

IN THE MATTER OF RUDY LIM, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mrs J Martineau
Mr G Fisher

Date of Hearing: 18th March 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack, Roscoe & Coleman, solicitors of 70 Marylebone Lane, London, W1U 2PQ on 7th November 2007 that Rudy Lim of #05-09 Duchess Manor, Singapore 269032, solicitor, 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.

The allegation against the Respondent was that he had been guilty of conduct unbefitting a solicitor in the following particulars namely:

- (a) that he created a false payslip purporting to be issued by his current employer and by delivering such slip to his prospective employer for use in salary negotiations he dishonestly misrepresented the true position and by such conduct impaired or compromised his good reputation and that of the solicitors' profession in breach of Rules 1 and 3 of the Solicitors Overseas Practice Rules 1990 (as amended).

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 18th March 2008 when Robert Simon Roscoe appeared as the Applicant and the Respondent appeared in person.

During the hearing the Respondent handed up an unredacted copy of his letter to the Solicitors Regulation Authority dated 24th July 2007. The Respondent gave oral evidence.

At the conclusion of the hearing the Tribunal made the following Order:

The Tribunal Orders that the Respondent, Rudy Lim of #05-09 Duchess Manor, Singapore 269032, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,700.

The facts are set out in paragraphs 1 - 4 hereunder:

1. The Respondent, born in 1972, was admitted as a solicitor in 2002 and his name remained on the Roll of Solicitors.
2. The Respondent was employed as a solicitor by DLA Piper Singapore Pte Limited, a branch of DLA Piper International LLP ("DLA"), solicitors of 3 Noble Street, London, EC4, in their Singapore office. He was subsequently promoted to a fixed share equity partner.
3. In December 2006 the Respondent gave notice to his employers. A routine check of the Respondent's computer disclosed that he had created a false payroll slip. This false slip purported to show that the Respondent was receiving a monthly profit share of Singaporean \$65,000 when in fact the correct figure was Singaporean \$25,000. DLA reported the matter to the Law Society by a letter dated 6th February 2007.
4. The Respondent admitted that he had created the false document to provide to his new employers, Duane Morris solicitors ("DM").

The Submissions of the Applicant

5. The Respondent had travelled from Singapore to attend the Tribunal and the Applicant had explained the Tribunal procedure to him. The matter was contested. The Respondent had been in contact and helpful throughout.
6. The application was made pursuant to the Solicitors Overseas Practice Rules. The Respondent had served a counternotice on the Applicant on 7th March 2008.
7. The Applicant had exhibited the Respondent's letter to the SRA of 24th July 2007 in redacted form as he did not consider that the whole letter was relevant. The Respondent however would hand up the unredacted letter as he considered it would assist the Tribunal.
8. The Tribunal was referred to the relevant Overseas Practice Rules. Rule 1 covered the ambit of the Rules. Rule 3 was a mirror of Solicitors Practice Rule 1. A relevant issue was the good repute of the solicitor or the profession but it might also be appropriate to touch on the solicitor's independence and integrity.

9. The Respondent agreed the facts and accepted that he had created the payslip. The Applicant had made the allegation in relation to a false payslip not a "forged" payslip as that would be using criminal vocabulary.
10. There were a number of facets to the allegation:
 - (i) a false payslip - this was not in dispute;
 - (ii) created by the Respondent - this was not in dispute
 - (iii) delivered to his prospective employer - this was not in dispute;
 - (iv) for use in salary negotiations - this was in dispute. The Respondent said there was an alternative reason.
 - (v) it misrepresented the true position - this was a matter for the Applicant to prove;
 - (vi) dishonesty - it was open to the Tribunal to find that the Respondent had created and delivered the false payslip but having heard his explanation, to find that there was no dishonesty and he did not misrepresent the true position or that he was dishonest and did misrepresent the true position or that while he misrepresented the true position he was not dishonest;
 - (vii) the Tribunal would also need to consider whether the creation and delivery of the false payslip impaired or compromised the good reputation of the Respondent and of the profession.
11. The Respondent in his letter to the Applicant dated 7th March 2008 had said that such conduct could not impair the reputation of himself or the profession as not only did it not relate to salary negotiations but was in the context of a private employment matter between employer and employee. The Applicant did not accept that contention. The conduct of a solicitor was always a solicitor's conduct particularly where he was seeking employment with a firm of solicitors in order to join the firm as a regulated professional fee earner.
12. In his letter of 7th March the Respondent had indicated that the false payslip was submitted to complete an administrative request from the Human Resources Department of the new employer after salary negotiations had concluded. No evidence had been put forward to support that contention. While the Respondent had frankly acknowledged responsibility for the creation of a false payslip he had not said why he did it. The Applicant submitted that the Respondent had acted to secure a higher salary than he might otherwise have expected to obtain. The Applicant based that on the letter from DLA of 28th February 2007 in which it was stated:
 - "5. Mr Lim was questioned on 19th January over the telephone by Ms KB, the firm's Head of HR (Asia), following the discovery of the forged document on his F:\drive. According to Ms B's contemporaneous notes of such conversation, Mr Lim told her:

"My guard was down and Duane Morris were pressuring for information. I needed this to obtain the salary I was told I could get. If I had been thinking more conservatively, I would not have done this."

