

IN THE MATTER OF NASEEM AHMED BAJWA, Registered Foreign Lawyer
NIDHI KUMAR SHARMA & AZFAR NASEEM BAJWA solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr 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 by Ian Ryan, solicitor and partner in the firm of Finers Stephens Innocent LLP, 179 Great Portland Street, London W1W 5LS on 23rd March 2009 that:-

Naseem Ahmed Bajwa of A Bajwa & Co, 39 Gowers Walk, London E1 8BS, registered foreign lawyer; and

Nidhi Kumar Sharma of N Sharma & Co, 50 Crestwood Way, Hounslow, Middlesex, TW4 5EQ, solicitor; and

Azfar Naseem Bajwa of A Bajwa & Co, 39 Gowers Walk, London E1 8BS, solicitor;

might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondents were that:-

1. They entered into a sham agreement pursuant to which Ms Sharma was held out as a partner and principal of the firm of A Bajwa & Co, when that firm was in reality controlled by Mr Azfar Naseem Bajwa.

The further allegation against Naseem Ahmed Bajwa and Nidhi Kumar Sharma was that:-

2. They permitted the firm's bank accounts to be held and controlled by a non solicitor, Azfar Naseem Bajwa.

The further allegation against Nidhi Kumar Sharma only was that:-

3. She agreed to share professional fees with Azfar Naseem Bajwa in breach of Rule 7 of the Solicitors Practice Rules 1990 (SPR).

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 10th February 2010 when Ian Ryan appeared as the Applicant, Mr Naseem Ahmed Bajwa and Mr Azfar Naseem Bajwa appeared and were represented by Miss Healey. Ms Nidhi Kumar Sharma did not appear and was not represented but the Tribunal had before it an email from her dated 9th February 2010 confirming she would not be attending the hearing but accepted the allegations against her. The other evidence before the Tribunal included the admissions of Mr Naseem Ahmed Bajwa and Mr Azfar Naseem Bajwa to the allegations against them.

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

The Tribunal Orders that the Respondent, Naseem Ahmed Bajwa of A Bajwa & Co, 39 Gowers Walk, London, E1 8BS, registered foreign lawyer, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he be jointly and severally liable with Azfar Naseem Bajwa to pay the costs of and incidental to this application and enquiry fixed in the sum of £7,500.00.

The Tribunal Orders that the Respondent, Nidhi Kumar Sharma of N Sharma & Co, 50 Crestwood Way, Hounslow, Middlesex, TW4 5EQ, solicitor, do pay a fine of £750.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,500.00.

The Tribunal Orders that the Respondent, Azfar Naseem Bajwa of A Bajwa & Co, 39 Gowers Walk, London, E1 8BS, solicitor, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he be jointly and severally liable with Naseem Ahmed Bajwa to pay the costs of and incidental to this application and enquiry fixed in the sum of £7,500.00.

The facts are set out in paragraphs 1-12 hereunder:-

1. Naseem Ahmed Bajwa (“Mr Naseem Bajwa”), born in 1937 was, registered as a registered foreign lawyer (RFL) on 8th February 1999. At the material time he was Senior Partner of A Bajwa & Co, 39 Gowers Walk, London E1 8BS.
2. Nidhi Kumar Sharma (“Ms Sharma”), born in 1971, was admitted as a solicitor on 3rd April 2000 and her name remained on the Roll of Solicitors. At the material time she was a salaried partner of A Bajwa & Co, 39 Gowers Walk, London E1 8BS.
3. Azfar Naseem Bajwa (“Mr Azfar Bajwa”), born in 1972, was admitted as a solicitor on 1st March 2005 and his name remained on the Roll of Solicitors. At the material time he was an immigration lawyer at A Bajwa & Co Immigration Lawyers, 267 Whitechapel Road and this practice was regulated by the Office of the Immigration Service Commissioner (“OISC”).
4. Under Rule 7 (6) of the Solicitors Practice Rules 1990, partnerships between solicitors and RFL’s are permitted and known as a multi-national partnership (MNP). Under the supervision rules in force at the time, every solicitor’s firm had to have at least one principal who was a solicitor qualified to supervise (i.e. had held a practising certificate for at least 36 months within the last 10 years). An RFL who was a principal in a practice could fulfil the role of a solicitor qualified to supervise provided that various conditions were met, including the condition that the practice had at least one principal who was a solicitor, although not necessarily a solicitor qualified to practise.
5. In addition, under the Immigration Act 1999, any qualified persons could provide immigration advice or services, and qualified persons included the following:-
 - Persons registered with OISC
 - Qualified solicitors (but not RFL’s)
 - Persons supervised by either OISC registered persons, or a qualified solicitor
6. The position at all times material to the allegations in this statement was, therefore, that Mr Naseem Bajwa could not practise on his own account as an RFL, or in partnership with Mr Afzar Bajwa who was unqualified; they could only practise in partnership with a qualified solicitor.

