Neutral Citation Number: [2012] EWCA Civ 421

Case No: C1/2011/0710

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
Lord Justice Toulson and Mr. Justice Lloyd Jones
[2011] EWHC 291(Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 April 2012

Before :

LORD JUSTICE MAURICE KAY
Vice-President of the Court of Appeal, Civil Division)
LORD JUSTICE HOOPER
and
LORD JUSTICE MOORE-BICK

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Between :

SOLICITORS REGULATION AUTHORITY	**Appellant/ Respondent**
- and -	
ANTHONY LAWRENCE CLARKE DENNISON	**Respondent /Appellant**

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Mr. Simon Monty Q.C. (instructed by **Hayley Goldstone, Pinsent Masons LLP**) for the **appellant**
Mr. Michael McLaren Q.C. and **Mr. Richard Coleman** (instructed by **Jonathan Goodwin**) for the **respondent**

Hearing date : 14th March 2012

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Approved Judgment

Lord Justice Moore-Bick :

1. This is an appeal by a solicitor, Mr. Anthony Dennison, against the order of the Divisional Court (Toulson L.J. and Lloyd Jones J.) that he be struck off the Roll of Solicitors. The order of the Divisional Court was made on an appeal by the Solicitors Regulation Authority ("SRA") against the order of the Solicitors Disciplinary Tribunal that Mr. Dennison be fined a sum of £23,500 and pay the costs of the proceedings in relation to certain allegations of professional misconduct which it found had been proved against him.

2. The background to the proceedings before the Tribunal is described in the judgment of Lloyd Jones J. as follows:

> "3. Prior to joining Rowe Cohen, Mr. Dennison had acted for Motor Law which operated a claims management scheme for personal injuries claimants. On joining Rowe Cohen in about March 1998 Mr. Dennison introduced Motor Law to Rowe Cohen who were appointed panel solicitors under Motor Law's claims management scheme. In September 2000 The Accident Group ("TAG") had acquired Motor Law's business and the claims management business of Accident Advice Bureau Limited. TAG operated the claims management scheme involving the sourcing, funding and representation of claimants in personal injury cases ("the TAG scheme"). In 2003 TAG had gone into insolvent liquidation. Rowe Cohen had been involved in the TAG scheme in three respects:
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> (a) As vetters of claims for TAG under the scheme, in which respect TAG had been Rowe Cohen's client;
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> (b) As advisors to TAG in connection with the TAG scheme;
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> (c) As one of the firms of panel solicitors that had acted for claimants introduced by TAG."

3. A large number of allegations of professional misconduct were made by the SRA against Mr. Dennison and his partners. In Mr. Dennison's case five were found to have been proved, but of those four did not involve dishonesty and it is unnecessary to refer to them in detail. The only allegation with which the appeal is concerned related to his interest in a company called Legal Report Services Ltd ("LRS"), which acted as an intermediary for obtaining expert evidence in support of claims handled by solicitors on the TAG panel, including Rowe Cohen. Mr. Dennison failed to disclose his interest in LRS either to his partners or to clients of the firm for whom it obtained expert evidence.

4. The conflict of interest came to an end in 2003 when TAG collapsed and ceased to refer clients to Rowe Cohen. Mr. Dennison sold his shares in LRS in February 2004,

but it was not until July 2007 that he disclosed to his former partners and to the SRA that he had held an interest in LRS. He subsequently paid £400,000 to settle claims against him by his former partners, although only a relatively small proportion of that, perhaps as little as £37,000, represented money received from services provided by LRS to clients of Rowe Cohen.

5. The allegation of professional misconduct made against Mr. Dennison in relation to LRS was that he had

> "facilitated, permitted or acquiesced in the provision by Legal Report Services ("LRS"), a company in which he had a one third interest, of medical reports for clients for whom Rowe Cohen acted under the TAG scheme, and thereby created a conflict between:
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> a. his financial interest in LRS; and
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> b. his and Rowe Cohen's duty to the client."

