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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT
NEUTRAL CITATION NUMBER: [2021] EWHC 1302 (Admin)

CO/3836/2019

Royal Courts of Justice

Wednesday, 27 January 2021

Before:

MR JUSTICE LAVENDER

B E T W E E N :

BRIAN MILNER-LUNT

Appellant

- and -

SOLICITORS REGULATION AUTHORITY

Respondent

THE APPELLANT appeared in person.

MS HANSEN (instructed by Solicitors Regulation Authority) appeared on behalf of the Respondent.

J U D G M E N T

(Transcribed from Microsoft TEAMS recording and without the benefit of documentation)

MR JUSTICE LAVENDER:

- 1 This is an appeal against the findings made by the Solicitors Disciplinary Tribunal in the case of the appellant, Brian Milner-Lunt, as set out in a judgment dated 3 September 2019, following a hearing on 6 to 8 August 2019. The Tribunal found seven allegations proved and found that the appellant was dishonest in relation to two of them. The appellant was struck off the roll of solicitors and ordered to pay £30,950.50 in costs.
- 2 This appeal is by way of review, not rehearing. The question is whether the Tribunal's decision was wrong. It is appropriate to pay due regard to the fact that the Tribunal heard the evidence, which I did not.
- 3 From November 2005 the appellant was a sole practitioner, practising under the name Milner-Lunt and Company. In November 2013 he prepared a will for a client, who has been referred to as "TW". She executed the will on 12 November 2013 and died on 16 November 2013. The residual beneficiaries were TW's four half sisters. The appellant was appointed as the sole executor of the estate. Probate was granted on 3 October 2014. The will allowed him to charge for his services as executor. Clause 2(c) stated as follows:

"Any of my trustees who is engaged in any professional business may charge fees for professional or other work carried out whether personally or by his or her firm as if he or she were not one of my trustees, but were employed to carry out the work on my trustees' behalf."
- 4 Between 2 January 2014 and 1 September 2017 the appellant raised 45 invoices against the estate for a total of £132,666. He says that this was about 17% of the value of the estate, plus VAT, which suggests that the total value of the estate was in the region of £600,000. The principal asset of the estate was a house valued at a little under £400,000. By her will,

TW gave a life interest in the house to her friend, GJB. By July 2015, the appellant had realised the remainder of the estate. However, he did not provide an account to the beneficiaries and he did not make any distributions.

5 On 20 August 2015 the appellant transferred a total of £125,000 of the estate's money from his client account to an account which has been referred to as the "Business Bonus Account". This money was used to pay the appellant's invoices. Transfers were made from the Business Bonus Account to the appellant's office account against the appellant's invoices. In addition, two transfers were made which were not supported by invoices. There were no documents on the appellant's file to evidence any work done for the estate after January 2016, yet 36 invoices were raised in the period after January 2016.

6 Following an earlier unsuccessful complaint to the Legal Ombudsman, in early 2016 three of the residual beneficiaries brought two complaints against the appellant to the Legal Ombudsman. On 7 June 2017 the appellant was adjudged bankrupt. The Legal Ombudsman issued preliminary decisions dated 21 and 22 June 2017 on the two complaints, each of which found that the appellant had provided a service which fell below a reasonable standard and each of which required the appellant to pay £350 to the relevant complainant, to write a letter of apology and to provide copies of the interim estate accounts. In fact, the appellant did none of these things.

7 One of the residual beneficiaries, JH, brought an action against the appellant in the High Court. On 22 June 2017 JH obtained from Mrs Registrar Herdman an order requiring the appellant to provide an inventory of the estate and an account of his administration of the estate within 28 days. He did not do so within 28 days or at all.

8 The appellant's practising certificate was suspended on 27 June 2017. Six of the invoices were raised after that date. On 6 July 2017 the appellant replied to the Legal Ombudsman's first preliminary decision. He did not reply to the second preliminary decision.

