

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF DR ABDUR-RAHMAN OLALEKAN AREMUN OLAYIWOLA,
solicitor (Respondent)

Upon the application of George Marriott
on behalf of the Solicitors Regulation Authority

Mr. A. N. Spooner (in the chair)
Mr. J. C. Chesterton
Mr. M. Palayiwa

Date of Hearing: 8th June 2010

FINDINGS & DECISION

Appearances

George Marriott, solicitor, formerly partner in the firm of Gorvins but subsequently partner in the firm of Russell Jones & Walker of 4 Davey Avenue, Knowle Hill, Milton Keynes, MK5 8NL, appeared on behalf of the Solicitors Regulation Authority (the SRA).

The Respondent appeared in person.

The application had been made on 23rd October 2009 and the Applicant had made a Supplementary Application dated 4th March 2010.

The allegations set out below are those contained in the original and Supplementary Statements subject to the fact that with the agreement of the Respondent and the consent of the Tribunal the Applicant withdrew Allegation 4.

Allegations

1. The allegations against the Respondent are that he:
 - (1) Failed to act in the best interests of his clients, contrary to Rule 1.04 Solicitors

Code of Conduct 2007 (“SCOC”);

- (2) Failed to provide a good standard of service to his client, contrary to Rule 1.05 SCOC;
- (3) Acted in a manner likely to diminish public confidence in the professions, contrary to Rule 1.06 SCOC;
- (4) [Withdrawn]
- (5) Failed to act in his clients’ best interests and compromised the good repute of the solicitors’ profession by abandoning his practice contrary to Rules 1.04 and 1.06 SCOC.
- (6) Failed to deal with the LCS and SRA in an open, prompt and co-operative manner contrary to Rules 20.05 SCOC;
- (7) Failed to comply with an order under s.44B of the Solicitors Act 1974;
- (8) Failed to act with integrity, and diminished public confidence in the solicitors profession contrary to Rules 1.02 and 1.06 SCOC.

Factual Background

1. The Respondent, born in 1955, was admitted as a solicitor in 2005. His name remained on the Roll. At the material time he was a sole practitioner his firm, Nasra Imran Solicitors, of Evelina Road, Nunhead, London. The SRA effected an intervention into the firm on 7th August 2009. At the date of the hearing the Respondent was not in practice.

2. The Respondent held the following positions and qualifications:-

He had been a Local Councillor and Chair of Council Committees in a London Borough Council. He had also been a prospective Parliamentary candidate for the House of Commons.

He had been a university lecturer, and researcher and had published books, chapters in books and papers in reputable national and international journals. He had presented papers at national and international conferences.

He held a Diploma Certificate, passed with Distinction, in Arabic and Islamic Studies: a Bachelor of Science Degree in Political Science, (B.Sc. (Hons) 2.1); a Master of Science Degree in Political Science (M.Sc.); Professional Degree of Master in Communication Arts (M.C.A.); Master of Philosophy Degree in Political Science (M.Phil.); Post Graduate Diploma in Legal Studies Common Professional Examination in Law. He enrolled with the Law Society as a student under Training Regulations 1990. He obtained a Post Graduate Diploma in Legal Practice (LPC); Professional Skills Course (P.S.C.), various Management and Compulsory Professional Development courses M/CPD and a Degree of Doctor of Philosophy (Ph.D), from the University of London. The

Respondent should properly be addressed as “Doctor” Abdur Rahman. The Law Society had granted a waiver to the Respondent, enabling him to be a sole practitioner before he had gained 3 years’ post-qualification experience.

