

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11901-2018

BETWEEN:

ANDREW ABEREOJE

Applicant

and

SOLICITORS REGULATION AUTHORITY

Respondent

Before:

Miss J Devonish (in the chair)

Mrs A Kellett

Mr S Marquez

Date of Hearing: 28 February 2019

Appearances

The Applicant did not appear and was not represented.

Alexandra Whelan, barrister of Fountain Court, London EC4Y 9DH, instructed by the Solicitors Regulation Authority for the Respondent.

**MEMORANDUM OF
WITHDRAWAL OF APPLICATION TO REMOVE
CONDITIONS ON PRACTISING CERTIFICATE**

1. The Applicant had lodged an application dated 27 November 2018 for removal of a condition on his Practising Certificate. The Respondent had opposed that application and had served a response on 21 January 2019.
2. On 5 February 2019 the Applicant had informed the Tribunal that he was contemplating withdrawing his application. He then contacted the Respondent on 9 February 2019 and asked if costs would be sought if he withdrew.
3. On 11 February the Applicant stated that he wished to withdraw.
4. On 12 February 2019 the Respondent had written to the Applicant (in an email that was subsequently sent to the Tribunal on 21 February) stating that the costs would be £1630.
5. On 19 February 2019 the Applicant sent a message through the SDT Feedback system. This was picked up on 21 February 2019 and sent to the Respondent. In that message the Applicant stated that he wished to withdraw his application.
6. On 25 February the Respondent had written to the Applicant imposing a deadline of 4.00p.m. for confirming if he still wished to proceed as he had not responded to the question of the Respondent's costs in a number of previous emails. The email stated that if the Respondent did not hear from the Applicant by that deadline it would need to commence preparations for the hearing, which was listed for 28 February and this would include further costs.
7. On 27 February 2019 at 8.41am the Respondent sent a schedule of costs to the Tribunal and the Applicant in the sum of £5,803.
8. On 27 February 2019 the Respondent sent the following email to the Applicant, copied to the Tribunal, at 9.26am:-

“URGENT

Dear Mr Abereoje

The hearing of your application was listed for 28 February 2019 on 5 December 2019. You first indicated that you might want to withdraw your application on 5 February 2019 but you sought confirmation as to the SRA's position on its costs.

The SRA advised you that it would seek its costs if the application were withdrawn. You did not respond, despite both the SRA and the Tribunal emailing you to confirm your position: see emails of 12 February 2019 (from the Tribunal) and 18 February 2019 (from the SRA). On 19 February 2019, you emailed the Tribunal only and stated that you wanted to withdraw your application but (again) you failed to address the SRA's position on costs. It appears, from your most recent correspondence, that on 20 February 2019, you booked a flight to Largos, which departs the night before the hearing. You did so despite the fact that:

(a) you had not responded to the SRA or the Tribunal to state your position as to the SRA's position on costs; and

(b) you had not received any confirmation from the Tribunal that the hearing would be vacated and/or that the application had been withdrawn.

Thereafter, both the Tribunal and the SRA emailed you to confirm your position: see emails of 20 February 2019 (from the SRA), 21 February (from the Tribunal), and 22 February 2019 (from the SRA). You did not respond. Accordingly, the SRA wrote to you on 25 February to state that if you did not respond by 4pm that day, it would assume that the hearing was proceeding.

You did not respond and so on 26 February 2019 the SRA confirmed that it assumed the hearing was proceeding. The SRA then prepared and lodged its skeleton argument.

Last night you wrote to the SRA and the Tribunal to state that:

- You wish to withdraw the application and, in any event, you will not be attending the hearing: email of 26 February 2019, 21:47.
- You do not see the need for a hearing but if the SRA insists on a hearing, you request that it be adjourned because you are travelling: email of 26 February 2019, 21:54.
- You request that your first email (sent at 21:47) be presented to the Tribunal as an application for an adjournment: email of 26 February 2019, 22:24.

Please respond as a matter of urgency to the following questions:

- Are you seeking to withdraw your application or to apply for an adjournment?
- If you are seeking to withdraw your application, what is your position as to the SRA's costs? The SRA provided its costs schedule this morning.

The SRA's position is as follows:

- If you are withdrawing your application, the SRA seeks its costs (as set out in the costs schedule provided this morning).
- If you are applying to adjourn the hearing, the SRA opposes that application. In this regard, it is noted that your reason for the adjournment is a flight to LARGOS, which appears to have been booked on 20 February 2019, i.e. at a time when you were well aware that the hearing remained listed; and that your request for the adjournment has been made only one day before the hearing.

Subject to Mr Abereojé's responses as to the questions above, the SRA proposes that these matters be dealt with at the hearing tomorrow.

9. The Applicant responded at 9.42am stating the following:-

“Dear Sirs/Madam

I am unable to give proper consideration to the issues being raised by the SRA in the email below because I have to travel to see my parents in Nigeria, Africa.

I have not read my emails for a while and I have received any written information via post from the SRA or SDT.

I do not intend to dispute the SRA costs and I do not see the need for a trial.

If the SRA or the tribunal decide that there is a need for a hearing then please adjourn the hearing to date in April 2019 or May 2019.

Kind regards”

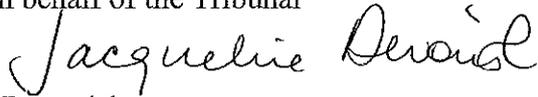
10. The Tribunal was satisfied that the Applicant was making an application to withdraw his application and not for an adjournment. The Tribunal agreed to grant that application.
11. In considering the question of cost, the Tribunal reviewed all the emails, including those cited above. The Tribunal was concerned that costs had risen substantially from £1630 to £5803 despite repeated statements from the Applicant that he wished to withdraw. In light of those concerns the Tribunal invited further submissions from Ms Whelan on the point.
12. Ms Whelan told the Tribunal that she accepted that the Applicant had indicated he had wished to withdraw but he had not responded to the question about costs until the day before the hearing. In the circumstances the Respondent was not sure that he still wished to withdraw if he would have to pay the Respondent’s costs. At one stage it appeared that the Respondent may wish to apply to adjourn.
13. The Respondent was left with no choice but to prepare for the hearing. Ms Whelan explained that the figure of £1630 included preparation of the response as the primary position of the Respondent was that the application was an abuse of process.
14. The Tribunal noted that it was clear that the Applicant was not going to be present on 28 February as he was going to be abroad. In those circumstances there was no prospect of a contested hearing.
15. The level of preparation required, including instructing Counsel was not the same as it would have been had he attended and pursued his application. In those circumstances the costs claimed seemed high. There was no doubt that the Respondent was entitled to costs of defending an application that had now been withdrawn. The Applicant could have been clearer in his responses to the Respondent. In the circumstances the appropriate level of costs was £2,600.

Statement of Full Order

16. The Tribunal Ordered that the Applicant, Andrew Abereoje, be granted leave to withdraw his application dated 27 November 2018 for the removal of a condition on his practising certificate made in case number 11863-2018 and it further Ordered that he do pay the costs of an incidental to the Respondent's response to the application fixed in the sum of £2,600.00.

Dated this 1st day of March 2019

On behalf of the Tribunal



J. Devonish
Chair