The CMH Decisions

7.12 At the CMH, the SRA put three propositions to the Tribunal.

- Proposition 1: "That the requirements relating to the obtaining permission from a foreign jurisdiction if it is proposed for an individual to give evidence remotely from within that jurisdiction do not apply to regulatory panels/tribunals";
- Proposition 2: "That if they [the Agbabiaka procedures] do apply, the SDT should still give its permission in the particular circumstances of this case"
- Proposition 3: "That the SDT should consider making a direction that would permit Mr Seedo's evidence to be admitted before the SDT in a manner that does not require him to give oral evidence."

7.13 The Respondents had opposed each proposition.

7.14 The Tribunal's decision in respect of Proposition 1 was as follows:

> *"The Tribunal read all the written material and listened carefully to the oral submissions of all parties. The background to the development of the Agbabiaka procedures is set out above and not repeated here. The question for the Tribunal was whether those procedures did in fact apply to it.*
>
> *The Tribunal was a statutory Tribunal, constituted under the legislation cited by Mr Croally [Counsel for the Second Respondent]. In situations where the Tribunal imposed a financial penalty, that penalty was payable to His Majesty the King. The Tribunal's powers and procedures all derived ultimately from Acts of Parliament".*

7.14.1 In the SRA submissions, Mr Collis [Counsel for the SRA] had written:

> *"The application of this approach to the taking of oral evidence from within a foreign jurisdiction has been confirmed to apply to the statutory or administrative tribunals…".*

7.14.2 Mr Collis had gone on to seek to draw a distinction between statutory or administrative Tribunals and regulatory panels or Tribunals. The Tribunal did not accept there was necessarily such a distinction. It was possible for a statutory Tribunal to also be a disciplinary Tribunal, as was the case with this Tribunal.

7.14.3 The Tribunal had been applying the Agbabiaka procedures since 2021 and had incorporated that into its pre-hearing documentation since 2022. There had, until 5 February 2024, been no challenge to the application of those procedures to the Tribunal, including in the course of these proceedings.

7.14.4 The Tribunal noted that the FCDO had been told expressly that the reason for the enquiry that was made in November 2023 was that the SRA intended to call Mr Abuseedo to give oral evidence before this Tribunal. The FCDO had not suggested that, in those circumstances, the enquiry was unnecessary and/or that the Agbabiaka principles did not apply to this Tribunal. To the contrary, the FCDO had accepted the payment of the fee of £150 and proceeded to make the enquiry. Furthermore, when the matter had been chased by Capsticks, the FCDO had not revised its position but had stated expressly that "…the FCDO would recommend that the taking of evidence should not take place at this time" due to the lack of response from the UAE.

7.14.5 Mr Collis had not been able to point to any authority from the Courts that had ruled either way on the point, and so there was no assistance there. The Tribunal considered that it was a stretch too far to suggest that because of that, the Tribunal could safely proceed in the face of a clear recommendation from the FCDO that it should not take that evidence.

7.14.6 The Tribunal was satisfied that the Agbabiaka procedures applied to cases before this Tribunal and Proposition 1 was therefore rejected.

7.15 The Tribunal's decision in respect of Proposition 2 was as follows:

> *"The Tribunal, having ruled that the Agbabiaka procedures applied to it, considered that there would have to be a truly exceptional set of circumstances for it to consider dispensing with those procedures.*
>
> *The fact of the lack of response so far from the UAE, and the fact that such lack of response was not unique, was unfortunate but was not a sound basis to abandon a procedure that was, in the Tribunal's view, legally sound and applicable to the Tribunal. Mr Collis had, in the SRA submissions, written that the UAE had made a "decision" not to respond. He qualified this in oral submissions to make clear that the UAE had not responded. The Tribunal considered the reason the UAE had not responded was speculative. There could be a number of reasons why a response had not been received, and the Tribunal could not proceed to alter its procedures on a speculative basis.*
>
> *The Tribunal noted that it appeared, though it was again unclear, that permission may not have been obtained in the civil proceedings. The Tribunal noted that the proceedings in the Central London County Court took place before the issuing of the Practice Note, Judgment being handed down on 14 January 2021, almost five months before the Practice Note and ten months before the Judgment in Agbabiaka was handed down. In any event, if an error had occurred in the civil proceedings (and the Tribunal made no finding either way on that point) that was irrelevant to the duty on this Tribunal to follow established legal procedure.*
>
> *Further, if such an error had taken place in the civil proceedings, then the UAE's knowledge of, or response to that was entirely speculative.*
>
> *Finally, the Tribunal had seen a clear and unambiguous recommendation, specific to this case, from the FCDO on 23 January 2024 that evidence not be taken in the way at the time, as to do so risked acting in a way that was contrary to the public interest. The suggestion that the Tribunal disregard this recommendation, and proceed entirely contrary to the FCDO's stated position was not one that the Tribunal could accept. Proposition 2 was therefore rejected."*

7.16 The Tribunal's decision in respect of Proposition 3 was as follows:

> *"The starting point was that Mr Salfiti had long made known his intention to challenge the evidence of Mr Abuseedo. This was also now the position of Ms Jovovic. In those circumstances, the SRA were under a duty to make him available for cross-examination. The Tribunal had granted leave for Mr Abuseedo to give oral evidence from the UAE, subject to the relevant permissions having been obtained, which so far had not proved possible.*
>
> *That left the SRA in the position of having to either arrange for Mr Abuseedo to give evidence from a country where permission was not required, or had been granted, or to arrange for him to attend the Tribunal in person for the*

substantive hearing. Any departure from that would need to be justified by a very good reason.