3. The Respondent’s firm dealt with immigration matters. On 31st August 2007 Mr O instructed the firm to make an application for an extension of his stay in the UK and an application was submitted to the Home Office that day.
4. On 3rd September 2007 Mr O attempted to open a bank account in the UK using a Greek Passport in his name. He was arrested and charged with possession of a false identity document with intent and placed on remand. On 6th November 2007 he was convicted of the offence and sentenced to 15 months’ imprisonment.
5. On 20th November 2007 the Home Office returned Mr O’s application because it failed to include all of the necessary documents.
6. On 23rd January 2008 a further application for leave to remain in the UK was made by the Respondent including all the necessary documents. On 16th April 2008 this application was refused by the Home Office.
7. The Asylum and Immigration Tribunal (“AIT”) complained about the Respondent’s conduct. The SRA began an investigation and on 9th December 2008 they ordered (under s.44B Solicitors Act 1974) the Respondent to provide all documents in connection to Mr O’s matter.
8. On 18th April 2008, whilst still serving his sentence, Mr O was served with a deportation order and informed that he had the right to appeal either within five or ten working days. (The difference depended on whether Mr O was being detained under the Immigration Acts or not.) Mr O instructed the Respondent to conduct his appeal by letter of 18th April 2008.
9. Notice to Appeal, dated 30th April 2008, was not received by the AIT until 7th May 2008, out of time. No extension of time was applied for even though the AIT forms provided a reminder about this. The Appeal form had not been duly completed by the Respondent.
10. At the AIT hearing the Respondent was asked why the AIT should grant permission hear an appeal lodged out of time.
11. The Respondent made two submissions, the first was that the appeal was not out of time, and the second related to the fact that letters had been sent to Mr O direct when he was in prison, when the Respondent was on the record as Mr O’s legal representative, leading him to question the validity of the notice of intention to deport.
12. In its written determination the AIT recorded, “[the Respondent] *obviously and quite deliberately avoided giving an answer... We never did receive any comprehensible, let alone plausible explanation from [the Respondent] for this appeal being late... We took the view that [the Respondent] gave every appearance of being so incompetent that there was a high degree of probability that the appeal had not been lodged in time due to his default.*”

13. The determination went on to state that the AIT should have notified Mr O that his appeal was out of time, but it failed to do so. The date of service of the decision on Mr O and the deadline for appeal had not been completed in the notice of appeal. The AIT stated that these details were left out either “*deliberately or for reasons of incompetence*”.
14. The AIT heard the appeal as Mr O “*should not be denied the opportunity to put forward his proper case by reason of fault on the part of his legal representative.*”
15. The AIT recorded in its determination that it was “*alarmed at the neglect shown by [the Respondent] in his preparation and presentation of [Mr O’s] case... We were also disturbed by the fact that, as it seemed, he did not intend to lead any evidence in chief on matters which would be relevant to any assessment of a case based upon Article 8 ECHR*”
16. The Judges had requested permission from the Respondent to allow them to put questions to Mr O “*so that he would not be prejudiced by the alarmingly poor representation being provided to him by [the Respondent]*”.
17. Mr O in response to those questions gave details of his private and family life in the UK, where he had lived for sixteen years. He said he was unable to produce any documents as he was currently in prison.
18. The AIT noted that there were no witness statements corroborating Mr O’s evidence. There was no evidence on the Respondent’s matter file that contact had been made with those who could give corroborative evidence.
19. The comments of the AIT indicated that the Respondent’s preparation and presentation of Mr O’s case was “*alarmingly poor*”, and that he had not provided a proper standard of work.
20. It was the Respondent’s position that Mr O’s appeal was not out of time. The Home Office had taken no point in this connection. The Respondent had “got off on the wrong foot”, when Mr O’s case was called on as the Respondent was in the lavatory and he had kept the Tribunal Judges waiting. The Immigration Judges had questioned the Respondent’s academic and professional qualifications. The Respondent had felt intimidated by the Immigration Judge, who had expressed doubt about the provenance of the Respondent’s doctorate amongst other things. The Respondent considered that he had acted properly on behalf of his client, Mr O, providing a good standard of client care and of work including the exercise of competence, skill and diligence, and indeed Mr O’s satisfaction was expressed in a letter of thanks that he wrote from prison to the Respondent, which was handed up at the hearing. The Respondent said that the criticism of him by the Immigration Judge was unjustified, pointing out that the Judge had questioned the validity of his doctorate which had been granted to him by London School of Economics & Political Science.

Abandonment of Practice

21. When Mrs A complained to the LCS she said she had visited the firm’s office on

several occasions. There was a notice on the door stating “open”, but nobody was there. The Respondent told the Tribunal that he had had reason to doubt the bona fides of Mrs A and had declined to act for her.