Allegation 1

7. Ms Sharma was employed on a fixed term contract of one year with an option to renew. She did not share in the profits of the firm; was not liable for any debts owed by the firm; and was not involved in the management of the practice. Her “Partnership at Will” specifically stated the following:-
 - “Mr Naseem Bajwa and Mr Azfar Bajwa are the proprietors (sic) of the firm”

- “All monies taken by Mrs Nidhi Sharma during her employment by any client are to be brought to the attention of Mr Azfar Bajwa”
 - “As the Executive of the firm, Mr Azfar Bajwa retains the sole right to control all property, client files and finances relating to A Bajwa & Co Solicitors as he deems fit and appropriate.”
 - “If the Executive, Mr Azfar Bajwa passes his QLT papers at any stage and is later granted permission from the Law Society to run and supervise his own firm, once such permission is given in writing by the Law Society, Mr Azfar Bajwa has the automatic right to apply to the Law Society to make him the Sole Principal and a Supervisor of the Practice.”
8. In addition Mr Naseem Bajwa and Mr Azfar Bajwa were solely responsible for VAT. Mr Azfar Bajwa had to consent to any written notice to terminate employment by the other Respondents, he was responsible for hiring the supervisors of the firm and was “in charge of employing and paying the salary of Mrs Sharma.” Mr Azfar Bajwa was the sole signatory to the firm’s bank account.
9. At all material times, Ms Sharma was also a director at Malik Law Chambers, and in practice on her own account under the style of N Sharma & Co.
10. Mr Naseem Bajwa had also continued to run his own firm Bajwa & Co until April 2004 when that firm was closed, and he then underwent heart surgery and was absent from work for a further period of time. According to Mr Azfar Bajwa, Mr Naseem Bajwa attended the office about once a week. On the date of the inspection, neither Mr Naseem Bajwa nor Ms Sharma was present in the office.

Allegation 2

11. The only account held for the firm was in the name of Azfar Bajwa t/a Bajwa & Co; this was the account used by Mr Azfar Bajwa when he was OISC registered and only he was able to operate this account even though he was not a solicitor.

Allegation 3

12. Rule 7 of SPR 1990 stipulates that a solicitor can only share fees with an employee in certain circumstances. As Mr Azfar Bajwa was Ms Sharma’s employer rather than employee, Ms Sharma was in breach of this Rule.

The Submissions of the Applicant

13. The Applicant confirmed the Respondents had admitted the allegations. Mr Naseem Bajwa could not practise alone as he was a registered foreign lawyer, and he could not practise with Mr Azfar Bajwa as he was not a solicitor at the time the conduct took place. The Applicant referred the Tribunal to the case of Martin Kwoko Ofosuhene 6918/1995

which confirmed that the Tribunal had jurisdiction over acts committed by a person before they became a solicitor.

