Solicitors Regulation Authority

Mishcon De Reya LLP (Mishcon De Reya)

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Licenced body
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Agreement Date: 20 December 2021

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 20 December 2021

Published date: 5 January 2022

Firm details

No detail provided:

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome

1.1 Mishcon De Reya LLP ('the firm'), a licensed body authorised and regulated by the Solicitors Regulation Authority Limited (SRA), agrees to the following outcome to the investigation of its conduct:

a. the firm will pay a financial penalty in the sum of £232,500, pursuant to Rule 3.1(b) of the SRA Regulatory and Disciplinary Procedure Rules.

b. the publication of this agreement, pursuant to Rule 9.2 of the SRA Regulatory and Disciplinary Procedure Rules.

c. the firm will pay costs of the investigation of £50,000, pursuant to Rule 10.1 and Schedule 1 of the SRA Regulatory and Disciplinary Procedure Rules.

Reasons/basis

2. Summary of Facts

2.1 Between September 2015 and April 2017, the firm carried out work for two individual clients, and corporate vehicles connected with the same two

individual clients. This work related to a non-SRA regulatory investigation, asset planning for one of the individuals, and the initial stages of the proposed acquisition of two separate entities (and the onward sale of one of them).

2.2 In relation to the above clients and matters:

a. while the firm believes that customer due diligence (CDD) was obtained in relation to the two individual clients, the firm did not retain the hard copy file of such documents, which appears to have been misplaced, and no electronic copy of the records was retained either;

b. some documents, but not a full set of CDD documents were obtained in relation to one of the corporate vehicles involved in one of the proposed acquisitions;

c. both proposed acquisitions presented a “higher risk of money laundering or terrorist financing” under the relevant money laundering legislation in force at the time, because they involved companies in high-risk jurisdictions, therefore requiring enhanced customer due diligence (EDD) and ongoing monitoring which was not adequately applied;

d. one payment was made into and three payments were made out of the firm’s client account between 22 July and 28 July 2016, which did not relate to an underlying legal transaction in relation to which the firm was instructed;

e. funds belonging to one corporate vehicle were transferred to the client ledger for another corporate vehicle, and used to discharge the firm’s fees and disbursements on the matter relating to the latter entity; and

f. the firm did not send a bill of costs, or other written notification of the costs incurred, to the relevant entities before two invoices were raised and paid out of monies held in client account.

2.3 During the external investigation commissioned by the firm into these matters, it was identified that the former partner at the firm responsible for the relationship with the above clients and instructed in relation to most of the above matters had not received mandatory training as required by anti-money laundering regulations. The firm has stated, and the SRA accepts, that such training would usually be provided but was not, owing to a personnel absence. However, there was no contingency plan at the firm for AML training to be implemented if such a personnel absence occurred.

2.4 Separately, between September 2017 and October 2018, the firm acted in relation to three property transactions which were related to one another,

but unrelated to the matters outlined at paragraphs 2.1 to 2.3 above. For each transaction, the firm's client was a separate special purpose vehicle with the same ultimate beneficial owner.

2.5 The firm secured CDD in relation to the ultimate beneficial owner but, because it opened each matter file in the name of a different entity in the corporate structure, the firm did not secure full CDD for each special purpose vehicle before each relevant transaction took place. The firm also did not retain copies of some of the CDD information obtained in relation to the ultimate beneficial owner, and in relation to another individual who instructed the firm on a fourth, related, matter.

2.6 In September 2018, the SRA requested a copy of the firm's practice-wide (firm-wide) risk assessment, as required by Regulation 18 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017). The firm did not at that time have in place such a risk assessment. A risk assessment was prepared by an external provider and supplied by that provider to the firm in March 2019, and to the SRA in May 2019.

