

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JONATHAN MICHAEL KRESTIN, (The Respondent)

Upon the application of Mark Barnett
on behalf of the Solicitors Regulation Authority

Mr. D. Potts (in the chair)
Mr. E. Nally
Mr. D. Gilbertson

Date of Hearing: 27th July 2010

FINDINGS & DECISION

Appearances

Mark Barnett, solicitor, employed by the Law Society, at the SRA, 8 Dorner Place, Leamington Spa, CV32 5AE was the Applicant.

The Respondent was represented by Jonathan Caplan QC.

The application to the Tribunal, on behalf of the SRA, was made on 10th February 2010.

Allegation

The Allegation against the Respondent was that he had breached Rule 1.06 of the Solicitors' Code of Conduct as he had behaved in a way likely to diminish the trust the public placed in him or the legal profession in that on 19th November 2008 at Isleworth Crown Court he had been convicted upon indictment of facilitating the acquisition, retention, use or control of criminal property by or on behalf of another person, contrary to section 328(1) of the Proceeds of Crime Act 2002.

Factual Background

1. The Respondent, born in 1948, was admitted as a solicitor in 1977. His name remains on the Roll.

2. At times material to this application the Respondent had practised as a partner in the firm of Butcher Burns at Beaumont House, 47 Mount Pleasant, London WC1X 0AE. He had been the firm's Managing Partner. He had also been the firm's Money laundering Reporting Officer.
3. The Respondent had ceased being a partner on 31st October 2009 and is not currently practising.
4. On 19th November 2008, at Isleworth Crown Court, the Respondent had been convicted upon indictment and following a jury trial of one count contrary to section 328 (1) of the Proceeds of Crime Act 2002. He had been sentenced on 4th December 2008 to pay a fine of £5,000 or in default to serve three months imprisonment. A Confiscation Order under the Proceeds of Crime Act 2002 for £9,517 (being the sterling equivalent of 14,000 Euros at the time), or in default to serve six months imprisonment, had also been made.
5. The Particulars of Offence in the amended Indictment had stated that the Respondent "between 19th September 2005 and 8th October 2005, in relation to the receipt and disbursement by the firm of Butcher Burns of 14,000 Euros from Kilmeston Limited to Dzindzer Jeles' Italian bank account, had entered into or had become concerned in an arrangement which he had known or had suspected had facilitated the acquisition, retention, use of control of criminal property by or on behalf of Michel Namer."
6. Michel Namer had been a prolific MTIC fraudster who was now serving a six year prison sentence.
7. In sentencing the Respondent His Honour Judge McDowall had said:

"I do not think for one moment that Mr Krestin given his excellent character, his long experience as lawyer working his way up to become the senior and managing partner of his firm, was in any sense guilty of knowing assistance.

A jury, obviously, by their verdicts decided that it was not even a matter of suspicion until the crucial stage when Revenue and Customs notified Mr Krestin of the proceedings involving Mr Namer, the true villain of the piece."
8. The Learned Judge had also said:

"The final thing I think I should say is this. That I have already made it plain, I think, in the course of my sentencing remarks, that in my view, and it was my responsibility even though the jury returned the verdict on Count 4, which was capable of being returned on the basis of knowledge and suspicion, I think it would be wildly unreal to suggest that their finding was anything other than suspicion and I think, as I have said, that it is at the lower end of the scale in these matters and although it is, obviously, nonetheless, a criminal offence and in no way to be trivialised, I would very much hope that those who conduct disciplinary proceedings will find a resolution of the appropriate action or sanction against Mr Krestin other than the most drastic which would be available to them, because, to put it in very simple terms, I do not think that his professional life and career should be broken because of this single, however regrettable, lapse in the conduct of his affairs when, as his character

witness is made plain, he has throughout his life been endeavouring to apply the law and was certainly not knowingly trying to break the law.

9. The Respondent had sought leave to appeal his conviction. His application had been refused by the Court on 7th October 2009.