6. The Tribunal found that Mr. Dennison had deliberately kept his interest in LRS secret, that he had failed to inform his clients that he had an interest in the company which provided their medical reports and that he had deliberately deceived his partners because he wanted to retain the whole of the benefit of his interest for himself. The Tribunal found that Mr. Dennison had acted dishonestly by the ordinary standards of reasonable and honest people and, moreover, that he had been aware that, by those standards, he had been acting dishonestly.

7. The Tribunal's decision on the penalty to be imposed for what it recognised was a serious example of professional misconduct is set out in paragraphs 573 and 574 of its decision as follows:

> "573. The Tribunal noted that the circumstances of the LRS matter had been very unusual, not to say unique, and not related solely to a regulatory matter. However, the probity of Mr. Dennison and therefore the reputation of the Profession had been involved and the Tribunal considered that the matter was very serious.
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> 574. However having regard to the length of time that had passed since the matter complained of, taking into account the payment that Mr. Dennison had already made to his former partners and the fact that it was the clear view of the Tribunal that no member of the public would be at risk if Mr. Dennison remained in practice, the Tribunal determined that the appropriate penalty, in the particular circumstances, would be a substantial fine. The Tribunal did not consider it to be appropriate or necessary for Mr. Dennison to be struck off the Roll or suspended for any period."

8. Having regard to the finding of dishonesty against him, the SRA did not consider that a financial penalty alone was sufficient to mark the seriousness of Mr. Dennison's conduct or to protect the reputation of the profession and maintain public confidence in it. It therefore appealed to the Divisional Court seeking to have the penalty reviewed. After careful and detailed consideration of the issues the court allowed the appeal and ordered that Mr. Dennison be struck off the Roll.

9. Mr. Dennison now appeals against the order of the Divisional Court on the grounds that the court failed to give sufficient weight to the views of a very experienced professional tribunal which had seen him give evidence over a period of five days and was well placed to assess both his character and the risk to the public of allowing him to remain in practice. It is also said that, although it was a case of dishonesty, in respect of which striking off is usually appropriate, the circumstances of this offence were very unusual and could properly be regarded as falling within that very small class of cases involving dishonesty in respect of which such a severe sanction is not required.

10. The legal framework within which this appeal falls to be determined was not in dispute. In the well known passage in his judgment in *Bolton v Law Society* [1994] 1 W.L.R. 512 Sir Thomas Bingham M.R. said:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. *The most serious involves proven dishonesty*, whether or not leading to criminal proceedings and criminal penalties. *In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.* Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. . . .
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> It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to

> be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. *The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth.* To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. . . . A profession's most valuable asset is its collective reputation and the confidence which that inspires." (Emphasis added)

11. The approach to be taken by the court to the decision of the Tribunal was considered in *Salsbury v Law Society* [2008] EWCA Civ 1285, [2009] 1 W.L.R.1286. Jackson L.J., with whom Sir Mark Potter P. and Arden L.J. agreed, said:

> " . . . the Solicitors Disciplinary Tribunal comprises an expert and informed tribunal, which is particularly well placed in any case to assess what measures are required to deal with defaulting solicitors and to protect the public interest. Absent any error of law, the High Court must pay considerable respect to the sentencing decisions of the tribunal. Nevertheless if the High Court, despite paying such respect, is satisfied that the sentencing decision was clearly inappropriate, then the court will interfere."

12. While recognising the force of that observation, Mr. Monty submitted that in the present case the Divisional Court failed to give proper weight to the decision of the Tribunal, which had clearly been of the view that it was not necessary to stop Mr. Dennison from practising, either by striking him off or suspending him. He submitted that the Tribunal had been in a good position both to assess the risk to the public if he were allowed to continue in practice (which it regarded as negligible) and, by implication, the risk of undermining confidence in the profession. He coupled that with a submission that the circumstances of the present case, which the Tribunal itself described as "very unusual, not to say unique", placed it in that residual category of cases of dishonesty for which striking off is not an appropriate penalty.