- 9 TW's friend, GJB, died on 22 July 2017, meaning that the house could thereafter be sold. The appellant remarried on 25 July 2017. The Solicitors Regulation Authority intervened in his practice on 3 October 2017.
- 10 There were seven allegations against the appellant and, as I have said, the Tribunal found all seven proved and found that the appellant was dishonest in relation to the first and third, but not the second.
- 11 The appellant does not appeal against the Tribunal's findings that allegations 1.5 and 1.7 were proved. Allegation 1.5 was that the appellant failed to co-operate adequately, or at all, with the SRA's investigation into his conduct and he thereby breached any or all of principles 6 and 7 of the Principles and any or all of outcomes 10.6, 10.8 and 10.9 of the 2011 Code. The Tribunal found that there were, indeed, breaches of principles 6 and 7 and a failure to achieve outcomes 10.6, 10.8 and 10.9.
- 12 Allegation 1.7 was that the appellant failed to reconcile the firm's client accounts every five weeks, or at all, between September 2015 and September 2017, in breach of any or all of rules 29.1, 29.2 and 29.12 of the SRA Accounts Rules 2011 and all or any of principles 8 and 10 of the Principles. The Tribunal found that the appellant failed to comply with rules 29.12, 29.1 and 29.2 of the SRA Accounts Rules 2011 and was in breach of principle 10.
- 13 I start with allegation 1.1. This was that the appellant between approximately 12 November 2013 and 1 September 2017 overcharged the estate for fees for the administration of the estate and thereby breached any or all of principles 2, 6 and 10 of the Principles.
- 14 The Tribunal found that the appellant was in breach of principles 2, 6 and 10 and, as I have said, that he was dishonest.

- 15 The terms of the will did not entitle the appellant to charge more than reasonable remuneration. The SRA relied on the evidence of a costs draftsman, Mark Venyard. His evidence, which the Tribunal accepted, was that the appellant's costs should not have amounted to more than £15,630.44. Yet the appellant charged the estate over eight times that amount. Moreover, the appellant did not seek before the Tribunal, and has not sought before me, to justify the amount charged by reference to the amount of work which he did. Instead, the appellant made a number of subtly different claims.
- 16 In his answer to the SRA's rule 5 statement, he said as follows, First, in paragraph 1.1, the appellant said that he had a conversation with TW in which she instructed him that, so far as she was concerned, he could charge up to 50 per cent of the estate. This statement was not incorporated in the will. Indeed, the appellant says that it was made after the will was executed. Consequently, even if it was made, the statement was of no effect in law, save, perhaps, as a factor to be taken into account, together with many others, in assessing the reasonableness of the appellant's bills. Nevertheless, the appellant attached considerable significance to it. The appellant contended that what TW said had the effect of entitling him to fix his own fee at a fixed fee of any percentage of the value of the estate up to 50 per cent. Even if TW said what she is alleged to have said, it cannot have had that effect.
- 17 Then in paragraph 14 of the answer, the appellant referred to his standard probate terms and conditions, which provided for a fee of 25 per cent of the value of the estate, plus VAT and disbursements. He said that he was of the view that this was the upper limit of the amount that he could charge. But, in paragraph 16.1 of the answer, he said that he was operating under a percentage cost regime and in paragraph 16.4, he said that he did not keep file notes of the work undertaken, because he was operating under a fixed-fee regime.

