

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11864-2018

BETWEEN:

AHMAR HUSSAIN

Applicant

and

SOLICITORS REGULATION AUTHORITY

Respondent

Before:

Ms A.E. Banks (in the chair)

Miss H. Dobson

Mr S. Howe

Date of Hearing: 20 February 2019

Appearances

Klentiana Mahmutaj, counsel, of Red Lion Chambers, of 18 Red Lion Court, London, EC4A 3EB, for the Applicant

Lorraine Trench, solicitor, of the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Respondent

**APPLICATION FOR
RESTORATION TO THE ROLL**

Application

1. On 30 August 2018 the Applicant applied for his name to be restored to the Roll of Solicitors. The application was supported by a statement dated 3 September 2018. The Applicant appeared before the Tribunal on 21 October 2010 (case number 10453/2010) and was struck off the Roll of Solicitors. The Tribunal found the following allegations proved:
 - (i) The Applicant had failed to act in the best interests of his clients contrary to Rule 1.04 of the Solicitors' Code of Conduct 2007;
 - (ii) The Applicant had behaved in a way that was likely to diminish the trust the public placed in him and the legal profession contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007;
 - (iii) The Applicant had misled clients and/or the SRA as to the nature of his partnership;
 - (iv) The Applicant had failed to produce records, papers, client and trust matter files, financial accounts and other documents in breach of Rule 34(1) of the Solicitors' Accounts Rules 1998;
 - (v) The Applicant had failed to supervise adequately or at all the activities and work of staff within the firm contrary to Rule 5 of the Solicitors' Code of Conduct 2007;
 - (vi) The Applicant had acted recklessly;
 - (vii) The Applicant had failed to fulfil an undertaking in breach of Rule 10.05 of the Solicitors' Code of Conduct 2007;
 - (viii) The Applicant had failed to cooperate with the SRA in the course of its investigation in relation to his practice contrary to Rules 20.05 and 20.08 of the Solicitors' Code of Conduct 2007.
2. The Tribunal was satisfied that the Applicant had advertised the application on 12 November 2018 in the Law Society Gazette and on 13 December 2018 in the Chingford, Walthamstow, Wanstead, Woodford, Leyton and Leytonstone Guardian.

Documents

3. The Tribunal reviewed all of the documents submitted by the parties, which included:
 - The Applicant's application and supporting documents
 - The Applicant's statement and the statement of Mr SS
 - Additional references submitted by the Applicant at the hearing
 - Further documents submitted by the Applicant at the hearing
 - The Respondent's response and supporting documents
 - Section 41 approval of employment granted by the Respondent dated 12 October 2018

- Respondent's schedule of costs dated 12 February 2019

The Applicant's Case

4. Ms Mahmutaj submitted that public confidence in the profession would not suffer from the Applicant's restoration to the Roll. He had undertaken a long and significant period of personal and professional rehabilitation and she submitted that he had to some extent thereby regained the trust of the Respondent.
5. Ms Mahmutaj noted that the Applicant had been struck off for matters he had admitted. The allegations had concerned six property transactions and misleading the Respondent about the nature of his partnership. The Tribunal had found that the Applicant had run his practice in a reckless manner and that this left the door open to fraud. She stressed that no allegation of dishonesty was brought against the Applicant. He had cooperated fully with the Police from the outset of their investigations and he had thereby proactively contributed to exposing and punishing the frauds committed by others.
6. Ms Mahmutaj submitted that the Applicant's application was exceptional in that while struck off he had been working, with the Respondent's permission, as a legal assistant with various firms. In November 2014 the Respondent approved a position for him to be employed as a legal assistant subject to stringent conditions. In 2016, at the request of the firm in question, the conditions were varied so that the Applicant could undertake a limited number of hearings in the Immigration Tribunal.
7. She noted that the Respondent had granted a further approval of employment under section 41 of the Solicitors Act 1974 on 12 October 2018 and that the Respondent's submissions in this matter post-dated this decision. Ms Mahmutaj noted that the Respondent was neutral in the application. She submitted that when reviewing the Applicant's application for approval of employment the Respondent's duty to maintain public confidence in the profession would have been at the forefront of their mind.
8. Ms Mahmutaj stated that the Applicant's proposed employment would be under direct supervision and that the firm offering employment was aware of the Tribunal's decision in 2010 and had read the judgment. The Applicant would not have management responsibility or access to the client or office accounts. She stated that the Respondent had received no complaints about the Applicant during his approved employment. All three directors of the firm employing the Applicant had provided supportive references which commented on the quality of his work and also his conduct. Further references were provided to the Tribunal which Ms Mahmutaj submitted demonstrated that public confidence would not suffer should the Applicant be restored to the Roll.
9. The Applicant gave evidence in support of his application. He described losing virtually everything when his firm was intervened into following the fraud committed by others. He described those involved as confident and impressive and stated that they had gained his trust. He accepted that he did not carry out checks which were available to him when recruiting and that he did not supervise adequately. He stated that no debt was owed to the Respondent. He had previously worked primarily in the

