

IN THE MATTER OF MICHAEL LIONEL NEMETH, JAGDISH MITTER KAPILA,
MARCUS REX GRAZIANI, NASEEM YOUSEF & BHASKAR KUKMAR RAY, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Miss T Cullen (in the chair)
Mrs E Stanley
Mrs S Gordon

Date of Hearing: 14th September 2004

FINDINGS

of the Solicitors' Disciplinary Tribunal
Constituted under the Solicitors' Act 1974

An application had been duly made on behalf of the Office for the Supervision of Solicitors (the "Law Society") by George Marriott solicitor and partner in the firm of Gorvins of 2/14 Millgate, Stockport, Cheshire, SK1 2NN (subsequently of 2 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL) on 1st September 2003 that the Respondent together with others might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

On 31st March 2004 George Marriott, the Applicant, made a supplementary statement pursuant to Rule 4(2) of the Solicitors (Disciplinary Proceedings) Rules 1994 against the Respondent, Naseem Yousef, alone. The allegations set out below are those contained in the supplementary statement.

The allegations against the Respondent were that she:-

1. acted as a solicitor in breach of a condition imposed upon her Practising Certificate for the year 2001/2002;

2. sought and obtained a position with a firm of solicitors without obtaining approval from the Law Society contrary to the conditions on her Practising Certificate;
3. failed to inform the firm of solicitors she was working for of the condition imposed upon her Practising Certificate contrary to Rule 1(d) of the Solicitors Practice Rules 1990;

(at the hearing allegation 2 was amended with the consent of the Tribunal and appears above in the amended form)

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when George Marriott appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the denials of the allegations by the Respondent, she referred to the documents, which she had sent by fax to the Tribunal prior to the hearing "Respond to the allegations" letter of 11th September 2004 and the Judgment of the Master of the Rolls, 8th July 2003. The Respondent gave unsworn evidence and made submissions at the hearing.

At the conclusion of the hearing the Tribunal made the following order:-

The Tribunal order that the Respondent Naseem Yousef of Isleworth, Middlesex, solicitor, be Struck Off the Roll of Solicitors and they further order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,453.28.

The facts are set out in paragraphs 1 to 12 hereunder:-

1. The Respondent, born in 1946, was admitted as a solicitor in 2000.
2. On 16th September 2002 the Respondent was granted a Practising Certificate for the practice year 2001 to 2002 subject to conditions. The conditions were:-
 - "a. that you may act as a solicitor only in employment, which has first of all been approved by the OSS;
 - b. that you may not be an office holder and/or shareholder of an incorporated solicitors' practice;
 - c. that you do not handle and/or hold clients' money and are not a signatory to any office or client account;
 - d. that any employer or prospective employer is informed of these conditions;
 - e. for the avoidance of doubt, bearing in mind your comment regarding clients' contacting you straight, giving files etc., that you do not hold or deal with any client or client files unless you are doing so as an employee in employment which has first of all been approved by the Office as referred to in a. above."
3. Following a hearing before the Master of the Rolls on 8th July 2003 the Master of the Rolls varied the conditions on the Respondent's Practising Certificate so that her Practising Certificate became subject to a condition that she practise in partnership or in employment. The Master of the Rolls confirmed that there would be no requirement that the Respondent inform employers or a would-be

partner of that condition on her Practising Certificate. She would not have to seek the approval of the Law Society to her employment or partnership.