- 18 There was some confusion, perhaps, whether the appellant's case was that 25 per cent of the value of the estate, plus VAT, was the fixed fee which he was entitled to charge or whether it was the limit on what he was entitled to charge.
- 19 In his grounds of appeal, he asserts that he undertook the administration of the estate for a fixed fee and he says the same in his skeleton argument for this hearing. His position appears, therefore, to be that he was entitled to charge 25 per cent of the value of the estate (i.e. about £150,000 plus VAT or £180,000 including VAT) regardless of the amount of work which he did. That is obviously unreasonable and the Tribunal was clearly entitled to accept Mr Venyard's evidence to that effect.
- 20 On this appeal, the appellant takes issue with some aspects of Mr Venyard's evidence, such as his opinion that the narrative within the appellant's bills was insufficient, but he has not sought to show that he did work worth £132,666 or £180,000. He has not dealt in any detail with Mr Venyard's figure of £15,630.44 as the most which could be charged as a reasonable amount.
- 21 A costs judge has decided that the appellant's bills are not interim statute bills. The appellant is appealing that decision. Master Leonard has decided that a further bill in the same general form is a final statutory bill. The appellant sought to rely upon Master Leonard's order and that bill. However, these matters do not help, since they do not address the central question, which is whether the amounts of the bills could be justified.
- 22 As to that, the Tribunal said in paragraph 35.27 of its judgment that the appellant had provided no cogent or credible evidence to justify the fees charged. Instead, he contends that it was reasonable for him to charge 25 per cent of the value of the estate, plus VAT. He contends that he, as executor, agreed with himself, as solicitor, that fee and that, therefore, it must be reasonable, but an executor cannot bypass the terms of the will in that way. The will entitled him to charge, but it did not entitle him to charge such sums as he saw fit or

such sum as he agreed with himself. His only entitlement was to charge a reasonable amount. It was not for him to determine what was reasonable.

- 23 The appellant relied before the Tribunal on a news article which said that Blake Morgan, who, as it happens, were the solicitors who intervened in his practice, had in one case charged fees amounting to 38 per cent of the value of an estate. The Tribunal rightly dismissed that as irrelevant. Two more articles, which he sought to rely on before me, concerning the amount of costs ordered in other cases were equally irrelevant. Each of those three cases were decided on their own facts. This case needs to be addressed on its facts.
- 24 Looking at the facts of this case in the round, I see no reason for disturbing the Tribunal's finding that the appellant over charged the estate.
- 25 The appellant also challenges the Tribunal's finding that he was dishonest in doing so. In this context, it is necessary to note what the Tribunal said in paragraphs 17 to 19 of its judgment, as follows,

“17. On the second day of the hearing at the close of the applicant's case, shortly after lunch, the respondent requested that matters be adjourned to the following day for him to consider whether he would be giving evidence. His health was such that he was very tired and he had not considered how much presenting his own case would take out of him. He noted that he felt that he had said all that he wanted to say. The applicant did not object. The Tribunal considered that, in the circumstances, it was just to finish sitting early that day and to adjourn the matter to the following day to give him time to consider his decision carefully. The Tribunal directed the Respondent to Practice Direction 5 which provided:

‘The Tribunal has taken careful note of the dicta of the President of the Queen's Bench Division, Sir John Thomas, at paras.25 and 26 of the judgment in *Muhammad Iqbal v. Solicitors Regulation Authority* [2012] EWHC 3251 (Admin.). In the words of the President, “Ordinarily, the public would have expected a professional man to give account of his actions”. The Tribunal directs, for the avoidance of doubt, that in appropriate cases where a respondent denies some or all of the allegations against him (regardless of whether it is alleged that he has been dishonest), and/or disputes material facts,

and does not give evidence or submit himself to cross-examination, the Tribunal shall be entitled to take into account the position that the Respondent has chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings. This direction applies regardless of the fact that the Respondent may have provided a written signed statement to the Tribunal’.”

18. On the final day of the hearing, the Respondent informed the Tribunal that he would not be giving evidence. He explained that his health issues were such that he was easily confused. As detailed by him the previous day, he had already said everything that he wished to say on the issues and allegations against him. He confirmed that he fully understood Practice Direction 5 as had been explained to him.

19. The Tribunal noted that the respondent’s answer, which was signed with a statement of truth, detailed his response to every paragraph of the rule 5 statement. The Tribunal noted the reasons that the Respondent chose not to give evidence. It had regard to Practice Direction 5. The Tribunal determined that, in the circumstances, while it would take account of the Respondent’s written evidence, that evidence would be given less weight than would have had afforded to any oral evidence he might have given.”

