

DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10630-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NAJAF SHAH

Respondent

Before:

Mr R Nicholas (in the chair)

Mr A H B Holmes

Mr D Gilbertson

Date of Hearing: 23rd March 2011

Appearances

Suzanne Jackson, solicitor (Solicitors Regulation Authority of Berrington Close, Redditch, Worcestershire B98 0TD) for the Applicant.

Marc Beaumont of Counsel appeared for the Respondent who was also present.

JUDGMENT

Allegation

1. The allegation against the Respondent was that:
 - 1.1 Contrary to Rule 1.02 and 1.06 of the Solicitors' Code of Conduct 2007 he had failed to act with integrity and had behaved in a way that was likely to diminish the trust the public places in him or the profession by virtue of his conviction in the Crown Court at Southwark on 13 April 2010.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

Applicant:

- Application dated 1 October 2010;
- Rule 5 Statement, and Exhibit "SEJ1";
- Statement of Costs for the hearing on 23 March 2011.

Respondent:

- The Respondent's skeleton argument by way of plea in mitigation
- Statement from David Spens QC
- References on behalf of the Respondent
- Medical Report from Professor Hirsch

Factual Background

3. The Respondent, born in 1976, was admitted as a solicitor on 15 October 2007. His name remained on the Roll of Solicitors as at the date of the hearing.
4. At all material times the Respondent had practised as a partner from 1 August 2008 to 8 June 2009 at Alexander Solicitors & Advocates of 80 Dunstable Road, Luton,

Bedfordshire, LU1 1EH. He had remained at the firm, albeit under the name of Alexander Solicitors Limited, in different roles and finally as employee until 15 April 2010.

5. On 13 April 2010 the Respondent had appeared before Southwark Crown Court and had been convicted of “dishonestly make false representations to make gain for self/another or cause loss to other/expose other to risk x 3” and sentenced to 12 months imprisonment.
6. Sentencing remarks had been made by his Honour Judge Rivlin on 24 May 2010.
7. The conduct giving rise to the offences had related to the preparation by the Respondent of three bills of costs on three separate client matters submitted to the National Taxing Team which had contained false representations.
8. It had been accepted that the Respondent had prepared and submitted false documentation to the National Taxing Team in three criminal cases. The Respondent had lost the original documentation and had needed to reconstruct the bills so that his firm could be paid. He had been too frightened to tell his more senior partners what had happened.
9. Although the actions of the Respondent had initially resulted in other members of his firm coming under suspicion, it had subsequently been established that there was no evidence that any other members of the firm had had any involvement in or knowledge of the Respondent’s actions.
10. On 21 July 2010, a decision had been made by an authorised officer at the Solicitors Regulation Authority to refer the Respondent’s conduct to the Solicitors Disciplinary Tribunal.

Preliminary Issue

11. Ms Jackson explained that she had accepted the statement of David Spens QC and the Medical Report as documents to be relied on by the Respondent in mitigation. Counsel confirmed that it was not his intention, in making submissions, to seek to go behind the conviction of the Respondent. The Tribunal accepted the statement and the Medical Report as submitted in respect of mitigation.

Witnesses

12. Although no witnesses gave live evidence, the Tribunal considered a statement from David Spens QC. In effect, Leading Counsel had said in his statement that he had been concerned that the Respondent had had an arguable defence to the criminal charges against him but that for various reasons the Respondent had insisted on maintaining his pleas of guilty.

Findings of Fact and Law

13. **Allegation 1.1. That the Respondent had contrary to Rule 1.02 and 1.06 of the Solicitors' Code of Conduct 2007 failed to act with integrity and had behaved in a way that was likely to diminish the trust the public places in him or the profession by virtue of his conviction in the Crown Court at Southwark on 13 April 2010.**
- 13.1. Ms Jackson, on behalf of the SRA, relied on the conviction of the Respondent on 13 April 2010 and on the Sentencing Remarks of His Honour Judge Rivlin made on 24 May 2010. Ms Jackson highlighted the four aggravating features found by the Judge; that the Respondent's offences had amounted to a serious breach of trust, that they had been an intended fraud on the public purse, that they would, if undetected, have involved the dishonest obtaining of substantial sums of well over £100,000; and that the offences had inevitably aroused suspicions that had centred upon others.
- 13.2. Ms Jackson referred the Tribunal to the authorities relating to the consequences in penalty of a lack of integrity and of dishonesty in the conduct of solicitors from Bolton v Law Society CA WLR 1994 onwards. Commenting upon the case of SRA v Sharma [2010] EWHC 2022 (Admin), Ms Jackson submitted that while there might be a very few exceptional cases where a solicitor, who had been found to have been dishonest, might not be struck off the Roll of Solicitors, the Respondent's behaviour had been deliberate, calculated and carried out to retain his position within his firm. These circumstances, she submitted, did not amount to the exceptional circumstances that would bring the Respondent within that small residual category of cases of dishonesty not resulting in a striking off from the Roll of Solicitors.
- 13.3. Commenting upon the Tribunal's Findings & Decision dated 27 January 2011 in the case of Rahman, in which a solicitor found to have been dishonest had been suspended for a period of 12 months, Ms Jackson noted that there had been no criminal conviction or term of imprisonment in that case and that the decision itself was currently subject to appeal by the SRA.
- 13.4. Counsel for the Respondent explained that while the allegation was admitted, he would be submitting, by way of mitigation, that there were in fact exceptional circumstances such as to justify a lesser penalty than that of a striking off the Roll of Solicitors.
- 13.5. The Tribunal found the allegation fully proved on the facts and the evidence, indeed it was not disputed by the Respondent.