22. The SRA had telephoned and emailed the firm, requesting the Respondent to make contact.
23. On 24th June the LCS received a call from another client, Mrs O, who said she had instructed the firm in February 2009 and had paid the Respondent £2,000.00 and had handed over her family’s passports. When she heard nothing from the Respondent she went to the offices and was informed by the Landlord that the Respondent had gone to Nigeria in February, apparently for his daughter’s wedding, and he had not returned. Attempts to contact the Respondent using a mobile number had been unsuccessful. The Respondent explained that Mrs O had lied and had wished the Respondent to undertake work on her behalf that would have placed him in breach of the professional conduct rules. He had refused to accept instructions.
24. The SRA wrote to the Respondent on 1st July, expressing concern that he had abandoned his practice.
25. On the same day the Respondent replied to an email saying that he had not abandoned his practice and that he could be contacted using the firm’s address. In response to further SRA emails the Respondent on 26th July explained that he was out of the country. He had suffered problems with receiving and sending email communications.
26. Upon making visits to the firm’s office they were found to be closed and clients had been unable to contact the Respondent by post, telephone, fax or email as set out in the firm’s letterhead. It was the Applicant’s case that the practice had been abandoned as a result of which the Respondent had not acted in the best interests of his clients and the good reputation of the solicitors’ profession would have been damaged.
27. The Respondent repeated his explanation that he had been compelled to close his practice when he found himself unable to get professional indemnity cover. He provided the Tribunal with a letter from his brokers explaining that they had not been able to arrange cover. He would not practise without such cover. The Respondent accepted that he should formally have notified the regulator of that at the time and regretted that he had not done so. He had notified his bankers. Upon intervention the SRA was able to establish that no money was held by the firm on behalf of clients.

Failure to co-operate

28. The LCS had received the complaint from Mrs A, who said she had instructed the Respondent, paid him £1,100 and had written letters to him to which he did not reply.
29. Mrs A’s complaint was put to the Respondent by letter of 26th May 2009 addressed to his firm’s office. A reminder letter was sent on 19th June requiring a response by 2nd July, otherwise the matter could be referred to the SRA. On the date of the deadline the LCS telephoned the firm but there was no answer.

30. On 3rd July 2009 the LCS wrote to the Respondent enclosing a notice requiring the Respondent to produce Mrs A's file. A further letter was sent to inform the Respondent that the matter had been referred to the SRA. The SRA wrote to him on 8th July. The LCS sent a reminder on 17th July.
31. When the Respondent's firm was intervened into on 7th August 2009, the intervention agents could not locate a file for Mrs A or any record of her payment.
32. Following the intervention the LCS wrote to the Respondent at a domestic address, thought to be the residence of his wife.
33. The Respondent made no response at all.
34. It was the Respondent's position that he had closed his firm when it became clear that he would not be able to obtain professional indemnity insurance cover. He had gone to Nigeria on family business and had returned to the UK on the day before the disciplinary hearing. He had been made aware of letters and the s.44B notice addressed to him by the professional regulators only shortly before the hearing. He had not deliberately failed to co-operate.
35. The Tribunal reviewed the documents annexed to the Applicant's Rule 5 and Supplementary Statements.
36. The Tribunal reviewed the Respondent's Defence Statement handed up shortly before the hearing, and a letter addressed to the Respondent's firm by Windrush Insurance Brokers dated 3rd February 2009.

Witnesses

36. The Tribunal did not hear any oral evidence but the Respondent addressed the Tribunal.

Findings as to Fact and Law

37. The Tribunal found allegations 1, 2 and 3 not to have been substantiated. The Tribunal read the determination of the Asylum and Immigration Tribunal and heard what the Respondent had to say. The Tribunal could not avoid the conclusion that the Respondent had started that hearing badly by attending late and having his credentials questioned and things grew steadily worse. The Respondent had felt on the back foot in so far as the Chairman of the AIT was concerned. The Tribunal had taken due note of the client's letter addressed to the Respondent in which he expressed his gratitude to the Respondent for his efforts.
38. Allegation 4 had been withdrawn.
39. With regard to Allegation 5, namely that the Respondent had failed to act in his client's best interests, and had compromised the good reputation of the solicitors' profession by abandoning his practice, the Tribunal found that allegation to have been substantiated. The Tribunal accepted that since September 2008 the Respondent did

