

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ALUM ZEB KHAN KHATTAK, solicitor (The Applicant)

Mr R Woolfe (in the chair)
Mr R Prigg
Mr M R Hallam

Date of Hearing: 12th October 2010

**APPLICATION TO LIFT AN
INDETERMINATE SUSPENSION**

Appearances

The Applicant, Alum Zeb Khan Khattak was present and represented himself.

The Respondent, The Solicitors Regulation Authority ("SRA"), was represented by Inderjit Singh Johal, barrister of the SRA, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE.

The application to lift an indeterminate suspension was made on 21 January 2010 by way of an affidavit and exhibits. The Applicant had also filed and served a supplemental affidavit and supporting documents dated 1 June 2010. The Respondent's outline submissions were dated 10 February 2010.

Application

1. It was confirmed to the Tribunal that the affidavit of 21 January 2010 was sufficient to constitute the application and there did not need to be a separate application document.
2. It was noted that a previous hearing of this application had been adjourned (on 3 June 2010) as the Notice of Application had not been advertised in accordance with the requirements of the Solicitors (Disciplinary Proceedings) Rules 2007. It was confirmed

to the Tribunal that the application had been appropriately advertised in The Law Society's Gazette. Although no copy of the advertisement placed in a Birmingham newspaper (local to the Applicant) was produced to the Tribunal, the Applicant confirmed that it had been advertised a month before the present hearing. The Respondent was content to proceed on the basis that the application had been advertised in accordance with the Rules, and the Tribunal agreed to proceed on this basis.

3. The Applicant submitted that he had considered long and hard before making the current application. He had asked the Respondent (SRA) if it would object to his application and the Respondent had indicated it would take a neutral stance, subject to being satisfied that the Applicant had undertaken certain training.
4. The Applicant was admitted as a solicitor on 15 July 1998. On completion of his training contract he became a partner in Caffrey & Co in Birmingham. He practised as a partner in that firm until 28 February 2005.
5. There had been two sets of proceedings against the Applicant brought before the Tribunal. On 16 December 2003 the Applicant answered three allegations relating to breaches of the Solicitors Accounts Rules 1998 ("SAR"). The Applicant had been fined £9,000 and the Tribunal had suspended the other partner in the practice, Mr Caffrey, for one year. The Law Society had imposed a condition on the Applicant's practising certificate for the 2004/2005 period that he should lodge quarterly Accountant's Reports with The Law Society and that he could act as a solicitor only in approved employment.
6. In the second set of proceedings, heard on 24 October 2006, the Applicant had been indefinitely suspended. The Applicant submitted that the actions which had led to those proceedings had occurred before the first Tribunal hearing. In the second proceedings the Applicant had admitted various allegations relating to acting where there was a conflict of interest and failing to act in the best interests of clients in conveyancing transactions in breach of Rules 1 and 6 of the Solicitors Practice Rules 1990 ("SPR"). The Applicant had also admitted on that occasion failing to supervise properly or at all non-admitted staff in breach of Rule 13 of SPR. The matters which had been found against him in both 2003 and 2006 related to accounting and management issues whilst carrying out a conveyancing practice.
7. The Applicant had not worked in the legal field since 2005. He had found it hard to find employment in a law firm whilst suspended, although he had made every effort to do so. He had sent about 200 letters to potential employers since 2006/2007. A major difficulty in finding employment with a law firm was that potential employers would have faced increased insurance premiums if they employed someone who had been suspended. It was difficult for employers to take on this additional financial burden in the current economic climate. Although the Applicant had supporters within the legal profession, some of whom had submitted testimonials on his behalf, this was a relatively small group and until now none had been in a position to offer employment.
8. The Applicant now had the possibility of employment in a law firm of which his brother was a partner. That firm, Stuart Miller Solicitors based in Wood Green, London, was Lexcel accredited. The work the Applicant was offered would involve

police station representation. To be able to do this work the Applicant would need to undertake various tests and training. He hoped in due course, if restored to the Roll, to obtain duty solicitor status. The Applicant told the Tribunal that if he were to become a police station representative whilst not being a practising solicitor, he would need to come off the Roll of Solicitors.