14. The Applicant submitted that although Mr Naseem Bajwa and Mr Azfar Bajwa could not hold themselves out as practising solicitors, they could practise in other areas under different regulatory authorities. The Tribunal's attention was drawn to the Partnership at Will between Mr Naseem Bajwa and Ms Sharma which also contained the terms of employment for Mr Azfar Bajwa. This document showed the true nature of the partnership, in that Mr Naseem Bajwa and Mr Azfar Bajwa could not practise together alone and accordingly Ms Sharma came into the practice as a salaried partner. However, this was for no reason other than to supervise the firm and indeed, the agreement made it clear that Mr Azfar Bajwa would become the sole practitioner of the firm as soon as he qualified. The Applicant accepted this was the Respondents' attempt to practice within the Rules and whilst they may not have intended a sham partnership, this is effectively what it was.
15. The Applicant also requested an order for his costs which had been agreed with Mr Naseem Bajwa and Mr Azfar Bajwa in the sum of £7,500 with joint and several liability. Regarding Ms Sharma, who had played a smaller part and had made admissions early, the Applicant requested an order that she should pay his costs in the sum of £1,500. However he confirmed she was not aware of the amount of costs as the Applicant had expected her to attend the hearing and had not informed her beforehand.

The Submissions of Mr Naseem Bajwa and Mr Azfar Bajwa

The Oral Evidence of Mr Azfar Bajwa

16. Mr Azfar Bajwa took the oath and confirmed the contents of his statement dated 2nd February 2010 were true subject to one amendment concerning the figure relating to his income. He confirmed that the reason for the partnership was that previously Mr Azfar Bajwa had been a qualified barrister regulated by the Bar Council. He then registered with the OISC and was regulated by them. His father, Mr Naseem Bajwa had been in partnership with another solicitor but then he had difficulties with that solicitor and Mr Naseem Bajwa and Mr Azfar Bajwa had thought it would be easier for Mr Azfar Bajwa to qualify as a solicitor so that they could join forces and work together.
17. Mr Azfar Bajwa stated that naively they had both thought that as they had both been in partnership with qualified solicitors, that arrangement was proper and acceptable. Accordingly, Ms Sharma had joined the practice on the same basis as Mr Azfar Bajwa's previous partner who had not wanted any financial burden and who had checked with the Ethics Department of the Law Society whether such an arrangement would be acceptable.
18. Mr Azfar Bajwa did not want to be in a position where he would lose clients. The partnership was a joint enterprise and Ms Sharma worked very hard for the firm. Mr Azfar Bajwa had wanted a supervisory solicitor who he could learn from as he was already taking steps to qualify as a solicitor himself. The partnership was to facilitate

them as they were operating. Mr Azfar Bajwa stated that if they had known from the outset that this would be regarded as a sham partnership, they would not be before the Tribunal today. The intention had been to get someone who could work there, would be cost effective and this worked well.

19. The word “sham” suggested a bogus partnership and Mr Azfar Bajwa vehemently denied this. Indeed, in 2006, reams of documents had been sent to the Authority to show Ms Sharma worked extremely hard and earned her salary. She had always understood that Mr Naseem Bajwa would eventually join the firm and there had been no intention to facilitate his joining the firm as this had always been the intention. Unfortunately, due to a condition placed on Mr Naseem Bajwa’s practising certificate he was prevented from being a partner in the practice.
20. Regarding the bank accounts, Mr Azfar Bajwa did not know that Ms Sharma needed to be a signatory on the firm’s bank accounts. If she had asked to be a signatory, he would have agreed. He was just protecting his position in case things turned ugly, which they did not. He had thought he was operating within the regulations.
21. On cross-examination, Mr Azfar Bajwa denied there had been any sham partnership or that there was any element of him hoodwinking the Law Society. This was never the case. The difficulties that Mr Naseem Bajwa had encountered with his previous partner related to ownership of the firm and indeed, his previous partner wanted to close the firm and take all the files. Mr Azfar Bajwa was acutely aware of this threat and this is what led to him drafting the very poor Partnership at Will agreement in order to protect himself and his father, and safeguard their position. He had been extra prudent but was now very embarrassed by a contract which appeared dictatorial when it was not. Mr Naseem Bajwa and Mr Azfar Bajwa were bringing more to the table.