The Tribunal was referred to the unredacted letter of 24th July 2007 which indicated that the Respondent might take issue with the above paragraph. The Respondent had written in the unredacted letter.

"There was no discussion about the "forged" documents at any time during the 19 January 2007 meeting. The telephone conversation with KB on 19 January 2007 was also to clarify what DLA Piper Singapore Pte. Ltd. would like me to include in my report and to agree to a date for me to send over that report. Therefore, paragraph 5 of DLA Piper's letter dated 28 February 2007 and the attendance note prepared by KB were inaccurate."

13. The DLA letter of 28th February 2007 further quoted a written report by the Respondent to Ms B on 22nd January 2007.

"I understand that you might have retrieved certain documents from my personal network drive that would require an explanation from me. Whilst there is no excuse, I would like you to know that I prepared those documents in a moment of indecision and as a result of pressure from the Managing Partner of Duane Morris' Singapore office to show "optimism" in my business case, and had submitted those documents only to Duane Morris."

14. The Tribunal was referred to the genuine payslip and the altered payslip exhibited by the Applicant. The payroll period was the same but the figures and the note underneath were altered. The Tribunal was referred to the Respondent's comments in his letter of 24th July 2007 in which he wrote:

"I accept that I did misrepresent to Duane Morris that my last drawn salary at DLA Piper was S\$65,000 per month when it was in fact S\$25,000 per month...

.....

I regretted my action and had come clean with Duane Morris sometime in February 2007 shortly after I joined them in Singapore and apologised for what I did. Although with a deep embarrassment, I had also come clean with all the lawyers and supporting staffs in the Singapore office of Duane Morris in April 2007 and apologised to them for what I did.

.....

Circumstances leading to my departure from DLA Piper and the alteration of my payroll statement

As I had been exploited at DLA Piper, this created a vicious cycle whereby I was not able to demand from a prospective employer a salary which I expect and believe would commensurate with what I could contribute. Any prospective employer would disregard what I could contribute and naturally would take advantage of my situation at DLA Piper in order to negotiate a less

costly package with me. I was not willing to continue working at DLA Piper given the circumstances and, when an opportunity came from Duane Morris, my difficult circumstances led to an isolated lapse of judgment. What I had done was to get around having to explain to a prospective employer, Duane Morris. I had no intention to cheat Duane Morris because if I could not perform, I would have to leave Duane Morris eventually.

I believe that Duane Morris had not relied on my last drawn salary at DLA Piper when making me an offer of partnership. My actual drawn salary at Duane Morris was S\$58,200 per month, lower than what I misrepresented. The salaries being offered to others, all of whom were not partners at their previous firms, who joined Duane Morris as partners around the same time as myself range from S\$45,600 per month to S\$51,000 per month, comparable to what I was receiving. I was a partner at my previous firm.

.....

Despite the difficult circumstances I was in, I accept that my action was wrong. I would like to assure you that the action was not committed because of a character flaw or with an intention to cheat. I am, except for this one isolated incident, an honest person. I have always worked hard for my employer and myself and contributed to the education of my younger colleagues. I am deeply ashamed of my action.

There was no failure to comply with any professional rule of practice.

There was no involvement of or injury to a client's interest or the interest of the general public."

The Applicant did not accept that assertion by the Respondent.

- 15. The Respondent had further written:

" I had apologised to DLA Piper for my action. I had come clean quickly with Duane Morris as to my misrepresentation of my last drawn salary and apologised for it. Duane Morris, as the party injured by the misrepresentation, and its Singapore and Vietnam managing partner, ERG, considered my misrepresentation as a foolish but isolated lapse.

.....

I humbly request that I be given the opportunity to learn from my mistake and that you would accept this as an isolated incident. What had happened thus far had caused me a deep embarrassment and a negative impact on my career. It had served as a sufficient warning and lesson for me. It was a regrettable mistake and I will never do such an act again."

