

IN THE MATTER OF NASEEM AHMED BAJWA, Registered Foreign Lawyer
and JAMES SELVARAJ LAZAR, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

J C Chesterton (in the chair)
Mr D Glass
Mr S Howe

Date of Hearing: 10th February 2010

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, solicitor and partner in the firm of Finers Stephens Innocent LLP, 179 Great Portland Street, London, W1W 5LS on 14th April 2009 that Naseem Ahmed Bajwa of A Bajwa & Co, 39 Gowers Walk, London, E1 8BS, a Registered Foreign Lawyer and James Selvaraj Lazar of 723A Barking Road, London, E6 5AW, Solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegation against the Respondents was that they failed to ensure that there were adequate systems in place for the supervision of staff.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 10th February 2010 when Mr Ryan appeared as the Applicant, Mr Bajwa appeared and was represented by Miss Healey and Mr Lazar appeared in person.

At the conclusion of the hearing the Tribunal made no Order.

The facts are set out in paragraphs 1 - 5 hereunder:

1. The First Respondent, Naseem Ahmed Bajwa, born in 1937, registered as a Registered Foreign Lawyer (RFL) on 8th February 1999. The Second Respondent, James Selvaraj Lazar, born in 1944, was admitted as a solicitor on 1st November 1995.
2. At all material times the Respondents practised in partnership under the style of Bajwa & Co ("the firm") at 30 Cambridge Road, Barking, Essex, IG11 8NW. The partnership commenced in September 2002 and ceased on 2nd April 2004.
3. Under Rule 7(6) of the Solicitors Practice Rules 1990 partnerships between solicitors and Registered Foreign Lawyers are permitted and are known as a Multi-National Partnership ("MNP"). When the Second Respondent left on 2nd April, the First Respondent joined another practice, A Bajwa & Co at 5 White Church Passage, London, E1 7QU.
4. An inspection into the Respondents' firm's books of account took place by the Investigation Unit of The Law Society and their Report dated 2nd August 2005 was before the Tribunal. The Report identified that a number of false work permit applications were submitted to Work Permits (UK) by the firm in the names of the First and Second Respondents.
5. Both Respondents denied signing any of the application forms and neither could offer an explanation as to who had signed the forms in their names. It was not alleged that either Respondent made the applications. In addition, a number of letters were written to the firm in respect of the false work permit applications.

The submissions of the Applicant

6. The Applicant confirmed both Respondents denied the allegation which was limited to the period during which they had been in practice together. However they accepted the facts. They both denied signing the work permit applications and the Applicant did not have any evidence to prove otherwise. The Applicant drew the Tribunal's attention to a number of work permit applications which pre-dated April 2004. There had been 156 false work permit applications altogether but the Applicant was unable to confirm how many of these had been made prior to April 2004. He only relied upon those false work permit applications made during the partnership, but accepted he could not show the Respondents were aware of all 156 applications made.
7. He submitted that correspondence had been received in relation to those false work permit applications and that these were matters that should have been picked up in reviewing incoming post. He submitted supervision arrangements of the firm were clearly inadequate. The Applicant referred the Tribunal to Practice Rule 13 of the Guide to the Professional Conduct of Solicitors which dealt with the issues of supervision and management of an office. He submitted the Tribunal should apply the civil test, which was the test applied by the Authority when considering the facts and evidence.

The submissions of the First Respondent, Mr Bajwa

The oral evidence of Naseem Ahmed Bajwa

8. The First Respondent took the Oath and confirmed his witness statement dated 2nd February 2010 was true to the best of his knowledge and belief. On cross-examination he confirmed he was also a partner at his son's firm but that he was not involved in supervision in either firm as he spent a lot of time in Court and had a heavy workload. He could not himself physically supervise, and accordingly the Second Respondent was responsible for supervising this practice and another solicitor had been responsible for the supervision of his son's practice.
9. In relation to this practice Bajwa & Co, the First Respondent confirmed he would be in the office most afternoons, and on days where there were no hearings, he would be in the office all day. His two sons worked there as well as other caseworkers. The Second Respondent kept an eye on the office and supervised the staff. He did immigration work. The First Respondent signed his own letters and although the caseworkers signed their own letters, the Second Respondent checked all the letters before they went out. The First Respondent thought the Second Respondent was checking letters before they went out because on a number of occasions, letters had come back to the First Respondent as they needed changing.
10. The First Respondent stated that the fraud at the office had been done so as to bypass the Second Respondent's vigilance. He accepted the Second Respondent was not the only person in the office dealing with work permit applications. They had thought that the work relating to work permit applications was marginal.

