

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ATTA-ULLAH KHAN, solicitor (respondent)

Upon the application of Jonathan Goodwin
on behalf of the Solicitors Regulation Authority

Mr A G Gibson (in the chair)
Mr R Hegarty
Mr D E Marlow

Date of Hearing: 2nd March 2010

FINDINGS & DECISION

Appearances

Mr Jonathan Goodwin, Solicitor Advocate, of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT for the Applicant.

The Respondent appeared in person

The Applicant's application was dated 8th May 2009.

Allegations

The allegations against the Respondent, Atta-Ullah Khan, were that:

- (a) he failed and/or delayed in the delivery of an Accountant's Report for the period ending 31st March 2008, contrary to s.34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder;
- (b) he breached the terms of Rule 1 of the Solicitors Code of Conduct ("SCC") in that he failed to comply with a condition attached to his practising certificate regarding the delivery of his Accountant's Reports;
- (c) contrary to Rule 1 and/or Rule 20.03 of the SCC he failed to comply with an expectation of an Adjudicator dated 22nd October 2008, as to the filing of his Accountant's Report for the period ending 31st March 2008;

- (d) he failed and/ or delayed in the delivery of an Accountant's Report for the period ending 30th September 2008 contrary to s.34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder;
- (e) he failed to maintain accounting records and, in particular, he failed to maintain a client cashbook, contrary to Rule 32(1), (2), (4) and (5) of the Solicitors Accounts Rules 1998 ("the 1998 Rules");
- (f) he failed to carry out the required reconciliations in breach of Rule 32(7) of the 1998 Rules;
- (g) he made payments from client bank account in excess of funds held for the client(s), contrary to Rule 22(5) of the 1998 Rules;
- (h) contrary to Rule 1 and/or Rule 20.03 of the SCC he failed to comply with an expectation of an Adjudicator dated 8th December 2008 as to the delivery of documentation relating to his accounting records.

In a supplementary statement dated 21st December 2009 the following additional allegations were made against the Respondent:

- (i) he failed and/or delayed in the delivery of an Accountant's Report for the period ending 31st March 2008 in respect of RFK Solicitors due for delivery on or before 26th July 2008 contrary to s.34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder;
- (j) contrary to Rule 1 of the SCC he failed to comply with an expectation of an Adjudicator dated 26th November 2008 as to the delivery of his Accountant's Report for the period ending 31st March 2008 in respect of RFK Solicitors;
- (k) he failed to comply with a condition attached to his 2007/2008 practising certificate as regards the filing of half yearly Accountant's Reports;
- (l) he failed to keep accounting records properly written up, contrary to Rule 32 of the 1998 Rules (see paragraphs 5-15 of the Forensic Investigation Report dated 23rd April 2009 ("the Report")).

Factual Background

1. The Respondent admitted both the facts and the allegations.
2. The Respondent, born in 1970, was admitted as a solicitor in 2003. His name remained on the Roll of Solicitors.
3. At all relevant times the Respondent carried on practice in partnership under the style of A F Solicitors, from offices at 1a Lorne Road, London, E17 7PX and with effect from 19th February 2008 he practised on his own account as A F Solicitors from the same address.

4. The Respondent's practising certificate for the practice year 2007/2008 was subject to a condition that he file half yearly Accountant's Reports within two months of the end of the period to which they related.
5. The Respondent was granted an extension of time to file his Accountant's Report (in respect of the six month period ending 31st March 2008) to 13th July 2008.
6. The Report had not been received when the SRA wrote to the Respondent on 14th August 2008 seeking his explanation.
7. On 22nd August the Respondent's accountants wrote to the SRA seeking a further extension of time to 28th August 2008 to deliver the Report. This was not granted.
8. On 28th August 2008 the SRA wrote to the Respondent asking why his Report had not been delivered. In his reply of 9th September 2008 the Respondent indicated that he was surprised to hear that the Report had not been submitted as he had relied upon his accountants who had let him down.
9. The matter, including the Respondent's complaint to his accountants' professional body, was considered by an Adjudicator on 22nd October 2008 who found that the Respondent had failed to comply with the condition attached to his practising certificate and that he had failed to deliver his Accountant's Report in time.
10. The Adjudicator "expected" the Respondent to deliver the outstanding Accountant's Report within 28 days from the date of notification (22nd October 2008) of his decision. There was no response from the Respondent.
11. The Accountant's Report for A F Solicitors for the period ending 30th September 2008 due to be delivered on or before 30th November 2008 (following the grant of an extension of time) remained due.
12. In response to an SRA letter dated 11th March 2009 the Respondent reiterated his complaint against his former accountants and explained that he had instructed new accountants and had utilised the services of a bookkeeper.
13. The Respondent's former accountants were not prepared to admit any of his complaints and had indicated an unwillingness to undertake further work until their fee of £17,331.25 had been settled.
14. On 10th March 2009 the Respondent offered to settle his former accountants' fees in the sum of £10,000, provided they completed all work and released documents. His former accountants asserted that the Respondent had not only not paid their fees but had not provided all necessary information.
15. A Forensic Investigation Officer ("the FIO") of the Solicitors Regulation Authority ("SRA") carried out an inspection of the Respondent's books commencing 10th July 2008 and produced a report dated 27th August 2008 which was before the Tribunal.
16. The books were not in compliance with the Solicitors Accounts Rules. The Respondent had failed to maintain his firm's accounting records and in particular he