The Further Submissions of Mr Naseem Bajwa and Mr Azfar Bajwa

22. Miss Healey on behalf of Mr Naseem Bajwa and Mr Azfar Bajwa submitted that there had been no intention by either of these Respondents to mislead, even though they now accepted that the partnership with Ms Sharma was not effective. This had simply been due to their mis-interpretation of the legal provisions and inadequate attention to the detail of the Rules. They accepted that the oversight had led to their appearance before the Tribunal however, no real mischief had occurred. Nobody had suffered, clients were happy and had received the benefit of representation by Ms Sharma who did a good job. There had been no complaints and the real mischief was in the description of the firm which was not in accordance with the publicity code.
23. Miss Healy submitted that normally sham partnerships were put in place to allow solicitors to obtain membership of mortgage panels and “pull the wool over other’s eyes.” In this case, one solicitor was already regulated by the OISC and the error was that the Respondents had not taken advice or checked the details of the rule book. They had never intended to defraud anyone and admitted the allegations immediately on being advised by their representative that the word “sham” did not mean fraud.

24. Miss Healey reminded the Tribunal that there had been a long delay in the progression of this case and during that time Mr Azfar Bajwa had qualified as a solicitor and had sufficient experience to supervise the practice. In normal circumstances the Law Society would have granted a waiver of the three years experience required to supervise a practice if the Applicant could show they had run a practice previously. Ms Healey submitted that if it were not for these outstanding proceedings, the Law Society may have granted Mr Azfar Bajwa a waiver. She submitted that the conduct was at the bottom end of the scale.

The Tribunal's Findings

25. The Tribunal had carefully considered the evidence of Mr Azfar Bajwa, the submissions made by all the parties, and all the documents before the Tribunal to include the references provided by Mr Naseem Bajwa and Mr Azfar Bajwa and the Operation Note, which was undated, from Mr Pakesh Uppal, Consultant Cardiothoracic Surgeon, relating to Mr Naseem Bajwa. The Tribunal found all of the allegations to be substantiated, indeed they were admitted by the Respondents.
26. The Tribunal accepted that whilst this had been a sham partnership in the technical sense, the Respondents did not intend to mislead anyone and that there had been no adverse consequences to clients as a result. However, the Tribunal was mindful that Mr Azfar Bajwa was a qualified barrister and was of the view that whilst he may not have properly checked the appropriate rules for compliance, he should have done so. Furthermore, Mr Naseem Bajwa was also a lawyer with considerable experience and indeed was the Senior Partner of the firm and so had responsibility for ensuring the firm complied with the relevant rules and regulations. Ms Sharma had also been qualified for some time and whilst the Tribunal accepted she had worked on many files and had agreed to supervise the firm for a fixed salary, it was clear that control of the firm remained with a person who was not a solicitor. This was in clear contravention of the regulations which were there to protect clients and the reputation of the profession.
27. As a result of the Respondents' conduct, there had been a risk, however insubstantial, to the good reputation of the profession, and this was a serious matter. The Respondents had accepted the allegations and were in breach of the rules, and the Tribunal considered the appropriate Order was to fine Mr Naseem Bajwa and Mr Azfar Bajwa, the sum of £2,000 each, and to fine Ms Sharma £750.00.
28. In relation to the question of costs, the Tribunal noted these had been agreed with Mr Naseem Bajwa and Mr Azfar Bajwa in the total sum of £7,500 with joint and several liability. Concerning Ms Sharma, the Tribunal ordered she pay the sum of £1,500 in costs.
29. The Tribunal Ordered that the Respondent, Naseem Ahmed Bajwa of A Bajwa & Co, 39 Gowers Walk, London, E1 8BS, registered foreign lawyer, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he be jointly and severally liable with Azfar Naseem Bajwa to pay the costs of and incidental to

this application and enquiry fixed in the sum of £7,500.00.

30. The Tribunal Ordered that the Respondent, Nidhi Kumar Sharma of N Sharma & Co, 50 Crestwood Way, Hounslow, Middlesex, TW4 5EQ, solicitor, do pay a fine of £750.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,500.00.
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Dated this 10th day of June 2010

On behalf of the Tribunal

J C Chesterton
Chairman