9. The Applicant had completed a number of relevant training courses, in particular:
 - (a) Solicitors Accounts Rules on 15 September 2008 (accredited for three hours CPD) on 29 October 2009;
 - (b) A PSC Accounts Distance Learning Course with BPP (accredited for twelve hours CPD) on 29 October 2009;
 - (c) A Professional Standards and Client Care Course on 14 October 2008;
 - (d) Solicitors Management Course Stage 1 on 6 April 2009 (accredited for seven hours CPD);
 - (e) Solicitors Management Course Stage 2 - Developing the Manager - undertaken on 31 March 2009 (accredited for six hours CPD);
 - (f) A Police Station Accreditation Portfolio Preparation Day Course on 27 November 2008; and
 - (g) Commenced a Police Station Accreditation Course with Central Law Training on 18 September 2008.

At the time of the application the Applicant was studying for a Certificate in Personal Injury with ILEX Tutorial College Limited.

10. The Applicant told the Tribunal that the Professional Skills and Professional Conduct courses had been thorough. The Applicant had taken and passed assignment based work as part of the accounts course. Although he had undertaken management and accounts training, the Applicant did not aspire to practise in partnership or to have management responsibilities. He acknowledged that he had not been competent in management or accounts and this was what had led to his suspension. He hoped only to practise as an employed solicitor, if restored. He would undertake a criminal law update course and in-house training within his brother's firm, Stuart Miller Solicitors, if he were able to return to practise.
12. Since 2005 the Applicant had worked part-time, firstly for a vehicle hire company which had gone out of business in 2008, and currently in a newsagent's business. In his present employment the Applicant had found it hard to find the time to undertake any further training courses other than those set out above. He paid to receive the Law Society's Gazette so that he could keep up to date with legal developments and he also read articles about legal issues in the newspapers which his employer sold.
13. The Applicant submitted a number of testimonials. The Applicant explained that GW

used to work with the Applicant but was now believed to work in Manchester. He was not related to the Applicant. MM was known to the Applicant as a solicitor with a firm close to his previous practice and was not related to the Applicant. ZH worked for the Applicant until 2002 and now worked for another practice in Birmingham. He was not related to the Applicant.

14. In addition the Applicant had submitted a "petition" which had 15 signatures. These included the signature of the Applicant's brother, a partner in the firm, and the majority of the remainder were employees in the firm, which the Applicant hoped to join if his application was successful/granted. The Applicant had met them but had not worked with them.
15. The Applicant reminded the Tribunal that none of the matters which had led to his suspension involved dishonesty. He submitted that in the eyes of the public it would be acceptable for him to be able to return to legal practice. He wanted to work hard, in the field of criminal law, with suitable support from employers. He would accept conditions on his practising certificate such as only working in approved employment.
16. The Applicant confirmed that he would agree to pay the Respondent's costs in connection with dealing with the application, which he had agreed in the sum of £1,488.

The Submissions of the Respondent

17. It was confirmed by the Respondent that the SRA took a neutral position with regard to this application.
18. On the two previous occasions the Applicant had appeared before the Tribunal, the concerns and allegations had related to his failure to comply with and lack of knowledge of the SAR and SPR, the conduct rules governing the solicitors' profession. In relation to a possible application to have the period of suspension determined, the Tribunal dealing with matters on 24 October 2006 had stated:

"... Whilst the Tribunal does not seek to bind a future division of the Tribunal, it considers it likely that any such application would not receive favourable consideration unless the First Respondent were able to demonstrate his full comprehension of the Solicitors Accounts Rules and professional conduct rules with which a solicitor must comply when in practice.
19. The Respondent accepted that the Applicant had attempted to comply with the previous Tribunal's expectations with regard to undertaking training in accounts and management. The Applicant had undertaken 15 hours training in accounts and 12 hours in management. He had also undertaken courses concerning police station representation. Some of the courses were now about two years ago. That said, the Tribunal could regard this attendance on relevant courses as evidence to show that the Applicant understood the Rules and how to comply with them.
20. The main factors the Tribunal would have to consider were:
 - (a) whether the Applicant had been rehabilitated sufficiently; and

