

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11481-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

TARIQ GHOURI

Respondent

Before:

Mr I. R. Woolfe (in the chair)

Mr T. R. Smith

Mr M. Palayiwa

Date of Hearing: 2 February 2017

Appearances

Jonathan Goodwin, solicitor advocate of Jonathan Goodwin Solicitor Advocate Ltd, 69 Ridgewood Drive, Pensby, CH61 8RF, for the Applicant.

The Respondent attended and represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent, who was not a Solicitor, and was employed by Dent Abrams Solicitors (“the Firm”), was that he had been guilty of conduct of such a nature that in the opinion of the Solicitors Regulation Authority (“SRA”) it would be undesirable for him to be employed by a Solicitor in connection with his or her practice as a Solicitor, in that he, whilst an employee of the Firm;
 - 1.1 misled or attempted to mislead a representative of the SRA in relation to the preparation of the Firm’s accountant’s report and thereby he failed to:
 - 1.1.1 act with integrity in breach of Principle 2 of the Principles;
 - 1.1.2 behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Principle 6 of the Principles.
 - 1.2 misled or attempted to mislead NG in relation to the state of the accounts and/or the preparation of the accountant’s report and thereby he failed to:
 - 1.2.1 act with integrity in breach of Principle 2 of the Principles;
 - 1.2.2 behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Principle 6 of the Principles.
2. Dishonesty was alleged against the Respondent in relation to allegations 1.1 and 1.2. Whilst dishonesty was alleged, it was not an essential ingredient for proof of the allegations. The Applicant submitted that the Respondent’s actions were dishonest according to the combined test laid down in Twinsectra v Yardley and others [2002] UKHL 12 which required that a person had acted dishonestly by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included:
 - Notice of Application dated 16 February 2016
 - Rule 8 Statement and Exhibit KS1 dated 16 February 2016.
 - Applicant’s Schedule of Costs dated 27 January 2017
 - Defence of the Respondent (undated)

Preliminary Matters

4. These proceedings were instigated by the SRA on 16 February 2016 in respect of the Respondent and NG. On 2 February 2017 the proceedings in respect of the Respondent and NG were severed. This Judgment only relates to the case against the Respondent.

Factual Background

5. The Respondent was the Firm's Practice Manager; the responsibility for preparing the books of account had been delegated to him.
6. On 31 January 2013, (the deadline date for the delivery of the Firm's accountant's report), the Respondent contacted the SRA requesting an extension of time to 11 February 2013 for the delivery of the report, stating that the Firm's accountant needed that extra time to complete the report. An extension to 15 March 2013 was granted.
7. The report was not delivered by 15 March, and a further extension was granted to 30 March 2013; this further deadline was similarly not complied with.
8. Between 31 January and 13 August 2013, the Respondent represented, on more than one occasion, to the Firm's SRA Supervisor, that the Firm's accountant was preparing the accountants report, but that for various reasons the accountants had been delayed in completing the report.
9. On 13 August 2013, the Respondent emailed the Firm's Supervisor and stated *inter alia*:

“I have been at the accountant's office this morning to find out why our report has not been received by yourself. Our accountant is on holiday but his assistant confirmed that it is in the file. I asked her to send it but she says she needs to check with him before she does as she has no instructions from him regarding it. She left him a message and I was waiting to see if he got in touch. However, she told me that he will contact her at some point today, if not by tomorrow and she will confirm and send the Report. He's due back in the office next Monday.”
10. Following receipt of this email, the Firm's Supervisor contacted the accountants that the Respondent had represented were instructed to prepare the report. The Accountants informed the Firm's Supervisor that they had not been instructed by the Firm to prepare its accountant's report, the Respondent had not attended the office that day and they had not provided any information about the report being on the file.
11. The Firm's Supervisor contacted the Respondent by telephone on 13 August 2013 and asked him to confirm that he had attended the accountant's office that day personally. The Respondent confirmed that he had. The Respondent was asked to confirm who he had spoken to at the accountant's office, and was informed that the accountant's office had been contacted and had stated that they were not in the process of preparing any reports for the Firm. The Respondent then admitted that he had lied to the Supervisor; he had not been to the office that day and had not instructed the accountant to prepare the accounts.
12. The Respondent explained that because he had already been granted an extension, he felt he could not continue to ask for further time so he had decided to lie in order to allow the Firm time to submit the accountant's report. The Respondent apologised for his actions and explained that he could now see how serious this issue was but at the

time it had not occurred to him that it could have serious consequences for both him and NG.