4. It followed that the conditions on the Respondent's Practising Certificate imposed by the Law Society were in force from 24th October 2002 until 8th July 2003.
5. The Tribunal had before it copies of letters from Malik & Malik (solicitors) dated 18th September 2003, a copy of a letter to their client, Mrs K, dated 30th May 2003 and a copy telephone attendance note dated 30th May 2003 from which it became apparent that the Respondent was attending an immigration appeal hearing before a special adjudicator on behalf of Malik & Malik's client, Mrs K.
6. The Law Society wrote to the Respondent on 31st October 2003 seeking her explanation. Her response dated 15th November 2003 was that she had in March 2002:-
 - a. approached Malik & Malik for employment and informed them of the conditions attached to her Practising Certificate. They declined to employ her.
 - b. In November 2002 the Respondent approached another partner in Malik & Malik and told him of the conditions attached to her Practising Certificate. She was offered and accepted work as a representative for the firm, but not as a permanent job.
 - c. The Respondent asserted, "Since this was not a contract of employment, nor was it a permanent job, therefore nothing to inform the OSS".
 - d. The Respondent also asserted that the partner of Malik & Malik would have written to the Law Society about the conditions, as he had taken details from her.
 - e. The Respondent said she informed the Law Society when she applied for the renewal of her Practising Certificate in January 2003.
7. Before the Tribunal was a copy of the agreement between herself and Malik & Malik in the following terms:-
 1. Self-Employment and Fee Agreed
You will work as a self-employed solicitor and you will be assigned cases by our own Mr Saleen, who is head of Immigration Department. You will be paid per case and this is £--.—per case for representing the client before the Immigration Appellate Authority/Tribunal. In addition, we will pay your travel costs.
 2. Notice Period
There will be no notice period as you are a self-employed and the provision of notice does not apply.
 3. Training

You are required to carry out your own CPD points and Malik & Malik will not contribute anything towards that.

4. Confidentiality

You are under a duty to maintain the confidentiality of the client and of the firm when you are instructed as an expert to carry out the assignment.

5. Holding Out

You will not hold yourself out as an employee of Malik & Malik, nor shall you use any of Malik & Malik's stationery or other equipment unless prior permission has been sought from the partners. If it transpires any of the information you have provided is inaccurate, then Malik & Malik shall terminate your services as an expert".

8. In response to enquiry by the Law Society, Malik & Malik by letter dated 18th November 2003 said that the Respondent commenced employment on a freelance basis from 21st November 2002; she was self-employed; Malik & Malik were unaware of any conditions attached to her Practising Certificate until their receipt of the Law Society's letter of 31st October 2003. They stated that they had been made aware that the Respondent had been qualified as a solicitor for four and a half years.
9. On 1st December 2003 the Respondent telephoned the OSS when she stated that she did not inform the Malik & Malik partner about the conditions on her Practising Certificate as "she thought that she would be not successful in applying for the job if they knew of the Practising Certificate's conditions". She stated that she had informed the partner, but acknowledged that the two partners in Malik & Malik worked in separate offices. She also stated that Malik & Malik had not paid her since June 2003. They had used the investigation of the Law Society as "a lever" to withhold payment due. The Law Society's investigation commenced in October 2003.
10. When the Law Society sought further clarification from Malik & Malik they replied on 16th December 2003 saying, that the Respondent had not informed either partner about the conditions imposed on her Practising Certificate. The Respondent did provide a letter from the Law Society to the effect that she was a solicitor. There was no contract of employment. The Respondent's payment was £120. Details of supervision in place for the Respondent were set out. A partner had not written to the Law Society in January 2003. The arrangement with the Respondent was terminated on 9 December 2003.
11. The Respondent telephoned the Law Society on 9th December 2003 when she stated that she did not inform the partner at Malik & Malik of the conditions on her Practising Certificate. This contradicted her assertion in her letter of 15th November 2003.
12. The Respondent made further written representations to the Law Society but the Tribunal does not rehearse them here. They were repeated by the Respondent in her submissions, which are recorded below.