26 The appellant has produced for the purpose of this hearing a letter from Dr Christina Cox, dated 14 September 2019, which confirms that he had leukaemia and fatigue syndrome. He says that he did not have any diagnosis of fatigue syndrome at the time of the hearing and, therefore, could not produce evidence to that effect. He said that it was only in September 2019 that he was diagnosed with fatigue syndrome. Dr Cox’s letter does not address the symptoms of his fatigue syndrome. It does not deal, for instance, with the question of whether it would have prevented him from giving evidence or whether its effects could have been ameliorated by any steps which the Tribunal could have taken. I note in this context that, although he did not give evidence at the hearing, the appellant did make submissions and did so to such an extent that he was able to say to the Tribunal that he felt that he had said all that he wanted to say. It does not seem to me that Dr Cox’s letter assists the appellant in any way on this appeal.

27 The appellant complains about the last sentence of paragraph 19 of the judgment. He says that the Tribunal should have told him that it was minded to give less weight to his evidence

if he did not give oral evidence. But what the Tribunal did, by drawing his attention to Practice Direction 5, was to indicate to him that it might, indeed, give less weight to his evidence if he did not give oral evidence. Alternatively, he says that the Tribunal should have given serious consideration to an adjournment, but he did not ask for an adjournment on the third day of the hearing, unlike the second day of the hearing, and he produced no medical evidence which stated that he could not give evidence. So the Tribunal cannot be faulted on that score. I do not accept that this was a case in which the Tribunal was obliged to adjourn the hearing of its own motion. Indeed, I note that the Tribunal had seen him participate in the hearing for the first two days. It had accommodated his fatigue by adjourning on the second day to the third day and, on that third day, he was able to make submissions, although he did not submit to being cross-examined. In all of the circumstances, the Tribunal was not, in my view, obliged to go further and to adjourn the hearing of its own motion.

28 Whatever the reason for it, the fact is that the appellant did not give oral evidence. As a solicitor, he must have known that his evidence had not been tested by cross-examination and that that was a factor which the Tribunal was bound to take into account in deciding what weight to give to his evidence and, of course, the weight to be given to any evidence is a matter for the Tribunal. I do not consider, therefore, that the Tribunal can be faulted for its approach to this issue.

29 The other matters raised by the appellant in respect of the finding that he was dishonest consist largely of a repetition of the case which he advanced before the Tribunal, but, as I have said, this appeal is not a rehearing. In particular, he contends that the Tribunal was wrong to find that the alleged conversation between the appellant and TW about fees did not take place. That, in my judgment, was a finding which the Tribunal was fully entitled to make. The appellant did not make a note of the alleged conversation and did not make a

note of a subsequent alleged conversation when he says that he called the SRA's professional ethics advice line to ask about what TW had allegedly said. The Tribunal was entitled to conclude that the alleged conversation with TW did not take place. The Tribunal correctly directed itself as to both the burden and standard of proof and the meaning of dishonesty. In a case of gross overcharging and, in all the circumstances of this case, it was entitled to find that the appellant had been dishonest.

30 Allegation 1.2 was that the appellant improperly transferred money from the firm's client account to the firm's Business Bonus Account on 20 August 2015 and thereby breached any or all of principles 2, 6 and 10 of the Principles and any or all of rules 17.7 and 20.3 of the SRA Accounts Rules 2011. The Tribunal found that there was a breach of rules 17.7 and 20.3 of the SRA Accounts Rules 2011 and of principles 2, 6 and 10.

31 The central issue in relation to allegation 1.2 was whether the Business Bonus Account was a client account or not. The Tribunal found in the appellant's favour that he was not dishonest in this respect and that he always believed that the Business Bonus Account was a client account and treated it as such. However, the Tribunal did not accept that the Business Bonus Account was, in fact, a client account.