had failed to maintain a client cash book. He had not carried out proper reconciliations.

17. The FIO's report recorded a particular client conveyancing matter where the transaction was completed in August 2007. In May 2008 the Respondent discovered that on 3rd July 2007 an amount of £25,239.26 had been wrongly posted as a receipt to the relevant client's ledger account and had been taken into account as part of the sum available to complete the purchase, resulting in a shortage in client account of £21,752 which increased to £25,239.26 when further post-completion payments were charged to this account.
18. In correspondence with the SRA the Respondent accepted full responsibility for any errors with the accounts, pointing out that he had suffered difficulty with his accountants.
19. On 8th December 2008 an Adjudicator of the SRA "expected" the Respondent "within 28 days from the date of notification of this decision, to provide the caseworker with satisfactory documentary evidence to show that he is now maintaining a client cash book, and that he is now carrying out proper reconciliations" and the Respondent was notified of this on 10th December 2008, but he did not respond.
20. The Respondent's Accountant's Report for the period ending 31st March 2008 in respect of his former practice, RFK Solicitors, remained outstanding, an extension of time for filing to 26th July 2008 having been granted.
21. By letter dated 19th August 2008 the SRA wrote to the Respondent in respect of the outstanding report.
22. By letter dated 9th September 2008 the SRA wrote to the Respondent in relation to the outstanding Accountant's Report seeking his explanation in respect of same.
23. In response to letters from the SRA dated 19th August and 9th September 2008, the Respondent wrote on 3rd October 2008 enclosing copy correspondence with his accountants' professional body and he provided further representations by letter dated 4th November 2008.
24. On 26th November 2008 an SRA Adjudicator granted a waiver to the Respondent's former partner in respect of the delivery of the Accountant's Report for the period ending 31st March 2008, and in relation to the Respondent he resolved to "expect" the Respondent "to deliver the Accountant's Report for RFK Solicitors for the six month period ending 31st March 2008 to the SRA within 28 days of the notification of this decision", which was notified to him on 2nd December 2008.
25. The Report had not been filed and remained outstanding.
26. An FIO carried out an inspection of the Respondent's books of account in respect of AF Solicitors, incorporating RFK Solicitors, and his Report dated 23rd April 2009 was before the Tribunal.

27. The Report recorded the Respondent's failure to keep accounting records properly written up. In subsequent correspondence the Respondent provided explanations making reference to the failures of his former accounts and in particular saying that he could not provide the list of client balances as this was still with his former accountants. He explained that his bankers had credited interest earned on client account to that account. He had ceased to accept conveyancing instructions and many conveyancing matters had been transferred out of the firm. While he had been sole principal the cashbook and monthly reconciliations had been properly completed.

Findings as to Fact and Law

28. The Respondent admitted the facts and the allegations. The Tribunal found the facts recited above to have been established and found the allegations to have been substantiated.

Mitigation

29. The Respondent handed up a written statement and made oral submissions to the Tribunal.
30. The Respondent had been in dispute with his former accountants for nearly 18 months, which he had found extremely upsetting and exhausting. He believed these accountants had proved to be unscrupulous, incompetent, negligent, vindictive and dishonest and had attempted to take advantage of the position in which they had placed the Respondent and his firm. Their fees had been extortionate. The Respondent had tried to settle at a fee that was higher than a fee he considered to be appropriate to resolve the matter.
31. Since being a sole practitioner, the Respondent had ensured all the monthly reconciliations had been done and the cashbook was maintained. He had hired a bookkeeper to run his accounts and had instructed new accountants.
32. The majority of the difficulties with the accounts were inherited by the Respondent. He had made great efforts to resolve all issues. He had pressed the client concerned to make good the £25,000 shortage. He had not been able to replace it himself.
33. Having to file six monthly Accountant's Reports had been difficult. The Respondent had done everything he could to minimise the disruption caused by his dispute with his accountants. He stopped taking on clients, closed most of the files and was left with only some £30,000 in client account. The SRA had been aware of this and that a large part of the moneys in client account represented interest erroneously paid by the bank into that account. No client money had been placed in jeopardy.
34. The Respondent had tried to mediate, via the Institute of Chartered Accountants with his former accountants. He believed the Institute was sympathetic towards him but it had only now begun to investigate the matter.
35. The Respondent had not been able to earn a living for 18 months. He had had to turn away existing clients, to close his firm, had his firm intervened, his right to practice as a sole practitioner revoked, numerous conditions placed on his practising certificate

which made him unemployable and ultimately he had found himself before his professional disciplinary tribunal.

