

IN THE MATTER OF TIMOTHY JOHN DRUKKER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R Nicholas (in the chair)
Mr W M Hartley
Mr D E Marlow

Date of Hearing: 13th October 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (“SRA”) by Ian Ryan, a partner in the firm of Finers Stephens Innocent LLP, 179 Great Portland Street, London W1W 5LS on 12th December 2008 that Timothy John Drukker solicitor of 17 Loveridge Road, West Hampstead, London NW6 2DU might be required to answer the allegations contained in the statement that accompanied the application and such Order might be made as the Tribunal should think right.

The allegation as amended was that Timothy John Drukker, the Respondent, had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely:-

1. That he had failed to deal with the SWP transfer in his capacity as a solicitor.
2. That he had misleadingly held himself out to be a solicitor practising on his own account in his dealings with the parties to the transfer.
3. That he had made misleading and inaccurate responses to questions raised by the Quest Inquiry.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 13th October 2009 when Ian Ryan appeared as the Applicant and the Respondent, who was present, was represented by Peter Griffiths QC, instructed by Ambrose Appelbe Solicitors.

The evidence before the Tribunal included admissions by the Respondent, contained in an Agreed Basis of Plea, to the allegation as amended together with testimonials.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Orders that the Respondent, TIMOTHY JOHN DRUKKER of 17 Loveridge Road, West Hampstead, London, NW6 2DU, solicitor, do pay a fine of £15,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00.

Application for an amendment of the allegation

1. The Applicant sought the leave of the Tribunal to amend the particulars of the allegation. He explained that the allegation, as amended, had been admitted by the Respondent, subject to a Basis of Plea document agreed by both parties.
2. The Tribunal sought some clarification and subsequently granted leave to amend the allegation.

The facts are set out in paragraphs 3 – 17 hereunder:-

3. The Respondent, born in 1961, was admitted as a solicitor in 1990. His name remains on the Roll.
4. At all material times, the Respondent practised as a consultant with Robert Brand & Co Solicitors (“the firm”) at 17 Bentinck Street, London W1 2DS.
5. The allegation arose from the Quest Inquiry which investigated a number of transfers of professional footballers including SWP in July 2005.
6. At that time, in July 2005, solicitors had been permitted to act as “unlicensed” agents if they were lawyers, pursuant to Article 1.3 of the FIFA Regulations.
7. The FIFA Regulations had been superseded on 1st January 2006 by the FA Football Agents Regulations 2006, and again on 1st September 2007 by the FA Football Agents Regulations 2007.
8. The 2006 Regulations had incorporated the “solicitor exemption”; the 2007 Regulations had introduced a new regime for solicitors acting as agents.
9. SWP’s transfer had taken place on 17th July 2005 and the contract had been signed by the club. On the same date, the Respondent had signed an agreement with the club. The transfer had been registered with the Premier League on 22nd July 2005.

10. On 18th July 2005 the Respondent had invoiced the club for his fees in respect of the transfer.
11. The Respondent had previously contacted both the Football Association (FA) and the Law Society in 2004 for information.
12. The matter had been considered by an Adjudicator of the SRA on 24th April 2008 and he had referred the Respondent's conduct to the Solicitors Disciplinary Tribunal.
13. The Respondent, the club and SWP had all completed questionnaires in respect of SWP's transfer to the club.
14. Quest had also interviewed the club's secretary and chairman on 13th November 2006; and SWP on 1st February 2007, as part of the enquiry.
15. Quest had written to the Respondent for an explanation on 4th January 2006 and on 15th January 2007. He had replied on 20th November 2006 and 22nd January 2007.
16. Following a joint complaint to the SRA by Quest and the FA, the SRA had written to the Respondent on 9th October 2007 for an explanation.
17. The Respondent had replied, through his solicitors, by letters dated 7th November 2007 and 26th March 2008.