32 I need to deal first with the preliminary issue concerning documents. The Tribunal dealt at some length in paragraphs 20 to 34 of its judgment with the complex history of disclosure in this case. The appellant maintained that some chits, which had originally been on his file, had gone missing while the file was in the possession of the SRA. The appellant contends that the chits would have shown that the Business Bonus Account was always used as a client account, but the Tribunal accepted that. The sole issue here was as to the designation of the Business Bonus Account. The allegedly missing chits could not help with that issue.

33 The account was described on the paper bank statements as "Milner-Lunt and Company Business Bonus Account". It was described online as "Mil-Lun Client Interest". The

Tribunal found that neither of those designations complied with rule 13.3 of the SRA Accounts Rules 2011 which provides as follows:

“The client account(s) of:

(a) a sole practitioner must be in the name under which the sole practitioner is recognised by the SRA, whether that is the sole practitioner’s own name or the firm name;

...

and the name of the account must also include the word ‘client’ in full (an abbreviation is not acceptable).”

- 34 The name on the paper bank statements, “Milner-Lunt and Company Business Bonus Account”, clearly did not comply with rule 13.3 because it did not include the word “Client”. The name online did include the word “Client”, but it only included an abbreviation of the name under which the appellant practised. It said “Mil-Lun” rather than “Milner Lunt and Company”. The appellant submitted that he did comply with rule 13.3, but the Tribunal disagreed.
- 35 The Tribunal, therefore, found that neither name was compliant with rule 13.3. I consider that the Tribunal was entitled to make that finding. In particular, on the disputed issue, “Mil-Lun” was not, in the words of rule 13.3(a), “the name under which the appellant is recognised by the SRA”.
- 36 The appellant submitted that an abbreviation of that name was acceptable because rule 13.3(a) did not contain an express statement that an abbreviation was not acceptable, in contrast to the concluding part of 13.3.
- 37 I do not accept this submission. Rule 13.3(a) was clear. What was required was the name by which the appellant was recognised by the SRA. That name was “Milner-Lunt and Company” not “Mil-Lun”.

38 In paragraph 36.22 of its judgment the Tribunal said, *inter alia*, as follows:

“Therefore, as it was not a properly designated client account, monies held in that account would not be afforded the same protection as monies contained in a client account. Thus, the Respondent had failed to protect client monies and assets in breach of principle 10. Members of the public would expect a solicitor to safeguard client money and afford it maximum protection by placing it in a properly designated client account. Thus, the Respondent had failed to maintain the trust that the public placed in him and in the provision of the legal services in breach of principle 6. The Tribunal considered that a solicitor acting with integrity would ensure that he had properly protected client monies. By improperly transferring monies to the Business Bonus Account, the Respondent had failed to do so. The Respondent’s conduct in that regard had fallen below the standards that the public and the profession expect of him, thus he had breached principle 2.”

39 The appellant submits that it was wrong for the Tribunal to find that he was in breach of principle 2 (i.e. that he did not act with integrity). However, the Tribunal correctly directed itself in paragraph 16 of its judgment as to the meaning of “integrity” by reference to *Solicitors Regulation Authority v. Wingate* [2018] 1 WLR 3969 and its finding in paragraph 36.22 was consistent with that direction.

40 I bear in mind that the Tribunal is a specialist body and well placed to determine such issues. The context was that the appellant transferred £125,000 of client money to an incorrectly designated account. The Tribunal was entitled, in my judgment, to conclude that he fell below the standards which the public and the profession expect of him and thereby acted without integrity.

41 Allegation 1.3 is that the appellant improperly transferred money from the firm’s Business Bonus Account to the firm’s office account between 20 August 2015 and 15 September 2017 and thereby breached any or all of principles 2, 6 and 10 of the Principles and any or all of rules 17.3 and 20.3 of the SRA Accounts Rules 2011. The Tribunal found that he was in breach of those Principles and those Rules. I need not say anything about allegation 1.3,

because the appellant accepted, as is the case, that this allegation stands or falls with the Tribunal's findings on allegation 1.1.

