Solicitors Regulation Authority

DKLM LLP (DKLM LLP)
City House 3 Cranwood Street, London , EC1V 9PE
Recognised body
389794

Agreement Date: 13 October 2023

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 13 October 2023

Published date: 20 October 2023

Firm details

No detail provided:

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome

1.1 DKLM LLP, a recognised body, authorised and regulated by the Solicitors Regulation Authority (SRA), agrees to the following outcome to the investigation:

a. DKLM LLP will pay a financial penalty in the sum of £12,072, under Rule 3.1(b) of the SRA Regulatory and Disciplinary Procedure Rules
b. to the publication of this agreement, under Rule 9.2 of the SRA Regulatory and Disciplinary Procedure Rules
c. DKLM LLP will pay the costs of the investigation of £1,350, under Rule 10.1 and Schedule 1 of the SRA Regulatory and Disciplinary Procedure Rules.

Reasons/basis

2. Summary of Facts

2.1 We carried out an investigation in to DKLM LLP (the firm), based on intelligence received from a complainant.

2.2 The investigation identified areas of concern in relation to the firm's compliance with the Money Laundering, Terrorist Financing (Information on the Payer) Regulations 2017 (MLRs 2017), the SRA Principles 2011, the SRA Code of Conduct 2011, the SRA Principles 2019 and the SRA Code of Conduct for Firms 2019.

2.3 The complaint concerned a property transaction being carried out by the firm. The complainant alleged that the firm miscalculated his Stamp Duty Land Tax (SDLT) liability. He was entitled to a full refund, as 0% SDLT was applicable to him as a first-time buyer in the UK, however he was not refunded his monies.

2.4 Concerns were also raised by the complainant regarding the transaction, as the house appeared to be undervalued compared with the sales' history of similar houses in the same street. The legal costs for the conveyancing transaction also appeared to be high.

2.5 Upon further investigation into this matter, we discovered that the firm relied upon customer due diligence (CDD) and source of funds (SoF) checks provided by a Ukrainian lawyer, at a Ukrainian law firm.

2.6 We identified the following issues identified following a review of the file:

a. Enhanced customer due diligence (EDD) was required for this matter. Some EDD was applied but was not sufficiently adequate.
b. Client and matter risk assessments were not performed, or if they were no records of those assessments have been retained by the firm.
c. The SoF documentation shows the firm relied on a letter produced by the Ukrainian law firm.
d. Reliance – the firm used those SoF documents for the purpose of reliance but did not adequately scrutinise or go far enough into the background of the information it had received from its client.
e. The SoF for the transaction, totalling £295,000, did not pass through the firm's client account, so the firm could not accurately know if those funds had been paid and what scrutiny had been placed on the origin of those funds, before being transferred.
f. The firm relied upon statements made by the parties that the funds passed between them in the Ukraine.

2.7 The firm failed to pay sufficient regard to the SRA's warning notice on Money Laundering and Terrorist Financing, first published on 8 December 2014 and updated on 2 March 2018.

2.8 Following our investigation, the firm has stated:

a. The transaction involved a Ukrainian client purchasing a property in the UK, from another Ukrainian citizen.

b. It knew that Ukraine was not a jurisdiction subject to either the fourth or fifth EU Money Laundering Directive but was also not a "high-risk third country" at the time of the transaction, which was taken into consideration by the fee earner and the firm's then Money Laundering Compliance Officer (MLCO).
c. No funds were received in the UK and all financial transactions took place in Ukraine.
d. There is no suggestion on the part of the SRA that the transaction involved money laundering or any financial crime.
e. The firm has reflected upon the position and with the benefit of hindsight, recognises and accepts the breaches and failings identified within this document, relating to the firm's due diligence on its client and monies involved in this transaction.

3. Admissions

3.1 The following breaches of the MLRs 2017 are admitted to:

- Regulation 31 – failure to exit the business relationship, despite several red flags.
- Regulations 39(3) and (39)(4) – incorrectly placed reliance on CDD and SoF performed by a firm based in Ukraine, which is a country not subject to the requirements in national legislation implementing the fourth money laundering directive (4MLD) or fifth money laundering directive (5MLD).
- Regulation 28 – failed to adequately identify at the outset of the retainer that the third party solicitor had previously been struck off by the Solicitors Disciplinary Tribunal (SDT).
- Regulation 33 – failed to apply EDD adequately.