Previous Disciplinary Matters

14. There were no previous matters.

Mitigation

15. Counsel relied on his detailed written skeleton argument, the statement of David Spens QC, the bundle of testimonials and the comprehensive Medical Report from Professor Hirsch.
16. Mr Beaumont referred the Tribunal to the agreed facts. At the material time the Respondent had been a salaried, junior partner working in a criminal practice in Luton but with very little experience. He had been asked by his firm to prepare legal aid claims in relation to fees earned in three criminal cases. The Respondent had not completed such bills before, had prevaricated and had taken the papers, including the raw data and attendance notes, with him to deal with while on holiday during which his luggage had been lost by the airline.
17. Instead of going to the firm's senior partner, the Respondent had panicked because he had believed, albeit wrongly, that he would have been subject to a severe internal sanction, perhaps even dismissal.
18. In seeking to explain the Respondent's reaction to events, Counsel referred to Professor's Hirsch's Medical Report in which he had explained that the Respondent's self-sufficient reaction to stressful events was attributable to a psychological response with its origins in childhood.
19. Counsel noted from the Medical Report that the Respondent had developed a depressive episode which had begun around March 2008 because of serious and permanent family disputes. Counsel submitted that when preparing the three bills, the Respondent, because of depressed cognitive function, had not really known what he had been doing, hence the absurdity of some of the information in the claims.
20. Counsel stressed that the High Court had not defined "exceptional circumstances" as all such cases were fact-sensitive. However, Counsel explained and expanded upon those exceptional circumstances, relevant to the Respondent, as detailed in his Skeleton Argument. Counsel noted that the criminal case could have been defended on the basis of no subjective "Ghosh" dishonesty, that the Respondent had pleaded guilty for pragmatic reasons because he could not face the public ordeal of a Crown Court trial, that from the testimonials it was clear that the Respondent was an excellent solicitor held in high esteem, that he had the support of the senior partner of his former firm and of others, that it was not professional misconduct for lawyers to estimate fees if their records were inadequate, that the false claims had been easy to detect as they had been so crass, that the Respondent had acted out of panic and not with any intention to gain materially, that his self-sufficient reaction to stressful events had been attributable to a psychological response with its origins in the Respondent's childhood, that he had been suffering from a mental illness, that the Respondent had suffered trauma in prison resulting in PTSD-like symptoms, albeit treatable, and that the Respondent now had an offer of employment at an appropriate time.

21. Counsel also referred to the relevant authorities from Bolton v Law Society CA WLR 1994 onwards and stressed that if, as he submitted, there were exceptional circumstances in the Respondent's case, the Tribunal would be discharging its duty by imposing a penalty of suspension which would not shut the door for good on a solicitor who could provide a valuable service in the future.

Sanction

22. Having considered all the evidence and the submissions, the Tribunal noted that the Respondent had been convicted and had indeed pleaded guilty to three serious offences of fraud involving dishonesty. The Tribunal was satisfied, so that it was sure, that the acts that had led to those convictions had involved behaviour lacking in integrity. Moreover, it was also satisfied that those acts had been performed in a way that would have inevitably diminished the trust that the public places in the profession as a whole.
23. The Tribunal stressed that solicitors working in a field remunerated from public funds must be completely trustworthy. The consequences of failures of trust in such a field of work would be the breakdown of the entire system of public financing and consequently of the system itself. The system relied upon those working within it to act with integrity.
24. The Tribunal accepted that the Respondent sincerely acknowledged his regret. It also accepted his fragile state of mind, his family problems and the absence of any personal financial gain. However, the Tribunal did not accept that all the various factors placed before it amounted to exceptional circumstances such as to make a striking off order inappropriate.
25. The Tribunal noted all of the many mitigating factors but did not accept that taken as a whole they negated the duty of the Tribunal to maintain the public's confidence in the integrity of the solicitors' profession. The Tribunal also noted, with concern, the aggravating factors involving a breach of trust, the exploitation of a system vulnerable to abuse and in particular that innocent people had come under suspicion.
26. Having given very careful consideration to the submissions of both parties and to the evidence submitted by way of mitigation, the Tribunal considered that in all the circumstances of the particular case the appropriate penalty was that the Respondent be struck off the Roll of Solicitors and it so ordered.

Costs

27. The Applicant's solicitor submitted a claim for costs totalling £1,331.87. Ms Jackson submitted that under its Rules the Tribunal could make orders as to costs and that it was its practice to make orders both for the costs of forensic investigations by the SRA and for the costs of its employed solicitors.

28. Counsel opposed the making of any order for costs on the basis that as the SRA employed Ms Jackson she was not in a position to submit a Bill of Costs without which no costs could have arisen. Counsel also provided limited details of the Respondent's means.
29. The Tribunal accepted that the proceedings had been properly brought and that the costs, as claimed, were reasonable and, having considered the limited information provided as to the means of the Respondent, that costs of £1,331.87 should be ordered as against him.

Statement of Full Order

30. The Tribunal Ordered that the Respondent, NAJAF SHAH, 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 £1,331.87.

Dated this 13th day of May 2011
On behalf of the Tribunal

R Nicholas
Chairman