13. Later that day the Respondent emailed the Firm's Supervisor and stated, inter alia:

"I am truly sorry for the mess I created and for the reasons I tried to explain to you ... I am devastated and ashamed by my actions. I cannot regard them more than I am doing so. As I explained, in order to just buy some time I did a very foolish thing ... [NG] relied on me and I have let her down. Please find a way to punish me and not her ... I do not think [NG] will want me around after learning about this. I am going to discuss it with her as soon as she arrives and has seen her clients ... I am truly sorry to you personally, you have been very reasonable the entire time and I just simply cannot come to terms with what I have done, particularly as it is not me who will suffer the most. To be responsible for perhaps ending someone's career is too much of a burden and I accept I have no one to blame but myself but please take a balanced view and take into account what measures will be put in place and the fact that I will be out of the picture with regards to dealing with important matters".

14. The Applicant commenced an inspection on 1 October 2013 due to concerns in relation to the Firm's financial stability and produced a forensic investigation report dated 30 October 2013.
15. During the inspection, the Respondent informed the Forensic Investigation Officer ("FIO") that the books of account were not up to date, and that he had concealed the extent of the problems with the books of account from NG and misled her as to the true position.

Witnesses

16. The following witnesses provided statements and gave oral evidence:

17. Tariq Ghauri – the Respondent

- 17.1 In his oral evidence the Respondent confirmed that he admitted allegations 1.1 and 1.2. Further, he accepted that his actions had been objectively dishonest. His evidence related to the subjective element of dishonesty; he denied that he had been subjectively dishonest. The Respondent explained that he had been to see his Doctor in August 2012 in relation to his mental health. He blamed himself for the death of his father, believing that he was responsible for neglecting his father's health and failing to provide adequate support. The Respondent referred the Tribunal to a letter from his GP dated 17 December 2013, which explained that the Respondent had been to see his GP in August 2012 complaining of feeling depressed with suicidal ideation following the death of his father. He was struggling with the simplest tasks of daily living and had persistent low mood, lack of motivation and sleep problems. He had been prescribed anti-depressants but his mental state, as at December 2013, had not significantly improved from August 2012.

- 17.2 The Respondent stated that at the time he made the misrepresentations, he was not thinking clearly, but was aware that what he was doing was wrong. He had invented stories and lied. He regretted and was ashamed of his conduct but he was not “thinking clearly of the consequences” so did not appreciate the gravity of his actions. He had been unable to provide a psychiatric report to the Tribunal, as he was unable to afford the cost of the commission of such a report. He explained that he knew what he was doing was wrong, but did not realise that it was dishonest; he did not give it a second thought.
- 17.3 Under cross-examination, the Respondent accepted that he had lied to the SRA and to NG; that the lies had continued over a period of time and that telling lies was wrong. Further, he accepted that even where there were no consequences arising out of any lies told, a lie was still a lie. The Respondent stated that he knew his actions were wrong but he did not think about how seriously wrong that was, nor about anything beyond the fact that he was doing wrong. The Respondent accepted that he had lied to the SRA and to NG to conceal his failings in relation to the accounts. The Respondent accepted that the emails written to the SRA containing untruths had been consciously written, however they were written at a time when he was unwell. The Respondent accepted that he had invented and developed the “story” given to the SRA in relation to the preparation of the accountant’s report, but stated that he “wasn’t in the right frame of mind when telling those lies.” The Respondent further accepted that when he was confronted by the Firm’s Supervisor he “came clean” as he had “no option”.
- 17.4 The Respondent explained that he denied dishonesty as he did not think he had been intentionally dishonest. He had tried to gain time and had “done wrong”, however it was unfair to label him as dishonest as he had been unwell at the time. He accepted that he had “concealed the truth”, as per his letter to the FOI of 21 October 2015.