Documentary Evidence before the Tribunal

10. The Tribunal reviewed the Rule 5(2) Statement together with the documentary exhibits as detailed in that Statement, including the sentencing remarks of His Honour Judge McDowall. The Tribunal also had the benefit of a bundle of documents filed by the Respondent, including the NCIS report made by the Respondent dated 14th October 2005 and the Grounds of Appeal dated 16th December 2008.

The Tribunal's Findings as to Fact and Law

11. The Tribunal found the allegation both proved and admitted on the basis of the Certificate of Conviction.

Mitigation

12. Leading Counsel for the Respondent detailed what he submitted had been highly unusual circumstances in which the Respondent had been convicted upon a single count. He explained that the particular client, Mr Namer, had been introduced to the Respondent, by a tax partner at Baker Tilly, as a client of theirs needing a solicitor to undertake some commercial work. The Respondent had been aware that Mr Namer had accounts at major banks, had relied upon the due diligence checks of Baker Tilly and, between 2003 and 2005, had undertaken small amounts of commercial work for Mr Namer at standard and reasonable costs.
13. Leading Counsel said that in fact Mr Namer had been a serious VAT fraudster and the partner at Baker Tilly, who had introduced Mr Namer to the Respondent, had profited from and subsequently been convicted of money laundering.
14. Leading Counsel detailed the circumstances of the transaction that had led to the Respondent's conviction on one count of money laundering following his payment of a sum of 14,000 euros, on the instructions of Mr Namer given by fax, on 30th September 2005. The payment had been made following a draft production order to the Respondent, dated 21st September 2005, that had set out the criminal case against Mr Namer, had named the companies and entities in whom the customs had been interested and had warned the Respondent about the offence of tipping-off Mr Namer.
15. Leading Counsel explained that in the circumstances the Respondent had believed that he had no choice but to make the payment as instructed by Mr Namer, but the jury had found the offence proved. The Respondent now fully accepted that he should have taken legal advice at the time about whether or not to make the payment requested after the date of the production order because that order had put him on notice. Leading Counsel referred to the Judge's sentencing remarks in which he had stressed that the Jury's findings in relation to the Respondent's actions had been at the lower end of the scale in such matters.

16. Leading Counsel detailed the consequences for the Respondent of the criminal proceedings and his subsequent resignation as a partner from the firm that he had built up, explaining that the Respondent did not currently hold a practising certificate but was now the Chief Executive of Butcher Burns with responsibility for practice development.

Application for Costs

17. The parties informed the Tribunal that costs had been agreed in the sum of £1,709.82

Sanction and Reasons

18. The Tribunal stressed that it took a very serious view of convictions of and actions by solicitors relating to money laundering. The Respondent was an experienced solicitor and had been his firm's Money Laundering Reporting Officer. However, the Tribunal accepted that the Respondent had been faced with a very difficult decision and unfortunately his decision had led to extremely serious consequences.
19. It was clear that the Respondent had not been aware of, actively involved in or had made any profit from the money laundering activities of his client. The Tribunal noted that the Respondent had suffered severe financial penalties. It also noted the sentencing remarks of the Judge, particularly with regard to professional disciplinary proceedings. In the particular circumstances the Tribunal considered that a Severe Reprimand was an appropriate penalty both to reflect the seriousness with which the Tribunal viewed the money laundering legislation and the penalties that the Respondent had already suffered and it so ordered.

Decision as to Costs

20. As agreed between the parties, the Respondent was ordered to pay the costs of the proceedings fixed in the sum of £1,709.82.

The Orders of the Tribunal

21. The Tribunal Ordered that the respondent Jonathan Michael Krestin of 52 Northway, Hampstead Garden Suburb, London, NW11 6PE, solicitor, be severely reprimanded and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,709.82

Dated this 27th day of October 2010
On behalf of the Tribunal

D. Potts
(In the Chair)