The Submissions of the Applicant

13. The allegations against the Respondent were allegations of conduct unbefitting a solicitor.
14. The course of conduct of the Respondent upon which the allegations were based were put to the Tribunal on the basis that they demonstrated dishonesty on the part of the Respondent. It would be open to the Tribunal to find any or all of the allegations substantiated without finding any element of dishonesty however.
15. The Applicant invited the Tribunal to apply the definition of dishonesty set out in the case of *Twinsectra v Yardley* 2002 (UKHL12). The Tribunal was referred in particular to the following remarks in the judgment of Lord Hutton.
 - a. Dishonesty requires the knowledge by the Respondent that what he was doing would be regarded as dishonest by honest people although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct.
 - b. A Respondent would not be held to be dishonest unless it was established that his conduct had been dishonest by the ordinary standards of reasonable and honest people and that he himself had realised that by those standards his conduct was dishonest. Thus in equity a person could not escape a finding of dishonesty because he set his own standards of honesty and did not regard as dishonest what he knew would offend the normally accepted standards of honest conduct.
16. The Tribunal might have considered that the Respondent's behaviour if not dishonest had been reckless. Recklessness would mean that the Respondent failed to give any thought or proper thought as to whether or not there was a risk of harmful consequence in circumstances where if any thought or any proper thought had been given to the matter it would have been obvious that there was.

The Submissions of the Respondent

17. There was no proper employment contract made between Malik & Malik and the Respondent. She did not know whether she would work one day or two days a week because the job was offered on condition that the Respondent proved competent. The job depended on the availability of work. There was no guarantee that even one job would be available every week.
18. The Respondent was aware that her Practising Certificate was subject to conditions and that the employers might change their mind about giving her any more work.
19. The Respondent had provided Malik & Malik with the number of her Practising Certificate and a letter from the Law Society confirming the date of her admission.

20. The Respondent had neither a job title nor a written contract of employment. She did not think she was in breach of the conditions imposed on her Practising Certificate.
21. In April 2003 Malik & Malik offered the Respondent more work. Again there was no written contract of employment and the job depended on the continuity of work.
22. In April 2003 the conditions on the Respondent's Practising Certificate were relaxed and she was allowed to work for one month continuously without obtaining approval from the Law Society.
23. On her appeal against the imposition of conditions the Master of the Rolls criticised that step. He pointed out that the Respondent was engaged in immigration and asylum work which non-professionals could carry out. The Master of the Rolls varied the condition on the Respondent's Practising Certificate.
24. The Respondent denied that she obtained a position with a firm without obtaining approval from the Law Society. The Respondent understood that her employment was to be approved by the OSS and thereafter she had to notify the Law Society and not 'obtain approval' from the Law Society. The Respondent did this on several occasions. First she informed the Law Society when she applied for a Practising certificate for the year 2001/2002 and secondly she informed the Law Society when she made enquiries about her tax liability. During that period of time she had spoken with several staff members on several occasions. On each occasion the Respondent told the staff that she was working for Malik & Malik. Her job was not an inconspicuous office job but she publicly represented clients in the Immigration Appeal Authority. The Respondent did not keep her job a secret. She had to comply with Section 84 and complete the requisite form to inform the Immigration Appeal Authority about her employers. She always gave the correct information.
25. As well as producing the information set out above to a partner at Malik & Malik, one partner knew the conditions as the Respondent had met him twice. A prudent employer would have made enquiries of the Law Society about the Respondent's eligibility. The Respondent thought she had discussed this matter with a partner. The Respondent had not told Malik & Malik that she had been working for four and a half years.
26. As far as the copy of the employment contract was concerned this was prepared and given to the Respondent only two weeks prior to her leaving the job. She had no contract and no permanent job and therefore had nothing to tell the OSS.
27. The Respondent confirmed that she had discussed the conditions attached to her Practising Certificate with a partner at Malik & Malik in March 2002 when she left her job with Genga & Co. Later the Respondent approached the partner for a reference, which he declined to provide.
28. There was no element of dishonesty. The Respondent did her work honestly and looked after her clients' interests. The clients and Malik & Malik were satisfied with the services of the Respondent.