- 16. The Applicant relied on this letter and submitted that the Respondent had in it made admissions as to what had occurred. If the document was not intended to mislead his new employers the Tribunal was asked to consider what was the purpose of creating and serving it. It was a natural conclusion to draw that the false payslip must be

connected with salary negotiations either confirming something already said or opening negotiations in relation to what salary was wished for. Within the wording of the allegation it was open to the Tribunal to find either of those possibilities. The Applicant had no detailed knowledge of the offer but clearly terms had been discussed before the letter of offer. There were no details of when the false payslip was handed over.

The Submissions of the Respondent

17. These were private contractual matters not done in the course of practice as a solicitor and not involving clients. It did not come within Rule 1. The Respondent had admitted his conduct immediately. The aggrieved party, DM, had acknowledged that no injury had been suffered and had agreed to resolve the matter.
18. In relation to salary negotiations the managing partner of DM in Singapore had confirmed that he had not relied on the false payslip. The offer of employment made clear that the salary offer was based on performance, i.e. projected billable hours for 2007. Further the salary offered was within the range of those offered to other partners even though the Respondent was the only partner joining who had previously been a partner in another firm.
19. The Respondent had wanted to put the unredacted letter of 24th July before the Tribunal to highlight the circumstances surrounding the creation of the payslip including the difficult circumstances when he joined DLA. The salary paid at DLA had not been commensurate with the effort he had made.

The oral evidence of the Respondent

20. The Respondent had been under a great deal of pressure for one and a half years. He had been promised a salary review which had not occurred and there had been no performance bonus. He spoke of the difficulties of managing the Indonesian team and issues between himself and the managing partner and referred the Tribunal to his letter of 24th July. All these matters created difficulty and made problems for the Respondent in motivating his team.
21. When the offer came from DM the Respondent had only been made a partner with DLA that year and did not wish to be disloyal. He had initially been approached in January 2006, had been interviewed and had submitted his business case and 2006 projections. He decided against accepting a post in April. DM contacted him again in July and August 2006. The first offer was before he created the payslip and the second offer was after DM had seen the payslip. The Respondent had accepted the position in December 2006 at a time when he was under great pressure regarding the Asian practice from the UK in respect of targets. He had brought in a \$1,000,000 in his first year of partnership and at a very young age was a leading credit finance lawyer in Indonesia.
22. The Respondent decided to resign and on 18th December 2006 he accepted the offer from DM. He submitted the false payslip before 6th December as part of a standard questionnaire from DM Human Resources relating to a US Tax Form/Social Security Form. It was a totally administrative exercise, separate from salary negotiations,

indeed there were no negotiations. The Respondent had asked why information was needed and had said he did not want to give his tax form.

23. The Respondent had been under difficult circumstances and wanted to leave DLA. He knew that a number of lawyers were being recruited as partners by DM and through the head hunters understood how much they would get. With hindsight he knew the creation of a false payslip was wrong but at the time he did not want the question of his existing salary to pop up as DM might start questioning, having received the administrative HR information, why they should pay him so much. There had been no intention to mislead or cheat. With hindsight he should have accepted the risk of not getting either the salary or the job that he wanted.
24. The Respondent had been negotiating other matters including having a Chair on the Board of Directors in the United States. He had attended an interview in Philadelphia and had received the impression that they did not understand Asia and how to build a practice there. His focus had been on protecting the position in Asia if he joined DM.
25. Asked whether he had created the payslip to mislead the Respondent said that the line was a thin one. His purpose had not been to increase his salary but to avoid questions. He was trying to persuade DM that they were not overpaying him. He accepted that this was similar to misleading but said it had not been his intention to cheat. He was speculating that questions might arise having been suppressed in his previous firm.
26. The Tribunal might conclude that he was trying to justify himself but the Respondent appealed to their compassion. He had not been seeking personal gain.
27. The Respondent submitted that he had not been acting in the course of practice as a solicitor within the meaning of the Overseas Practice Rule 1. He was not giving advice to clients or discharging his duty as a solicitor or acting in the role of a solicitor. He did not accept the Applicant's submission that he had created the false document to secure a higher salary than he might otherwise have expected to obtain. The Applicant had based that assertion on DLA's letter of 6th February 2007. While the Respondent had admitted the facts he did not admit the reasons put forward by the Applicant for his conduct. He had been surprised by DLA's letter of 28th February 2007 and Ms B's assertion that he had created the payslip to obtain the salary he was told he could get. The Respondent differentiated between acting as a solicitor or not. In some matters he was acting only in his private life. This had been a private employer/employee matter.
28. The Respondent said that there had been a dispute between DLA and DM in relation to his acceptance of employment with DM before his notice had expired. There had also been an issue of double registration of foreign bodies in Singapore. The Respondent had not however been bound by a member's agreement in DLA, indeed he had never been given a contract which subjected him to a six month notice period. The DLA managing partner in Singapore and the regional managing partner in Hong Kong had told him that there would be no difficulty with him giving an abridged period of notice.
29. The Tribunal was referred to the letter from DM dated 7th March 2008 in which they confirmed that they did not rely on the false payslip in deciding the Respondent's salary.