42 Allegation 1.4 is that the appellant failed to comply with an order of the High Court made on 22 June 2017, either within the 28 days required or at all, and he thereby breached any or all of principles 1, 6 and 7 and outcome 5.3 of the 2011 Code. The Tribunal found that the appellant was in breach of those principles and failed to achieve that outcome.

43 It is not in dispute that the appellant did not comply with the order. He contended that he was not obliged to do so because he was made bankrupt. The Tribunal rightly rejected that submission. He also submitted that he was having a difficult time at that time by reason of his own ill health, his divorce, his new wife's ill health and his bankruptcy. The Tribunal rightly found that these were matters of mitigation, but did not provide a defence. Accordingly, the Tribunal was entitled to find allegation 1.4 proved.

44 Finally, allegation 1.6 is that the appellant failed to co-operate adequately, or at all, with the Legal Ombudsman, in that he did not comply with and/or respond to the preliminary decisions issued on 21 June 2017 and/or 22 June 2017 and he thereby breached principles 6 and 7 of the Principles and outcome 10.6 of the Code. It is relevant to note that each of the preliminary decisions, dated 21 and 22 June 2017, stated as follows,

“You can reject my preliminary decision and request that an Ombudsman makes a final decision about this complaint. If you choose this option, you must let me know by [5 or 6] July 2017 and explain briefly, in writing, why you disagree with my preliminary decision. The Ombudsman will have access to all the information and comments that you and the Claimant have provided as well as my preliminary discussion. They will then make a final decision about the complaint. The Ombudsman is not bound in any way to follow my preliminary decision.”

45 The appellant contended that he was not obliged to comply with the preliminary decisions because they were subject to review. He relied on the email which he sent on 6 July 2017 which stated, “I wish to object to the findings of Mrs Searle. Could you please put in place

the necessary review?” The reference in the subject line of this email was the reference to the first preliminary decision. The Tribunal was entitled to find that the appellant did not apply for review of the second preliminary decision dated 22 June 2017.

46 In relation to the first preliminary decision, dated 21 June 2017, the Tribunal found, as was the case, that the appellant’s email of 6 July 2017 was one day late and contained no reasons, despite the preliminary decision stating that he should explain briefly in writing why he disagreed with the preliminary decision. For some reason, the dates given in the Tribunal’s judgment were one day out, but that did not affect the fact that the email was one day late.

47 The appellant complains that the Tribunal did not address the reply from Mrs Searle on 10 July 2017, which stated that the matter was referred to the Legal Ombudsman team for them to review the matter further and make a decision. So it seems that the first preliminary decision was subject to review, with the result that the appellant did not have to comply with it, but the Tribunal were still entitled to find allegation 1.6 proved in relation to his failure to comply with the second preliminary decision and in relation to his inadequate response to the first preliminary decision.

48 In his skeleton argument for this hearing, the appellant contended that certain emails, which he claimed were missing from his file, would have shown that he did co-operate with the Legal Ombudsman, but that was not a submission which he made before the Tribunal and, therefore, is not a submission that he can pursue on appeal. Quite rightly, he did not pursue this point in his oral submissions to me.

49 Thus, I conclude that the Tribunal was entitled to find allegations 1.1 to 1.4 and 1.6 proved and I dismiss the appeal against those findings.

50 As for sanction, the sanction of striking the appellant off the roll was entirely appropriate, given the findings of dishonesty.

51 Finally, there is an appeal against the costs awarded. The appellant submitted that the costs awarded were disproportionate for what, but for his illness, would have been a two-day hearing. However, he did not address the figures in any detail before me. Instead, he invited me to reduce the costs claim by two thirds on the basis that that was what the Tribunal had done in the two other cases which I have mentioned. This was not a submission which was made to the Tribunal. Indeed, the appellant made no submissions to the Tribunal on the schedule of costs claimed. In those circumstances, it cannot be said that the Tribunal was wrong to assess costs as it did. I dismiss the appeal against the costs order.

CERTIFICATE

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