29. The Respondent had been named as a partner in “the Brandon Group” owned by Dixit Shah while she was out of the country. She came to learn that on 1st September 2000 her name was registered with the Law Society as a partner of “Brandon Group” and she was so held out. The Law Society intervened into the Brandon Group on 1st September 2000, at which time the Respondent’s Practising Certificate was suspended.
30. The Respondent felt that she had been betrayed by the Law Society. She had informed the Legal Aid Board about the illegal activities of her ex-employer, Dixit Shah. There had been an agreement between the investigation officer and the Respondent that they would not disclose her name as an informer. The OSS prepared a report in which the Respondent was named as the informant. That breach of confidentiality had had an adverse effect on the Respondent. She had suffered damage to her reputation.
31. The Respondent had written to hundreds of firms of solicitors for a job. Either they did not reply or if they expressed interest the OSS investigation took so long that the prospective employers would change their mind. The Respondent had been unemployed for several months and had no source of income. She felt embarrassed to apply for income support. She had then been referred to Malik & Malik.
32. The Respondent had been unemployed since July 2004. The Respondent had been a victim of Dixit Shah’s nefarious activities and she might have been saved from anxiety and stress and have been able to earn her living as a solicitor if the Law Society had taken prompt steps to curb Mr Shah’s dishonest course of conduct. Mr Shah had asked the Respondent to be a partner, but she had refused saying that she did not want the liability. She agreed to be a signatory on the bank account, but that did not signify partnership. The Respondent was concerned that other people who were culprits together with Mr Shah had not been brought to book, nor in some cases even questioned.
33. The Respondent had found herself in an appalling position. She had been a mature person when achieving admission to the Roll. She held a Practising Certificate with conditions imposed. She had been good at her job, but had been prevented from doing it and thereby earning a living. She was a single parent. She had been the victim of circumstance. She had no job and no hope of getting a job. The Respondent was anxious that there should be no publicity of the hearing before the Tribunal.

The Tribunal’s Findings

34. The Tribunal finds all of the allegations to have been substantiated against the Respondent.
35. Following a hearing on 20th April 2004 at which the Respondent was required to answer allegations together with three other solicitors, the Tribunal found the following allegations to have been substantiated. The allegations against the Respondent were that:-

- (i) Contrary to Rule 6 of the Solicitors Accounts Rules 1998 (the Rules) they failed to ensure compliance with the Rules by all principals and by everyone else working within the practice with the result that:- One principal and/or other employee(s) withdrew monies from client account contrary to Rule 22 of the Rules; and
 - (ii) contrary to Rule 7 of the Rules they failed to remedy the breaches;
 - (iii) contrary to Rule 32 they failed to keep and retain accounting records for a period of at least six years.
36. The Tribunal having found those allegations to have been substantiated against the Respondent together with the other Respondents the Tribunal ordered that the Respondent be reprimanded and that she do pay the costs of and incidental to the application and enquiry fixed in the sum of £6,500.
37. The Respondent had denied the allegations against her and the Tribunal in its Findings said that
 “The Tribunal had considered carefully her oral evidence. The Tribunal however rejected the suggestion that someone of her intellectual standing who was a qualified barrister who had studied partnership law would not know the difference between partnership and employment however stressful the circumstances might have been in September 2000. The Tribunal found, as a fact, that the third Respondent had been a salaried partner and this was confirmed in her subsequent correspondence. When writing that correspondence she would have had time to consider it and as a lawyer would have known the effect of the words she was writing. The Tribunal accepted however the submissions on her behalf that she had been a salaried partner in only one of the constituent parts of the firm”
38. With regard to its decision as to the imposition of a sanction, the Tribunal said
 “The Tribunal had considered carefully the submission on behalf of the Respondent. The Tribunal had found or had received admissions that all the Respondents were partners in at least one part of the Brandons Group. As such they had to accept their responsibility under the Solicitors Accounts Rules. Nevertheless the Tribunal accepted that this was a highly unusual case of a one-off fraud by another partner within the Group who had, at the same time as taking very large sums of money from client account systematically destroyed all accounting records. This was not a fraud over a period of time which the Respondents’ duties as partners could have led them to uncover. The Tribunal had heard of the difficulties which had resulted for all of the Respondents following these events and the Tribunal considered that in all the circumstances the appropriate penalty for each Respondent was a reprimand.”