The SRA's reasons for not doing so were related to Mr Abudseedo's [sic] health. The SRA had produced no medical evidence until the day before the CMH, and the shortcomings in what had been produced had been outlined accurately by Mr Goodwin [Solicitor Advocate for the First Respondent]. Although not directly applicable to this issue, the Tribunal noted that the medical evidence did not amount to the reasoned opinion of an appropriate medical practitioner, which would be the test to apply if an adjournment was sought on health grounds. The medical evidence in this case fell far short of what would be required to justify the extraordinary step of agreeing to Proposition 3, given that it would deprive both Respondents of the opportunity to cross-examine a key witness in the case. The matter was made worse by the absence of any transcripts of Mr Abuseedo's evidence in the civil proceedings, notwithstanding the Judge's comments on that evidence.

There were significant logistical difficulties with the proposal that cross-examination take place in writing. The substantive hearing would inevitably have to be adjourned. The questions would need to be translated and sent to Mr Abuseedo. His answers would have to be translated by a qualified interpreter and sent back to the parties. The same process would need to be repeated for any follow-up questions. This was a case with 1600 pages of exhibits, and some or all of them may need to be translated if any of the questions involved reference to those documents. That process appeared to the Tribunal to be completely impractical, disproportionate and, most importantly, unfair to the Respondents.

Proposition 3 was therefore rejected."

7.17 The Tribunal having rejected each of the three propositions put to it, the SRA reviewed its position.

8. <u>Application to withdraw the Allegations</u>

8.1 On 21 February 2024 the SRA filed an application to withdraw all the Allegations against both Respondents. This application was supported by detailed written submissions setting out the reasons for the SRA's position. The key passages of relevance are quoted below.

8.2 At paragraph 1.2 the SRA submitted:

"This application is being made as a direct consequence of the Tribunal's decisions at the Case Management Hearing ("CMH") on 6 February 2024. The effect of those decisions was to exclude the evidence (in terms of witness statements provided for the civil proceedings and also for the case before the Tribunal) of the Applicant's key witness, Mr Seedo, unless arrangements could be made to make him available to give oral evidence. The Applicant has been unable to make such arrangements and, in the circumstances, no longer

believes that there is a realistic prospect of the Tribunal finding the Allegations proved against either Respondent."

8.3 At paragraph 2.3 the SRA submitted:

"Without being able to rely upon the evidence of Mr Seedo (the necessary effect of the decisions made at the CMH on 6 February, unless Mr Seedo is made available for cross-examination), the Applicant is of the view that its case would be reduced to little more than HHJ Dight's judgment in respect of the following Allegations:
Allegation 1.1;
Allegation 1.3;
Allegation 1.4;
Allegations 1.5(a) - 1.5(ac) and 1.5(af1);
Allegations 1.6(c), 1.6(e). 1.6(g), 1.6(i). 1.6(j), 1.6(r);
Allegation 1.7.2;
Allegation 2 (the dishonesty Allegation), insofar as it relates to the Allegations at 1.1 - 1.7 already mentioned, Allegations 3 and 4 (being the Allegations made against the Second Respondent)."

8.4 The SRA submitted that the remainder of the Allegations were supported by the evidence from Mr El Gamal. However, the SRA's position was that *"the reliability and credibility of Mr El Gamal's account has always been strengthened by the account given by Mr Seedo"* and that *"removing the support of Mr Seedo's account from Mr El Gamal's account serves to fundamentally weaken the credibility of a [sic] Mr El Gamal".*

8.5 The SRA confirmed that the position with regards to Mr Abuseedo's availability had not changed since the CMH on 6 February.

8.6 At paragraph 3.3; the SRA submitted:

"In light of the Tribunal's comments about the state of the medical evidence in relation to Mr Seedo, efforts have been made to try and obtain a more comprehensive and detailed document. This has not been possible in the limited timeframe since the 6 February CMH. However, it is further acknowledged that such a step (i) would necessitate the Applicant seeking an adjournment of the Substantive Hearing; and (ii) presents no guarantee of providing a solution to the predicament in which the Applicant finds itself; its key witness is elderly, in poor health, and so unable to conduct international travel, and resides within a country which has so far not responded to enquiries made of it by the FCDO."

8.7 The SRA had therefore concluded that it had "no option" but to apply to withdraw the Allegations.

8.8 The parties had reached an agreed position that the Tribunal would be invited to make no order as to costs.

The Tribunal's Decision

8.9 The panel of the Tribunal considering this application had been due to sit on the substantive hearing. As a consequence, the Tribunal had read the majority of the papers in the case and was familiar with the evidence and the issues to be determined. The Tribunal was also familiar with the procedural background, which is summarised above.

8.10 The Tribunal did not consider it appropriate to second-guess the SRA's decision-making in respect of this application. The SRA was under a continuing duty to review the appropriateness or otherwise of proceeding with matters, and it had clearly discharged that duty by reviewing its position in light of the CMH on 6 February 2024. The Tribunal therefore consented to the application to withdraw all the Allegations in this matter. It was further content to make no order as to costs.

Statement of Full Order

9. The Tribunal GRANTS the Applicant's application that the allegations against AMJAD ELIAS SALFITI, Solicitor, be WITHDRAWN.

The Tribunal further makes NO ORDER as to costs.

10. The Tribunal GRANTS the Applicant's application that the allegations against MARTINA JOVOVIC, be WITHDRAWN.

The Tribunal makes no order as to costs.

Dated this 27th day of March 2024
On behalf of the Tribunal

A Horne

A Horne
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
27 MARCH 2024