Findings of Fact and Law

18. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent’s rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
19. **Allegation 1.1 - whilst an employee of the Firm, the Second Respondent misled or attempted to mislead a representative of the SRA in relation to the preparation of the Firm’s accountant’s report and thereby he failed to act with integrity and to behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Principles 2 and 6 of the Principles.**

Allegation 1.2 – the Second Respondent misled or attempted to mislead the First Respondent in relation to the state of the accounts and/or the preparation of the accountant’s report and thereby he failed to act with integrity and behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Principles 2 and 6 of the Principles.

- 19.1 The factual background to these allegations is as set out at paragraphs 5 – 15 above. Mr Goodwin submitted that the Respondent had, on a number of occasions between 31 January 2013 and 13 August 2013, represented to the Firm's supervisor that the Firm's accounts were in the process of being prepared when he knew that this was not the case. He had misled, or attempted to mislead the SRA. Further, he had misled NG as to the preparation of the report and the state of the account.
- 19.2. The Respondent admitted both allegations in his response, during his submissions, and whilst giving evidence.
- 19.3 The Tribunal found that it was clear from the admissions made in the documents and during his evidence, that the Respondent had misled the SRA and NG as pleaded and alleged. Accordingly, the Tribunal found allegations 1.1 and 1.2 proved beyond reasonable doubt on the facts, evidence, submissions and the Respondent's unequivocal admissions.

Dishonesty

- 19.4 Mr Goodwin submitted that in misleading/attempting to mislead the Firm's Supervisor in relation to the preparation of the accountant's report, the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people, and that he knew that to be the case. Similarly, in misleading/attempting to mislead NG in relation to the state of the accounts and the preparation of the accountant's report, he had acted dishonestly by the ordinary standards of reasonable and honest people and he knew that to be the case.
- 19.5 The Respondent accepted that he had been objectively dishonest. The Respondent submitted that the evidence that his mental health was affected at the time of the conduct complained of and admitted, was sufficient to cast doubt on his frame of mind such that the Tribunal could not be sure, beyond reasonable doubt, that he was subjectively dishonest.
- 19.6 The Tribunal found that reasonable people operating ordinary standards of honesty, would find that deliberately lying was dishonest, and accordingly the objective test in Twinsectra was satisfied; indeed the Respondent admitted that his actions were objectively dishonest.
- 19.7 Whilst the Tribunal accepted that the Respondent was unwell at the time of his conduct, the Respondent had produced no evidence to show that he had been incapable of distinguishing between honest and dishonest behaviour. It was clear, from the documents, that the Respondent had not realised the serious consequences that could flow from his behaviour. This, the Tribunal considered, was different to not knowing that the behaviour itself was dishonest. The Respondent was motivated to lie to cover up his own failings. The Respondent accepted that he had lied and had done so repeatedly over a period of time; he only told the truth when he had no other option. The Respondent, the Tribunal determined, was an intelligent man who, notwithstanding his illness, was able to tell the difference between honest and dishonest behaviour. The Respondent knew that he had lied, and knew that to do so was dishonest; his failure to comprehend the severity of the consequences that could flow was not relevant to considerations of subjective dishonesty. Accordingly, the

Tribunal found that the Respondent was subjectively dishonest, and thus found dishonesty proved beyond reasonable doubt.