Further submissions of the First Respondent, Mr Bajwa

11. Miss Healey, on behalf of the First Respondent submitted that any incoming post was seen by the Second Respondent first. Neither the First Respondent or Second Respondent had been able to say how there could have been interference with the post before it reached the Second Respondent. She submitted that the Applicant had put his case too highly in that post could have been looked at by someone else before the Second Respondent. The allegation against the Respondents related to supervision and indeed, a relevant consideration for the Tribunal was that after a year long investigation, the Authority had still been unable to pin down what had happened. It was unsatisfactory for the SRA to say that because fraud had taken place, there was a failure to supervise. The allegation had been framed on the basis that letters received gave notice of the problems but this was not always the case in general practice small firms. Where letters were received of a routine nature, it was difficult to see how that could put the firm on notice that fraudulent work permit applications had been made. Miss Healey submitted that the Tribunal should apply the criminal test and be satisfied beyond reasonable doubt.

The submissions of the Second Respondent, Mr Lazar

The oral evidence of Mr James Selvaraj Lazar

12. The Second Respondent affirmed and confirmed the contents of his statement dated 6th February 2010 were true. He gave the Tribunal a history of his career and confirmed he had supervised staff in his previous position. He confirmed that when he worked at Bajwa & Co, he did open the post everyday for over 18 months except when he was on annual leave or absent due to illness. On these occasions the First Respondent would open the post. The Second Respondent had never been absent from the office for more than ten days and even during his periods of absence, he kept in touch with the office.
13. The fraudulent work permit applications appeared to have been made at the end of 2003 and over a period of six months before the Second Respondent left the firm. When he received letters from the Home Office, he had no reason to be suspicious as they were simply routine letters acknowledging the applications or requesting further information. The letters were addressed to the relevant caseworker and would be passed to that caseworker after they had been read by the Second Respondent as he had no reason to suspect anything was wrong. He had not received any letters questioning the authenticity of any application and had no reason for suspicion.
14. The Second Respondent did not sign any of the fraudulent applications himself and the first time he became aware of the fraudulent work permit applications was over a year after he had left the firm when the Forensic Investigation Officers came to speak to him in April 2005. The Second Respondent submitted he did his best but there had been dishonesty by an employee. They did not know who it was, but he submitted that he could not have done more than he did and the best supervisor in the world could not have done anymore than he did.
15. On cross-examination the Second Respondent did check some outgoing post but not all of it as the mail had to leave the office by a certain time. He made random checks of outgoing post but did not check every single letter. If he was in the office when the typist was preparing letters, he would take them from the typist and look at them.
16. He confirmed there were very few days when he did not see Mr Bajwa and the longest Mr Bajwa was absent from the office was about two weeks, although usually he went abroad on short trips. Mr Bajwa would come into the office every day, even on days when the office was not open and he often left the office late, after the Second Respondent had left. The Second Respondent confirmed that Mr Bajwa did not spend half his time at Bajwa & Company and half his time at his son's firm. Indeed, The Second Respondent was not even aware of Mr Bajwa's involvement in the other firm until late 2003 when the Professional Indemnity Insurance renewal forms were being completed and the insurers requested confirmation as to whether Mr Bajwa was the same Mr Bajwa from another firm. The Second Respondent had asked him if this was true and he said "Yes", and he said that he had not told the Second Respondent as he thought it was nothing to do with him.
17. The Second Respondent confirmed he supervised Mr Bajwa's sons who only did immigration work. However towards the end of his time with the firm, the Second

Respondent told Mr Bajwa it had been a mistake for him to supervise the family. He realised with hindsight that he should not have joined the law firm of a family. The Second Respondent had thought privately that it would have been easier if they had not all been related but this did not stop him from doing his duties. Sometimes he did get the feeling that Mr Bajwa's sons would rather be supervised by Mr Bajwa because they had been doing immigration work longer than the Second Respondent yet the Second Respondent was their supervisor.

18. The Second Respondent confirmed that he was not the only person dealing with work permit applications.

The further submissions of the Second Respondent, Mr Lazar

19. The Second Respondent adopted the submissions of the First Respondent and reiterated he had no reason to be concerned on receipt of routine incoming letters.

The Findings of the Tribunal

20. The Tribunal had listened carefully to the evidence and submissions of the parties and had considered all the documents provided. The allegation was based on lack of supervision in relation to incoming post only and indeed, it was still not clear exactly how the fraudulent work permit applications had been made. It was accepted that neither Respondent had signed any of the fraudulent work permit application forms and indeed the Tribunal noted the signatures on these forms were all different.