3.2 The firm admits, and the SRA accepts, that by failing to comply with money laundering legislation, the firm has: Up to 25 November 2019 (when the SRA Handbook 2011 was in force)

a. failed to 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.
b. failed to carry out the 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.
c. failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011, which states you comply with legislation applicable to your business, including anti-money laundering and data protection legislation.

From 25 November 2019 onwards (when the SRA Standards and Regulations came into force)

d. failed to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons, in breach of Principle 2 of the SRA Principles 2019.
e. failed to comply with all of the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements, in breach of Rule 2.1 of the SRA Code of Conduct for Firms 2019.
f. failed to keep up to date with and follow the law and regulation governing the way you work, in breach of Rule 3.1 of the SRA Code of Conduct for Firms 2019.

4. Why the agreed outcome is appropriate.

4.1 The conduct showed a disregard for statutory and regulatory obligations and had the potential to cause harm, by facilitating dubious transactions that could have led to money laundering (and/or terrorist financing).

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. There is nothing within this Agreement which conflicts with what is stated in Rule 4.1 and on that basis a financial penalty is appropriate.

4.3 In deciding the level of the financial penalty reference is made to The SRA's Approach to Financial Penalties (first issued in August 2013 and updated in May 2023).

Following the three-step fining process, we have determined the following: Step 1(a): Determining the basic penalty: Assessing the seriousness of the misconduct.

a. Nature of conduct: More Serious = nature score of 3.
b. Impact of harm or risk of harm: Low = impact score of 2. c)

Put together, this gives seriousness score of 5 (3 + 2).

Step 1(b): Arriving at a broad penalty bracket for the matter. A seriousness score of five (5) indicates penalty bracket Band "B" and this confirms the penalty to be a percentage of the firm's annual turnover of between 0.4% to 1.2%.

Step 1(c): Arriving at a specific figure for the basic penalty. The turnover relied upon for the calculation is taken from the firm's calendar year 2022 closed accounting records and is £5,030,374.

We consider, for the purposes of expediting resolution of this matter now, the penalty scale "B1" is appropriate. We have reached this score primarily to reflect the appetite of the SRA to seek a resolution of this matter now, along with the seriousness of the misconduct which related

to this client and transaction. As such, we calculate the basic financial penalty to be 0.4% of turnover, which equates to £20,120.

Step 2: Adjusting the penalty to account for mitigating factors. There is an opportunity to adjust the basic penalty for mitigating factors. We have taken the following factors into account.

a. The firm has a largely unblemished regulatory and disciplinary history.
b. The firm has cooperated with all of our investigations.
c. There is an absence of any pattern of misconduct.
d. The firm has offered a genuine, and sincere, apology for that which has been identified within this document, relevant to a single and isolated transaction.
e. After the transaction referred to in this document, the firm has implemented an enhanced regulatory training regime with AML training upon induction, both general and role specific, with the firm's MLRO and a policy of mandatory annual AML training.
f. The firm has also appointed a new MLRO and MLCO, who has undertaken a thorough review of the firm's AML approach and maintains a constant overview of the approach adopted on an individual matter basis, together with a firm wide perspective.

.4.4 Consequently, our initial view is that this matter may now be expedited towards a resolution of a financial penalty of £12,072 representing a discount of 40% on £20,120, owing to the firm's cooperation throughout the investigation.

4.5 Such a resolution will be dependent on the firm's response, of course, and be subject also to payment of the costs of £1,350.

5. Publication

5.1 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.

5.2 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.

6. Acting in a way which is inconsistent with this agreement

6.1 The firm agrees that they will not act in any way which is inconsistent with this agreement, such as by denying responsibility for the conduct referred to above. That may result in a further disciplinary sanction. 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).

7. Costs

7.1 The firm agrees to pay the costs of the SRA's investigation in the sum of £1,350. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

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