30. The Respondent accepted that he had been wrong to create the false payslip. Although it had not been used in salary negotiations it had misrepresented the true position of his salary. He had acted in the particular circumstances but this had been an isolated lapse of judgement on his part. He had not acted dishonestly as he had had no intention to cheat for personal gain. Since his resignation in May 2007 he had been punished. He asked that he now be allowed to move on and rebuild his career. He was currently working in business outside the profession.
31. The Respondent accepted that he had produced the payslip and misrepresented the position to avoid the questions which were playing in his mind. He accepted that this was dishonest in layman's terms. He had wished to circumvent any possible questions about the level of his salary and to avoid being placed in such a situation.
32. The Respondent had admitted what he had done in February 2008. He was very ashamed. DM had initially invited him to stay on but the matter had been referred to Philadelphia where the approach was conservative. He had been asked if there was any way in which action could be taken against DLA but had recognised that this had been his personal mistake. He had offered his resignation twice. He had apologised to his staff.
33. DLA had made complaints in the United Kingdom, Australia and Singapore. The matter had been closed in Singapore as there was no victim and the Australian body had not wished to consider the matter.
34. The Respondent did not accept that his reputation as a solicitor had been affected by what he had done as former clients still wanted him to advise them in his specialist fields. He had also had a number of enquiries from law firms offering him employment, subject to the Tribunal's decision. While he would have thought that his appearance before the Tribunal would have affected either his personal reputation or his reputation as a solicitor in the Respondent's view this had not happened. His action had not been based on greed but on the suffering he had experienced with his former employer.
35. The Respondent had agreed the Applicant's costs.

The Findings of the Tribunal

36. The Respondent had admitted the creation of a false payslip which he delivered to his prospective employer but denied that this was for use in salary negotiations, denied that he had acted dishonestly and denied that by his conduct he had breached Rules 1 and 3 of the Solicitors Overseas Practice Rules.
37. The Respondent had clearly admitted in his evidence that he had created the payslip to persuade his prospective employers that they would not be overpaying him. He had acted to prevent questions being put by his new employer which might have led to a reduction in his salary. The Tribunal was satisfied that he had therefore been acting in the course of salary negotiations.
38. The Tribunal considered carefully Rules 1 and 3 of the Overseas Practice Rules 1990 as amended. The Tribunal did not accept the Respondent's submission that because

these were matters relating to his employment he was not acting in the course of practising as a solicitor. He was a solicitor and his employers were solicitors and the Tribunal was entirely satisfied that, despite the fact that clients were still seeking his advice, his conduct impaired or compromised his good reputation and that of the profession.

39. The Respondent had admitted that he had misrepresented the position to his prospective employers. He had said that he had not intended to mislead or cheat but had accepted that in layman's terms his conduct had been dishonest. The Tribunal considered carefully the test set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Respondent had created a false payslip in order to ensure that he received the level of salary he wished from his prospective employers. The Tribunal was entirely satisfied that his conduct had been dishonest by the standards of reasonable and honest people. The Respondent himself had accepted that "in layman's terms his conduct had been dishonest". The Respondent's act had been conscious and deliberate. Having heard and seen the Respondent give evidence and heard his explanation for his conduct, and having heard his admission that what he had done was dishonest in layman's terms and that his intention had been to keep information from his prospective employers which might have led to a salary reduction, the Tribunal was satisfied so that it was sure that the Respondent knew at the time of his misconduct that what he was doing was dishonest by the standards of reasonable and honest people. The Tribunal found the allegation substantiated in all respects to the required high standard.
40. The Tribunal had heard the Respondent's explanation that he had been aggrieved at what he perceived as poor treatment by his previous employer and this had been an isolated lapse of judgement. The Tribunal however regarded this as a very serious matter. The Respondent, a solicitor, had behaved dishonestly towards his prospective employers who were also solicitors. The reputation of the profession required that the public felt able to have absolute confidence that any solicitor they instructed was a person of complete integrity. The Tribunal had a duty to uphold the standards of the profession in the interests of the public. In all the circumstances it was right that the Respondent be struck off the Roll of Solicitors and that he pay the Applicant's agreed costs.
41. The Tribunal Ordered that that the Respondent, Rudy Lim of #05-09 Duchess Manor, Singapore 269032, 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 £3,700.

Dated this 14th day of August 2008
on behalf of the Tribunal

A G Ground
Chairman