21. Practice Rule 13 of the Guide to the Professional Conduct of Solicitors stated:

"Solicitors shall ensure that every office where they or their firms practise is and can reasonably be seen to be properly supervised in accordance with the following minimum standards:

- (a) Every such office shall be attended on each day when it is open to the public or open to telephone calls from the public by:
 - (i) a solicitor who holds a practising certificate and has been admitted for at least three years; or
 - (ii) in the case of an office from which no right of audience or right to conduct litigation is exercised and from which no exercise of any such right is supervised, a registered foreign lawyer who is a principal of the firm and who has been qualified in his or her own jurisdiction for at least three years;

who shall spend sufficient time at such office to ensure adequate control of the staff employed there...."

22. The Tribunal was not satisfied that the Applicant had proved there had been inadequate supervision of the firm, notwithstanding the serious outcome. Furthermore, the Applicant had confirmed the allegation was limited to the duration

of the partnership, September 2002 until 2nd April 2004 but he had been unable to confirm how many false work permit applications had been made during this period. The Applicant had not shown what adequate supervision could have prevented the fraudulent work permit applications from being made. The Tribunal did not find the allegation was substantiated and dismissed the Applicant's case.

Costs

23. The Applicant submitted an application for his costs in the sum of £2,750, with each Respondent to pay half with joint and several liability.
24. The chronology of this case was that the inspection by The Law Society had taken place in August 2004 and their Report was produced in August 2005. The Respondents had been sent a warning letter in November 2005 and a referral had been made to the Tribunal in October 2007. The Applicant had been instructed by the Authority in January 2008 and had issued his application in March 2009. He confirmed that the reason for the delay was that he had to consider a large volume of papers which included perusal of all the fraudulent work permit applications that had been made and then decide on what basis to progress matters. The Applicant accepted that the outcome had been serious and it was possible that if the outcome had been less serious, the application might not have been mounted.
25. The Applicant referred the Tribunal to the case of Baxendale-Walker v The Law Society [2007] EWCA CIV 233 and submitted the case had been properly brought in the public interest and that an Order for his costs should be made.
26. The First Respondent resisted the application for costs and reminded the Tribunal that these proceedings had been hanging over both Respondents for six years and this had caused a great deal of stress and worry. The Authority had not proved their case and an Order for costs should not be made. In relation to the case of Baxendale Walker v The Law Society, the First Respondent submitted there had been many issues at the outset of the inspection and most of these had been weeded out. The Adjudicator's Report had dealt with this particular matter and had recommended a reprimand. Miss Healey on behalf of the First Respondent submitted it had not been in the public interest to pursue this application on the basis of the little evidence available, particularly where the partnership had ended and the mischief had already taken place. Miss Healey submitted that the delay in progressing the application weighed against the principle of Baxendale-Walker v The Law Society which was to award costs to a Regulator who had brought proceedings in the public interest, where those proceedings had not been brought promptly. That was a good reason why a costs Order should not be made.

The submissions of the Second Respondent

27. The Second Respondent also resisted the application for costs. He had suffered financially as a result of these proceedings as he had been applying for other jobs and had not been successful due to this matter hanging over him. He had spent a great deal of his own time dealing with these proceedings.

The Tribunal's decision on costs

28. The Tribunal was concerned that this case appeared to have been driven by the outcome, rather than the Respondents' conduct. The Tribunal was not satisfied that the case had been brought for the right reasons. The Applicant had accepted that if the outcome had been less serious, there was a possibility that the application might not have been mounted.
29. The Tribunal had considered the case of Baxendale-Walker v The Law Society which clearly stated:
- "A Regulator brings proceedings in the public interest in the exercise of a public function which it is required to perform. In those circumstances the principles applicable to an award of costs differ from those in relation to private civil litigation"
30. In this case, the Tribunal was of the view that this application had been brought due to the outcome, being the number of fraudulent work permit applications which had been made, and this issue was not in fact relevant to the case as it had been presented to the Tribunal. The basis of the allegation had been a lack of supervision of staff and this allegation had not been proved. Furthermore, the Tribunal was mindful that these proceedings had been hanging over both Respondents for almost six years.
31. The Tribunal had serious concerns about whether the proceedings were justified. The delay in progressing the application was undesirable and should be reflected in any costs Order. The Tribunal had considered the case of Baxendale-Walker v The Law Society and had also taken into account the arguments in relation to a breach of Article 6 of the Human Rights Act 1998. The Tribunal decided that this was a case where there should be no Order for costs.

Dated this 5th day of June 2010
On behalf of the Tribunal

J C Chesterton
Chairman