Previous Disciplinary Matters

20. None.

Mitigation

21. The Respondent expressed remorse for his actions. He explained that he did not intend to seek work in the legal profession in the future. His only concern was that he would like to assist in the closing of the Firm; the Applicant having intervened into the Firm on 12 January 2017. Given that he had no intention of working in the profession, the Respondent submitted that it was not necessary to impose a Section 43 Order. As he was no longer working, he had no income at present, and would not be in a position to pay any fine imposed immediately. He had not submitted evidence of his means as directed, because he had, until the intervention, been working, and thought that he would be able to pay any fines or costs imposed.

Sanction

22. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition – December 2016). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.
23. The Tribunal found the Respondent completely culpable for his conduct; he had direct control of his actions. He had been motivated by his desire to conceal from the SRA and NG his failings in relation to the accounts and the accountant's report. He had deliberately misled the SRA which was as culpable a form of professional misconduct as the misapplication of client's funds. (SRA v Spence [2012] EWHC 2977 (Admin)). The Respondent's conduct had directly affected NG, who, as a result of his failings, was to face proceedings before the Tribunal. Further, his conduct had damaged the trust the public placed in the profession and the provision of legal services. Members of the public would be extremely concerned to know that Respondent had misled both NG and the Applicant. The Respondent's misconduct was aggravated by his proven dishonesty, which had continued over a period of time, was deliberate and repeated. Whilst the initial untruths told may have been spontaneous, the Respondent had continued to lie over a period of time until such time that he was no longer able to do so, his lies having been discovered by the Firm's Supervisor. In mitigation, the Tribunal noted that the Respondent, once his misrepresentations had been discovered, had been completely open and honest and had co-operated in full with the Applicant. He had accepted the substantive matters from the outset, and had confirmed his admissions both in his Answer and in his oral evidence.
24. In light of the seriousness of the misconduct of the Respondent, namely his proven dishonesty and lack of integrity, the Tribunal determined that it was undesirable for him to be employed by a solicitor without the permission of the Applicant. It was

therefore appropriate and proportionate to make an order restricting the employment of the Respondent under Section 43 of the Solicitors Act 1974. The Tribunal did not find it appropriate or proportionate to impose a disciplinary sanction in addition to the Section 43 Order.

Costs

25. Mr Goodwin applied for costs as per the costs schedule, with some amendments to take account of the reduced hearing time. The costs, it was submitted should be apportioned between the Respondent and NG. Given the nature of the investigation and the matters, Mr Goodwin submitted that the apportionment should be an equal split between the Respondent and NG. On that basis, the parties had agreed costs payable by the Respondent in the sum of £15,000.00.
26. The Tribunal considered the schedule of costs submitted. The Tribunal determined that the amounts claimed for perusing/reviewing the papers and preparation for the hearings was excessive and would have included duplication of work between Mr Goodwin and the SRA. Further, the SRA supervision costs were excessive, with 42 hours having been spent on supervision, despite a very clear and well written Investigation Report. The Tribunal determined that £30,000 was reasonable in all the circumstances.
27. The Tribunal did not accept that an equal division of costs between the Respondent and NG was appropriate. The Respondent had made admissions from the outset, and the only issue was his honesty. The documents contained in the bundle that related to the Respondent were limited, and the issue to be decided was narrow and uncomplicated. The Tribunal determined that an appropriate apportionment was for the Respondent to pay a third of the costs. Accordingly, the Tribunal determined that the appropriate and proportionate amount of costs to be paid by the Respondent was £10,000.00. As the Respondent had failed to provide any evidence of his means, the Tribunal did not take his means into account when deciding on the appropriate quantum to be paid by him.

Statement of Full Order

28. The Tribunal Ordered that as from 2nd day of February 2017 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor TARIQ GHAURI;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Tariq Ghauri
 - (iii) no recognised body shall employ or remunerate the said Tariq Ghauri;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Tariq Ghauri in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Tariq Ghauri to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Tariq Ghauri to have an interest in the body;

And the Tribunal further Ordered that the said Tariq Ghauri do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

Dated this 10th day of February 2017
On behalf of the Tribunal

I. R. Woolfe
Chairman