2.7 By way of explanation, the firm states that:

a. the firm has cooperated with the SRA's investigation.

b. the firm has shown genuine insight into its management of risk and actions during the relevant periods, including by commissioning an external investigation into the matters outlined at paragraphs 2.1 to 2.3 above.

c. in relation to the matters at paragraphs 2.1 to 2.2 above, transactions were requested by the former partner and the firm had placed reliance on that former partner for completion of the relevant procedures under its own policies – albeit the firm acknowledges that the former partner was not adequately trained and admits the procedures did not adequately mitigate against the risk of non-compliance.

d. retrospective relevant CDD documents in relation to the three related property transactions (see paragraphs 2.4 to 2.5 above) were later obtained and provided to the SRA.

e. the firm has amended its policies and procedures, including introducing and investing in new, more sophisticated IT systems which involve increasingly centralised record-keeping and are, in part, specifically designed to prevent future breaches of the type addressed by this agreement.

f. the firm has not profited from the breaches, having divested itself of the fees earned once the breaches were identified in

relation to the matters outlined at paragraphs 2.1 to 2.3 above.

3. Admissions

3.1 The firm admits, and the SRA accepts, the following breaches:

a. failing to have a written, practice-wide risk assessment in place until March 2019, and failing to provide the same to the SRA until May 2019, pursuant to Regulation 18 of the MLRs 2017;

b. failing to secure adequate CDD at the material times in relation to four matters, and put adequate systems and controls in place to ensure that the correct client was named on three of those matters and throughout the lifespan of those matters, pursuant to Regulation 7 of the MLRs 2007 and Regulations 27 and 28 of the MLRs 2017;

c. failing to retain full CDD on four clients for a minimum period of five years, or have adequate systems and controls in place to retain and/or record the results of CDD checks at the relevant time, pursuant to Regulation 19(3) of the MLRs 2007 and Regulation 40(3) of the MLRs 2017;

d. failing to conduct adequate EDD, or adequately apply enhanced ongoing monitoring in respect of one client and two matters related to that client, including failing to put a notice or control in place at file or accounts level to show that EDD was required, or inform accounts staff that permission needed to be obtained before further transfers could be made, pursuant to Regulations 8 and 14(1)(b) of the MLRs 2007;

e. permitting four payments in the sums £965,000 (into) and $1,099,015, $10,000 and £10,000 (out of) the firm's client account, between 22 July and 28 July 2016, thereby permitting the client account to be used as a banking facility, pursuant to Rule 14.5 of the SRA Accounts Rules 2011;

f. failing to provide adequate training to a partner on whom they relied, where there is a duty to train all relevant employees in relation to anti-money laundering regulations, pursuant to Regulation 21 of the MLRs 2007;

g. improperly transferring funds belonging to one entity to the client ledger for another entity, which was then used to discharge the firm's fees and disbursements in relation to the latter entity, pursuant to Rules 1.2(c), 6.1, 20.1(a), 20.1(c), 20.1(d) and 29.2(b) of the SRA Accounts Rules 2011; and

h. failing to send a bill of costs, or other written notification of the costs incurred, to relevant entities before two invoices were raised and paid out of monies held in client account, pursuant to Rule 17.2 of the SRA Accounts Rules 2011, as required under the relevant money laundering regulations (both the MLRs 2007 and MLRs 2017) and/or SRA Accounts Rules 2011, and therefore the firm has failed to:

i. in respect of the matters set out at paragraphs 3.1a to 3.1h inclusive above, behave in a way that maintains the trust the public places in the firm and in the provision of legal services, in breach of Principle 6 of the SRA Principles 2011 (the Principles in force at the time of the misconduct),

j. in respect of the matters set out at paragraphs 3.1a to 3.1f inclusive above, comply with its legal and regulatory obligations, in breach of Principle 7 of the SRA Principles 2011,

k. in respect of the matters set out at paragraphs 3.1d, 3.1e, 3.1g and 3.1h above, run its business effectively and in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8 of the SRA Principles 2011,

l. in respect of the matters set out at paragraphs 3.1a, 3.1c and 3.1f above, have effective systems and controls in place to achieve and comply with all the Principles, rules and outcomes and other requirements of the Handbook, where applicable, and therefore failed to achieve Outcome 7.2 of the SRA Code of Conduct 2011,

m. in respect of the matters set out at paragraphs 3.1a, 3.1b, 3.1c, 3.1d and 3.1f above, have sufficient regard to its obligations under anti-money laundering legislation and therefore failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011, and

n. in respect of the matter set out at paragraph 3.1f above, have sufficient regard to its obligation to train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility, and therefore failed to achieve Outcome 7.6 of the SRA Code of Conduct 2011.