The Decision of the Tribunal

39. The Tribunal took into account the fact that the Respondent had qualified as a solicitor when she was of mature years. Her association with Dixit Shah had been at a time when she was inexperienced as a solicitor, although she had, previously been a barrister. The Tribunal accepts to a degree that the Respondent has been a victim of the nefarious activities of Dixit Shah and the Brandons Group.
40. There were for an identifiable period of time conditions placed on the Respondent’s Practising Certificate. The Respondent was dismayed by the nature of those conditions and did not agree with them. The Respondent had

only one course open to her and that was to comply with the conditions on her Practising Certificate until such time as they were varied or removed. It was open to her to pursue the appropriate courses to achieve either variation or removal.

41. The fact that the conditions were varied in due course did not alter that fundamental principle that while conditions were in force the Respondent had to comply with them. The Tribunal recognises that the variation of the conditions went some way to mitigate the position of the Respondent but they did not excuse her acting in breach of such conditions.
42. The Tribunal also recognises the difficult situation of the Respondent who was not earning. Whatever the relationship in employment law the Respondent undertook work under the aegis of Malik & Malik and did so in particular on 18th September 2003. The Tribunal was satisfied that Malik & Malik were the Respondent's employers as it was that firm which supervised her work and her employment by that firm had not been approved by the OSS as required by the condition on her Practising Certificate. The Tribunal was satisfied that the Respondent had not informed Malik & Malik of the conditions on her Practising Certificate.
43. The Tribunal takes the view that the Respondent's submissions that she had discussed matters, for example her position with regard to taxation, with the Law Society amount neither to an application for approval nor indeed that such approval had been given. The Tribunal further rejects the Respondent's argument that the fact that she had not undertaken the work secretly but rather had done so in the eye of the public altered the fact that she acted in breach of the conditions on her Practising Certificate.
44. To a large extent it was the Respondent's case that she had been the victim of others' wrong doing and the Tribunal has some sympathy for that view but any solicitor has to remember that one of the burdens to be borne by a solicitor is the fact that he remains liable for his own actions and his own decision making and whatever disadvantages might stem from behaving entirely appropriately, a solicitor must nevertheless adopt such an appropriate stand.
45. The Tribunal concludes that in her desperation to obtain paid work the Respondent skated over the conditions on her Practising Certificate and justified that action to herself by her view that she was a victim in the whole matter and not a perpetrator of nefarious activities. In not being open and frank about her position and the conditions on her Practising Certificate with her employers the Respondent behaved dishonestly. Although the Tribunal remarks that it finds it surprising that any firm of solicitors would take on an admitted employee without checking with the Law Society as to that prospective employee's history and the status of his or her Practising Certificate, the Tribunal rejects the Respondent's argument that it was for Malik & Malik to make their own enquiries and not for her to make full disclosure of her position.
46. Although the Tribunal has sympathy for the Respondent for what had happened to her in the past the Tribunal, in the interests of the protection of the public and the good reputation of the solicitors' profession, is not able to overlook the dishonest approach adopted by the Respondent. Further the Tribunal as was its custom conducted the hearing on the 14th September 2004

in public and its Order and its Findings will be documents of public record. It would be only in extraordinary circumstances that the Tribunal would conduct its hearing in private and place a bar on the publication of its proceedings. The Tribunal did not make the order sought by the Respondent that the publicity of the proceedings and outcome be restricted.

47. The Tribunal concluded that the Respondent knew exactly what she was doing and although the Tribunal understood her reasons, they concluded that she made a conscious decision to do things her own way. The *Twinsectra v Yardley* test for dishonesty had been met.
48. In all of the circumstances it was right that the Respondent be struck off the Roll of Solicitors. The Tribunal further considered it right that the Respondent should pay the costs of and incidental to the application and enquiry. The Tribunal found the costs sought by the Applicant to be entirely reasonable and ordered that such costs be fixed.

Dated this 21st day of October 2004
On behalf of the Tribunal

T Cullen
Chairman