13. In paragraph 573 of its decision the Tribunal recognised that the probity of Mr. Dennison and therefore the reputation of the profession had been involved and that the matter was very serious. That is not surprising, because it had found that Mr. Dennison had been knowingly dishonest, both towards his partners and towards his clients, and that he had persisted in his dishonesty over a period of some five years in order to enhance his personal gain. Although the case did not involve the dishonest use of clients' money, it was a case which on the face of it could be expected to have resulted in his being struck off for all the reasons given in *Bolton v Law Society*. It is therefore necessary to examine the reasons given by the Tribunal for not taking that course.

14. In paragraph 574 the Tribunal identified three factors which it regarded as significant: (i) the length of time that had passed since the matter complained of; (ii) the payment that Mr. Dennison had already made to his former partners; and (iii) the fact that no member of the public would be at risk if he were to remain in practice. Before considering the impact of these mitigating factors it is as well to remind oneself of the following passage in Sir Thomas Bingham's judgment in *Bolton v Law Society* at page 519:

> "Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness."

15. Despite the Tribunal's view that it was not appropriate or necessary for Mr. Dennison to be struck off or suspended, I am unable to accept that his dishonesty was so trivial as to fall into what has been described as a residual category of cases for which striking off is not an appropriate penalty. The only example of such a case that Mr. Monty was able to draw to our attention was the decision of the Tribunal in *Solicitors Regulation Authority v Block* (2011), in which the solicitor was found to have misinformed the Legal Complaints Service about the date on which he had learnt that an employee's former practice had been the subject of intervention by the SRA and his practising certificate suspended. However, although the Tribunal found that the solicitor had acted dishonestly, it accepted that he had done so for altruistic motives, without any prospect of gain and without any intention of influencing any investigation by the regulator. The Tribunal considered his dishonesty to be "very much at the bottom end of the scale", but even so, it considered that it required some interference with his ability to practise. It therefore suspended him for six months and ordered him to pay the costs of the proceedings. That case is far removed from the present.

16. As to the factors which led the Tribunal to conclude that striking off or suspension was not required in this case, none of them in my view carries a great deal of weight. The passage of time, although a factor to be taken into account, does little to detract from the gravity of the conduct, especially when the duration of the dishonesty and its subsequent concealment is taken into account. The matter is made worse by Mr.

Dennison's receipt, albeit by a circuitous route, of advice from the Law Society that his interests in LRS had to be disclosed. The payment by Mr. Dennison to his former partners was made by way of settlement of what he presumably recognised were at least arguably sound claims against him. It does nothing to preserve the reputation of the profession. The fact that the Tribunal was satisfied that no member of the public would be put at risk if he continued to practise likewise does little to ensure confidence in the profession, since it would tend to reinforce the perception that the profession was willing to tolerate seriously dishonest practitioners.

17. With effect from 31st March 2009 the Tribunal had power to impose a fine in an unlimited amount in respect of any individual example of professional misconduct. Mr. Monty submitted that that was an important factor to take into consideration, not only because the Tribunal itself had imposed what it regarded as a substantial fine, but because it enabled a more sophisticated approach to be taken when imposing penalties for less serious kinds of dishonesty. The submission assumes, of course, that the dishonesty with which the Tribunal had to deal in this case was of a less serious kind, but that is difficult to accept, given that the Tribunal itself described Mr. Dennison's behaviour as "very serious". That being so, I do not think that a large fine, even coupled with a period of suspension, could properly be regarded as an appropriate penalty in a case of this kind.

18. The Divisional Court was conscious of the respect due to the decision of a professional tribunal of this kind, particularly one composed of such experienced members, but having considered the arguments in detail it concluded that none of them justified the Tribunal's decision, which it found to be clearly inappropriate. For the reasons I have given, which are essentially the same as those set out in the judgment of Lloyd Jones J., I think its conclusion was entirely justified. I would therefore dismiss the appeal.

Lord Justice Hooper:

19. I agree.

Lord Justice Maurice Kay:

20. I also agree.