4. Why the agreed outcome is appropriate:

4.1 The SRA considers, and the firm accepts, that a financial penalty is appropriate following reference to the SRA Enforcement Strategy because:

a. there were serious breaches of the relevant money laundering regulations and the SRA's rules and the firm should have complied with the same.

b. the conduct had the potential to cause significant harm by facilitating transactions that gave rise to a risk of facilitating money laundering, and because the firm was responsible for the overall conduct.

c. the agreed outcome is a proportionate outcome in the public interest because the issuing of such a sanction is necessary to maintain standards by highlighting the risks arising from the behaviours in question and deterring such repetition.

d. there has been no evidence of lasting harm to consumers or third parties being caused by the admitted breaches, based on current knowledge.

e. there is a low risk of repetition, particularly in light of the improved IT systems which the firm has since put in place.

f. the firm has assisted the SRA throughout the investigation, admitted breaches, made changes to systems, policies and procedures as a result, and ensured training to all relevant employees is regularly provided.

4.2 Rule 4.1 of the SRA Regulatory and Disciplinary Procedure Rules states that a financial penalty may be appropriate to maintain professional standards and uphold public confidence in the solicitors' profession and in legal services provided by authorised persons.

4.3 In deciding the level of the financial penalty, agreed at £232,500, reference is made to the SRA's Approach to Setting an Appropriate Financial Penalty (issued 13 August 2013 and updated on 25 November 2019). Following the three-step fining process, the SRA has determined the following:

a. The firm is a firm of greater means, as it has an annual domestic turnover of more than £2m, and as such the financial penalty is calculated as a percentage of turnover.

b. Step 1(a) – assessing the seriousness of the misconduct: Nature of conduct score: Low/Medium = nature score of 1. Harm or risk of harm: Medium = impact score of 4.

c. Step 1(b) – arriving at a broad penalty bracket (percentage of turnover, as over £2m): Conduct band "B", as nature and impact scores total 5 (1 + 4), indicating a basic penalty of up to 0.5% of annual domestic turnover.

d. The turnover relied upon for the calculation is £155m, being the average turnover for the firm during the relevant periods.

e. The SRA and the firm agree the basic penalty scale of 0.25% of turnover to be appropriate, being in the middle of the band of up to 0.5%, because the breaches were serious but the risks did not crystalise into causing harm to clients or the wider public interest. As such, the basic financial penalty is 0.25% of £155m turnover, equating to £387,500.

f. The SRA and the firm agree the basic penalty be reduced by the maximum allowable 40% discount, to reflect the mitigating factors, such as assisting the SRA with its investigation including by providing outputs of the external investigation commissioned by the firm, early admissions, corrective action taken including improvements to systems and training and commitment to reduce the risk of repetition of similar issues. Consequently, the basic penalty of £387,500 is reduced by the maximum allowable discount of 40%, arriving at £232,500, which the SRA agrees is appropriate and the firm agrees to pay.

Publication

4.4 Rule 9.2 of the SRA Regulatory and Disciplinary Procedure Rules states that any decision under Rule 3.1 or 3.2, including a Financial Penalty, shall be published unless the particular circumstances outweigh the public interest in publication.

4.5 The SRA considers it appropriate that this agreement is published, as there are no circumstances that outweigh the public interest in publication and it is in the interests of transparency in the regulatory and disciplinary process to do so.

5. Acting in a way which is inconsistent with this Agreement

5.1 The firm agrees that it will not act in any way which is inconsistent with this agreement, such as by denying the admissions made in this Agreement or responsibility for the conduct referred to above. That may result in a further disciplinary sanction. Denying the admissions made or acting in a way which is inconsistent with this Agreement may also constitute a separate breach of Principles 1, 2 and 5 of the SRA Principles contained within the SRA Standards and Regulations 2019 (such SRA Principles having been in force since 25 November 2019).

6. Costs

6.1 The firm agrees to pay costs of the SRA's investigation in the sum of £50,000. Such costs are due within 28 days of a statement of costs being issued by the SRA. The date of this Agreement is 20 December 2021.

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