- (b) whether the reputation of the profession would be diminished by the lifting of the indefinite suspension and whether it would be contrary to the interests of the public to lift the suspension.
21. The Applicant had produced a number of testimonials. The Tribunal would wish to consider what weight those should be given as some of the providers might not be neutral. There was clearly a willing solicitor employer, albeit that was a family member. The Applicant had not worked in a legal environment since February 2005 and had not been in a position of trust since then. He should perhaps be given credit for attempts to find legal employment albeit these had been unsuccessful, and it was noted that he had undertaken some relevant training.
22. The Applicant's suspension in 2006 had related to breaches of the Rules in his conduct of conveyancing. There had been no issues of dishonesty. The Applicant was no longer seeking to work in conveyancing or as a partner in a law firm. The Respondent accepted that the Applicant had tried to address deficiencies in his knowledge. The Respondent did not consider there would be a serious risk to the reputation of the profession or to the public's perception of the profession, or to the public generally bearing in mind the proposed limitations on his practising certificate which the Applicant had indicated he would accept.
23. The Tribunal could impose conditions on the Applicant's practising certificate or could make recommendations to the SRA concerning conditions which could be imposed, should the application be granted.

Findings and Decision

24. A previous division of the Tribunal had imposed on the Applicant a period of indeterminate suspension approximately four years ago in the light of fairly serious breaches of the SAR and SPR.
25. At paragraph 63 of the Findings and Decision of 24 October 2006 the Tribunal had indicated some non-binding preconditions to the application for restoration. Whilst those conditions and indications did not bind this Tribunal, they were helpful. The Tribunal on the previous occasion had noted that any application to determine the suspension:
- "...would not receive favourable consideration unless the First Respondent were able to demonstrate his full comprehension of the Solicitors Accounts Rules and professional conduct rules with which a solicitor must comply when in practise."
26. Consideration of the courses the Applicant had undertaken showed a commitment of time and money to undertaking training. Some of the courses covered the accounts and Professional Conduct Rules. A number of the courses were now almost two years ago but at the time the application was made in January 2010, they had been relatively recent.
27. The training the Applicant had undertaken was relevant to the issue of whether he had sufficiently rehabilitated himself. Also relevant to that issue were the testimonials of

members of the profession. It was noted that the "petition" contained a number of names of employees of the Applicant's brother's firm. That document was therefore treated, in effect, as one testimonial.

28. The Tribunal's duty in considering this application was to protect the public and to protect the reputation of the profession in the eyes of the public.
29. The Tribunal was concerned that the Applicant had not worked in a legal environment since 2005. However, it understood the difficulties the Applicant had faced in obtaining such employment and in particular noted that firms would be reluctant to employ a suspended solicitor because of the effect that it would have on their insurance premiums.
30. The Tribunal was keen to ensure that if the Applicant were reinstated, he should not practise in areas outside his sphere of competence. He should undertake regular training, if necessary beyond the CPD requirements which applied to all solicitors. It was noted that the firm with which the Applicant had been offered employment was Lexcel accredited and should therefore have good standards of training and development. The Applicant's training needs should therefore be met. The Tribunal noted that there had not been any allegation of dishonesty against the Applicant. It was therefore content to allow him to be reinstated and determine the suspension.
31. The Tribunal would, however, recommend to the SRA that there should be conditions on the Applicant's practising certificate. In particular the Tribunal recommended that the Applicant should not trade as a solicitor on his own account or in partnership, should only work in employment approved by the SRA and should not be involved in conveyancing practice. The Tribunal noted the Respondent's application for the costs of dealing with the application and was content to Order the Applicant to pay those costs as claimed.

Order

32. The Tribunal Ordered that the application of Alum Zeb Khan Khattak of 54 Radstock Avenue, Hodge Hill, Birmingham, B36 8HD for the determination of the indefinite suspension be Granted and it further Ordered that he do pay the costs of the response of the Law Society to this application fixed in the sum of £1,488.

Dated this 6th day of December 2010

On behalf of the Tribunal

R Woolfe
Chairman