areas of immigration and family law and intended to do so again. He confirmed that he was not doing conveyancing work, and explained that the conveyancing training he had attended was to gain knowledge of what had gone wrong. He stated that he sought out more information about complaints and compliance and attended training courses on these topics. He described other training he had attended and explained to the Tribunal how he kept himself up to date with legal developments. He stated that following a reference by the Respondent in their submissions in response to his application he had booked training on client care and regulation, although he had not yet attended these courses. He confirmed that he had not undertaken any specific training on the SRA Principles or the SRA Code of Conduct.

10. The Applicant stated that he undertook pro-bono work with the knowledge and approval of his employer. He stated that his experience had heightened his sympathy for those who are struggling and that this brings him peace of mind.
11. In response to a question about what he had learnt as a result of his experiences, he stated that he had learned not to take things on trust from colleagues and employees. He stated that he recognised that with more responsibility came a greater obligation to conduct oneself responsibly and to work with due diligence and proper systems of oversight. He described having learned from his mistakes and being better equipped to practise as a solicitor and being keen to fully return to the profession he had worked hard to join and with which he had been involved for around 22 years.

The Respondent's Case

12. The Respondent was neutral on the application. Ms Trench submitted that the Tribunal needed to be satisfied that the Applicant was fit and proper to return to the Roll in the eyes of the public and that his restoration to the Roll would not be contrary to the interests of the public. She invited the Tribunal to review the principles set out in Bolton v The Law Society [1994] 1 WLR 512. She submitted that this case and the other relevant authorities consistently maintained that the reputation of the profession was of paramount importance. Bolton stressed that those guilty of serious lapses should not only be expelled from the profession but also denied re-admittance. The public needed to have total trust in the profession and its reputation was more important than the fortunes of any individual.
13. Ms Trench referred the Tribunal to its Guidance Note on Sanctions. She submitted that an application made over eight years after being struck off could not be described as premature. She submitted that whilst the Applicant had demonstrated some insight he described himself as the victim of fraudsters in circumstances where he did not undertake robust checks on those he employed. The Respondent had approved the employment that the Applicant was currently undertaking, although there appeared to be some ambiguity over who was currently his primary supervisor. She noted that the Applicant had not set out any training plan for if he was restored to the Roll. She also stated that whilst he did not have any outstanding debts to the Respondent, the cost of the intervention and the payment made by the Compensation Fund amounted to over £360,000 and much of what was owed fell away due to the Applicant's bankruptcy rather than through repayment.

14. Ms Trench referred the Tribunal to the cases of Thobani v SRA [2011] EWHC 3783 (Admin) and SRA v Kaberry [2012] EWHC 3883 (Admin). She submitted that these cases stressed that the Tribunal should be sure there was no risk of harm from the Applicant's restoration and be satisfied that he would be adequately supervised. The Respondent's position was that were the Applicant to be restored without suitable controls there would be a risk to the public. The Respondent had recognised some degree of risk which had been managed by way of the controls imposed in the section 41 approval of employment and Ms Trench invited the Tribunal to consider applying suitable conditions if it was minded to grant the application. She submitted that the case-law confirmed that the Tribunal should impose such conditions as it considered necessary and that any conditions imposed should be targeted, reasonable and necessary in view of the risk identified.
15. The Respondent's position was that if the Tribunal was minded to grant the application for restoration to the Roll, the Applicant's employment should continue to be approved by the Respondent, he should not supervise others, he should not act as Compliance Officer for Finance and Administration ("COFA"), handle client money or the firm's bank account or undertake conveyancing work. Ms Trench submitted that the Applicant should undergo training on the SRA Principles, the Code of Conduct and the Solicitors' Accounts Rules.

The Tribunal's Findings

16. The Tribunal had regard to its Guidance Note on Other Powers of the Tribunal (Second Edition). The Tribunal considered that the following provisions from the Guidance Note were relevant to this application:
- The guidance provided by Bolton:

“the most fundamental [purpose of sanction] of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission.”
 - in relation to cases where strike off was imposed for disciplinary offences not involving dishonesty, the guidance provided by Lord Donaldson in Case No. 11 of 1990 (unreported) that the Tribunal should ask:

“If this was the sort of case where, even if the back history was known (that is whatever explanation and mitigation was available to explain why the solicitor committed the original offence), and without the explanation as to what has happened subsequently, the members of the public would say ‘that does not shake my faith in solicitors as a whole’.”
 - the period which has elapsed since the order of strike off/removal was made. Save in the most exceptional circumstances an application for restoration within six years of the original strike off/removal is likely to be regarded by the Tribunal as premature.