not have any clients and did not hold clients' money. He had sent an email to the SRA in March 2009 explaining the position, but he had not taken all proper steps at the appropriate time to notify the SRA of his intention to close his practice, or the fact that he had done so. In all the particular circumstances of this case, the Tribunal was of the view that the "abandonment" of the practice fell at the lower end of a scale of seriousness.

40. With regard to Allegations 6, 7 and 8, the Tribunal found these allegations to have been substantiated. It was apparent that some letters had been sent to the Respondent's office address and were being collected. Some had been sent to his home address and some had been sent to a post office box address. The SRA could not have done more, and had done all that could reasonably be expected of them, to ensure that communications were being received and would be dealt with by the Respondent. The Respondent had not, however, responded to such communications. It was incumbent upon him as a solicitor to do so.

The Respondent's Mitigation

41. The Respondent expressed gratitude to the Tribunal for its decision.
42. He accepted that he should have informed the SRA immediately of the closure of his firm, and apologised both to the Law Society, the SRA and the Tribunal for his failure. Should he be given another chance those bodies might rest assured that he had learned a salutary lesson.
43. The Respondent expressed the view that members of black, Asian and ethnic minorities had been targeted by the SRA.
44. The Respondent regretted that he had not responded as he would have wished to the SRA, but he had found himself in difficulties because he was in Nigeria at the relevant time. Clearly, the Respondent could not comply with requirements when he had not been made aware of them.
45. The Respondent was a man of integrity. He said she had been the first black person to have been elected to a London Borough Council. He would never do anything to diminish the public's confidence in the solicitors' profession.
46. The Respondent's failures had not been deliberate. He had come to the profession at a late age, and at the date of the hearing was nearly 60 years old. He did not enjoy the best of health, suffering as he did from high blood pressure.
47. The Respondent's family had all made a valuable contribution to British society.
48. The Respondent had no job at the time of the hearing and he did not have any money: indeed, his lack of funds had played a part in his inability to return to the UK from Nigeria. The Respondent's wife had retired from work owing to her ill health. Her pension was modest. The Respondent had been in the UK for 25 years and had never claimed State benefits. He would never do that. The Respondent's wife owned their home, which was under threat of repossession. The Respondent's daughter had a new baby and her husband had not been able to find employment. It was difficult to

persuade anyone to lend money to the Respondent. The Respondent had been lent the money to buy his ticket to attend the Tribunal. The Respondent hoped that he might use his linguistic skills in acting as an interpreter. He was a court recognised interpreter, but he had not gained a great deal of work in that field, although he had been able to undertake a small amount of teaching. The Respondent said he would do his best to earn some money.

Costs

49. On the question of costs, the Applicant calculated that the costs of and incidental to the application and inquiry amounted to nearly £9,000. He accepted that some of the allegations had not been substantiated. He also accepted that the Tribunal would have to take a cognisance of the Respondent's means following the Court's decision in Merrick and de Sousa. The Applicant indicated that he would not resist an order that the Respondent pay the Applicant's costs but they should not be enforced without the permission of the Tribunal first obtained.
50. With regard to costs, the Respondent indicated that he had not been able to reach agreement with the Applicant, and the Tribunal concluded that it would be appropriate to take a view. It would summarily fix the costs.
51. At the completion of the hearing the Tribunal made the following Order, considering it to be both appropriate and apportionate and marking the level of seriousness of the Respondent's breaches.

The Tribunal ORDERED that the Respondent, DR ABDUR-RAHMAN OLALEKAN AREMUN OLAYIWOLA of 40 Heaton Road, Nunhead, London, SE15 3NL, solicitor, do pay a fine of £1,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,500.00, such costs not to be enforced without the prior leave of the Tribunal.

Dated this 2nd day of July 2010
On behalf of the Tribunal

A N Spooner
Chairman