36. The Respondent had been left in a dire financial situation. He had amassed large credit card bills just to stay afloat; there were large arrears on the mortgage on his home and there was a danger that his family would become homeless.
37. The Respondent had other responsibilities as he looked after his elderly, and often ill, mother and his brother who had a mental illness; he was anxious not to let his family down.
38. The Respondent accepted his duty and responsibility to submit Accountant's Reports. He continued to ensure that this would be done.
39. The Respondent had always been an honest and caring solicitor and had been very diligent in his field of expertise.
40. The Respondent invited the Tribunal to recognise and appreciate the difficulties he had experienced and the strain that had been placed on him. The Tribunal was invited to take a sympathetic approach. The Respondent hoped that he might begin his professional career again in the near future, having learned from his experience.
41. The Tribunal was invited to give due weight to the Respondent's testimonials which spoke highly of his competence and integrity.

Costs

42. The Applicant sought costs of some £25,000 which included the costs of the two FIO's and their Reports. The Respondent was shocked at the high level of those costs and believed it was unfair that the SRA had penalised him several times in connection with the issue with his previous accountants. He could not think of a way of making a payment of those high costs.

Previous disciplinary proceedings before the Tribunal

43. Following a hearing on 29th June 2006 in which the Respondent and Abdul Fatal Miramar Raman were Respondents, the Tribunal found the allegations against both Respondents to have been substantiated namely that they had been guilty of conduct unbecoming a solicitor and/or in breach of relevant Rules in each of the following particulars namely:
 - (I) That they failed to keep accounts properly written up in accordance with Rule 32(4) of the Solicitors Accounts Rules 1998 (hereinafter referred to as "the 1998 Rules");
 - (ii) That they withdrew money from client account in breach of Rule 22 of the 1998 Rules;
 - (iii) That they withdrew money from client account in breach of Rule 23(3) of the 1998 Rules;

- (iv) That they failed to notify their client(s) as to the payment of a referral fee to a third party, Parkway Financial Services, contrary to Section 2A of the Solicitors Introduction and Referral Code 1990.

44. In its written Findings dated 12th August 2006 the Tribunal said:

"32. The Tribunal found the allegations to have been substantiated, indeed they were not contested. It was perhaps fortunate that these relatively inexperienced solicitors had discovered the error of their ways at an early stage. However, punctilious compliance with the 1998 Rules and the other rules and regulations affecting the practice of a solicitor is a prerequisite to the practice of a solicitor and members of the solicitors were properly expected to be fully conversant with all such matters and to act accordingly."

Sanction and Reasons

45. Punctilious compliance with the Solicitors Accounts Rules is an important pre-requisite for a solicitor in private practice. Any failure to comply whatever the circumstances is to be regarded as serious. Full compliance is important in order to ensure that the public is protected and the filing of Accountant's Reports enables the SRA to be sure that when a reporting solicitor holds clients' money it is not thereby placed at risk. A failure to comply with this important requirement prevents the SRA from fulfilling its duty as a regulator. The Tribunal took into account the Respondent's unfortunate relationship with his former accountants and gave him credit for his admissions and the references written in his support. The Tribunal was, however, dismayed that the Respondent had not appeared to have learnt anything from his earlier appearance before the Tribunal. The Tribunal concluded that it was appropriate and proportionate to impose a fine upon the Respondent.

Costs

46. On the question of costs the Tribunal considered that the sum claimed was very large. The Tribunal recognised that the Respondent had been granted a number of opportunities to put matters right which he had not grasped. The Respondent was at the time of the hearing in a dire financial position and having regard to all of the particular circumstances of this case the Tribunal concluded that it would be both appropriate and proportionate summarily to fix the Applicant's costs in the sum of £10,000 and Order that the Respondent pay them. The Tribunal further ordered that the Order for costs was not to be enforced without the consent of the Tribunal.

The Tribunal's Order

47. The Tribunal's Order dated and handed to the parties on 2nd March 2010 took the following form:

The Tribunal Ordered that the Respondent, Atta-Ulla Khan of 8 Summit Drive, Woodford Green, Essex, IG8 8QP, solicitor, do pay a fine of £4,000.00, 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 £10,000.00 inclusive, such order not be enforced without the consent of the Tribunal.

Dated this 30th day of April 2010
On behalf of the Tribunal

A G Gibson
Chairman