- evidence of rehabilitation. This will usually require detailed evidence of substantial and satisfactory employment within the legal profession in the period since strike off.
 - the applicant's future employment intentions and whether another solicitor would be willing to employ the applicant within a practice in the event that the applicant's name is restored.
 - the extent to which the applicant has repaid any losses sustained by others as a result of the applicant's original misconduct, including any fines and cost orders made by the Tribunal. The applicant must be in a position to demonstrate that they have made a sustained effort to meet any such liability.
17. The Applicant had been struck off the Roll in 2010 for very serious failings in his practice, misleading the Respondent and acting recklessly. He was not found to have been dishonest. The Tribunal considered the Applicant to be an honest and credible witness who demonstrated insight into the causes of his misconduct. The Tribunal concluded that the public would consider that he had been taken-in by determined and convincing semi-professional fraudsters. He had cooperated fully with the Police and financially and professionally he lost a very substantial amount as a result of his own failings being exploited.
18. The Applicant had worked hard to re-establish himself in approved employment in the legal sector and no complaints had been received. The statements received from the directors of the firm where he had been working with the Respondent's approval were very positive. The firm had indicated an intention to offer the Applicant employment as a solicitor in the event he was restored to the Roll. The Tribunal noted that the Applicant had undertaken training covering some key regulatory requirements. It had been over eight years since he had been struck off and the application was not premature. Knowing the full back history the Tribunal considered that public confidence in the legal profession would not be undermined by the Applicant returning to the profession as a solicitor.
19. The Tribunal considered that the Applicant's knowledge of the training requirements for solicitors required updating. The Tribunal noted that the training that the Applicant had undertaken was largely in 2015 and 2017 and in areas not directly relevant to his areas of practice. The Tribunal had some concerns about the Applicant's self-analysis of his training needs and considered that training to update him in the regulatory framework applying to solicitors was necessary in order to protect the public and provide confidence in him as a solicitor.
20. The Tribunal also noted that the Applicant had not worked unsupervised for several years and considered that working unsupervised represented a potential risk. The Tribunal considered that conditions ensuring that he did not occupy a position where there would be no supervision or oversight was a proportionate way to ensure adequate protection against this risk. Despite the Applicant's indication that he did not intend to work in conveyancing, the Tribunal considered that a condition ensuring this was also necessary in order to protect the public given the context of the misconduct.

21. In view of the seriousness and nature of his misconduct, the Tribunal also considered that conditions ensuring that he did not act as Compliance Officer for Finance and Administration or Compliance Officer for Legal Practice were appropriate and necessary to protect the public. For the same reason, conditions ensuring that he did not work as a sole practitioner, manager or owner of an authorised or recognised body or as a partner or member of a Limited Liability Partnership, Legal Disciplinary Practice or Alternative Business Structure or other authorised or recognised body, were also necessary.
22. The Tribunal accordingly determined that it would grant the Applicant's application to be restored to the Roll of Solicitors and imposed conditions as set out above.

Costs

23. The total costs claimed in the Respondent's schedule of costs was £3,025.60. The parties reached agreement that costs of £2,500 should be paid by the Applicant.
24. The Tribunal assessed the costs for the hearing. In all of the circumstances the Tribunal considered that the figure agreed between the parties was reasonable and ordered the Applicant to pay the Respondent's costs of and incidental to responding to his application fixed in the sum of £2,500.

Statement of Full Order

1. The Tribunal ORDERED that the application of Ahmar Hussain for restoration to the Roll of Solicitors be **GRANTED** and it further Ordered that he do pay the costs of the response of the Solicitors Regulation Authority to this application fixed in the sum of £2,500.
2. The Applicant shall be subject to conditions imposed by the Tribunal as follows:
 - 2.1 The Applicant may not:
 - 2.1.1 Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;
 - 2.1.2 Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;
 - 2.1.3 Be a Compliance Officer for Legal Practice or Compliance Officer for Finance and Administration;
 - 2.1.4 Undertake any conveyancing work.
 - 2.2 The Applicant is directed by the Tribunal to attend training courses on the SRA Code of Conduct, the SRA Principles and the SRA Accounts Rules within 12 months of the date of this order.

Dated this 1st day of March 2019
On behalf of the Tribunal



A. E. Banks
Chair

Judgment filed
with the Law Society
on 28 FEB 2019