The Submissions of the Applicant

18. The Applicant submitted that the basis for the "solicitor exemption" in the FIFA Regulations was that a solicitor, acting as an unlicensed agent, would be subject to regulatory oversight by his professional body and covered by professional indemnity insurance. It was the only logical basis on which the exemption could have operated.
19. Referring to the Basis of Plea, the Applicant noted that although in July 2005, the Respondent had sought to act as a non licensed agent entitled to act under the terms of the Article 1 exemption by virtue of being a solicitor, the Respondent now accepted that he should not have done so and that he should have dealt with the transfer in his capacity as a solicitor.
20. The Applicant referred the Tribunal to examples in the relevant transfer documentation when the Respondent had misleadingly held himself out as a solicitor, practising as such, to all the parties involved in the transfer. For example, the Respondent wrote to one of the parties involved on notepaper headed "Timothy J Drukker Solicitor".
21. In relation to making misleading and inaccurate responses to Quest, the Applicant referred the Tribunal to documentation in which the Respondent had stated "...in this matter I was acting not as football agent, but as a solicitor" and "I am the player's solicitor and act for him in that capacity."
22. The Applicant explained that while there was no allegation of dishonesty, the matter was put before the Tribunal as misconduct of a serious nature as it had sought to

sidestep regulatory oversight by both the SRA and FIFA. However, since Mr Griffiths QC had been instructed, good progress had been made in obtaining admissions leading to an agreed Basis of Plea. In addition, costs had been agreed at £15,000.00.

The Submissions on behalf of the Respondent

23. Richard Griffiths QC explained the background to the transaction and sought to put what had happened in July 2005 into the context of the Respondent's professional career. He stressed that the Respondent had acted for SWP in relation to intellectual property rights in 2003/2004. Early in 2004, he had been approached by persons close to SWP and asked whether he could act as SWP's agent should a transfer opportunity emerge. The Respondent had (or indeed has) no desire to become a football agent but he had agreed in principle to do so provided that there was no legal or regulatory impediment in him so doing.
24. In 2004 the Respondent had made detailed enquiries about the solicitor exemption in the 2000 Players Agents Regulations. He had sought advice from the FA and from the Law Society. Leading Counsel submitted that the Law Society's response of 3rd March 2004 had not been entirely clear with the result that the Respondent had believed that he was subject to the exemption because he was a solicitor and not because he would be acting in the transfer transaction as a solicitor.
25. Leading Counsel referred to a small bundle of correspondence, before the Tribunal, from the mid 1990s. This was correspondence between the Law Society and the FA detailing the reason for that particular exemption. The correspondence had been disclosed to the Respondent's solicitors in March 2008. Leading Counsel suggested that had the writer of the letter of 3rd March 2004 from the Law Society been aware of that key correspondence, her letter would have been far clearer in explaining the reason for the exemption and would have corrected the Respondent's incorrect interpretation.
26. Leading Counsel explained that following the Respondent's initial investigations there had been a gap until a Friday in July 2005 when he had been told that the details of the transfer had been agreed and he was asked to act as agent. This the Respondent had done for no financial return other than goodwill for his overall practice. Leading Counsel stressed that the Respondent's interpretation of the exemption to the Regulations had been an honest one.
27. Leading Counsel said that the Respondent now accepted that he should not have acted as a non licensed agent entitled to act under the terms of the Article 1 exemption but that he should have dealt with the transfer, for his client, in his capacity as a solicitor. Moreover, the Respondent also accepted that he should have made it clear in any documents relating to the transfer that he was acting as an unlicensed agent and not as a solicitor.
28. On oath the Respondent explained to the Tribunal how he had dealt with the agent's fee in terms of both VAT and with the Inland Revenue. He stressed that he had not intended to retain nor had he retained any of the fee.

29. Leading Counsel explained that the Respondent accepted that he had not applied his mind sufficiently to his voluntary responses to Quest with the result that overall his responses had been misleading.
30. In mitigation, Leading Counsel gave details of the Respondent's professional career. He stressed that the Respondent's incorrect interpretation of Regulations relating to what for him was a one off event had led him into a mess. The Respondent apologised to the Tribunal for falling below his own high standards.

The Decision of the Tribunal

31. Having considered all the written evidence together with the testimony of the Respondent and the helpful submissions of both Mr Ryan and Mr Griffiths QC, the Tribunal determined that a financial penalty was appropriate in all the circumstances. Although it was not a case involving dishonesty, the Tribunal regarded it as a very serious matter. This was particularly so as the Respondent's actions had resulted in the undermining of the FIFA Regulations in force at the time. Moreover, the Respondent had misled a legitimate enquiry by his ill-considered responses. However, the Tribunal had accepted the Respondent's evidence on oath that he had not gained by way of fees from his actions and that it had been a one off situation undertaken with an honest, albeit mistaken belief, in his interpretation of the exemption regulations.
32. The Tribunal imposed a penalty of £15,000 together with an Order for costs fixed at £15,000.00.

Dated this 16th day of January 2010
On behalf of the Tribunal

R Nicholas
Chairman