

IN THE MATTER OF THE TAXATION AND DISCIPLINARY BOARD

BETWEEN

Reference: TDB/2014/72

THE ASSOCIATION OF TAXATION TECHNICIANS

-v-

MS ISABELA KOPALSKA (ATT student)

DECISION

Introduction

1. The Disciplinary Tribunal sat on the 16 December 2015, 11 April 2016 and 28 June 2016 at Artillery House, 11-19 Artillery Row, London SW1 to hear six charges brought against Ms Kopalska.
2. The Tribunal was chaired by Ms Valerie Charbit, sitting with Ms Penny Griffith (lay member) and Ms Marjorie Kostick (the taxation and accountant member).
3. The Chartered Institute of Taxation was represented by counsel, Mr Ben Smiley. Ms Kopalska attended on 16 December 2015. She did not attend on the 11 April 2016 due to illness and on 28 June 2016 because she had, “mixed up the dates”. She was not legally represented. The clerk to the Tribunal was Mr Nigel Bremner.

16 December 2015 hearing and Admissions made

4. On 16 December 2015, Ms Kopalska admitted the following charges: Charges 1, 3, 5 and 6.

5. However on that date, the Tribunal had to adjourn the case at 4pm because of insufficient time and due to Ms Kopalska's childcare arrangements requiring the Tribunal to conclude proceedings at 4pm. The Tribunal had not been able to start her case until 2.45pm on 16 December 2015 because it was dealing with two other cases prior to Ms Kopalska's case.
6. The case was adjourned with directions to the 11 April 2016. The directions made were complied with save that Ms Kopalska failed to notify the TDB that she had received the documents sent since the last hearing.

11 April 2016 – Hearing Adjourned

7. On the 11 April 2016 at 7am, Mr Bremner received an email from Ms Kopalska stating *“Due to my sickness I will not be able to attend today's Tribunal Hearing. I have got some sickness bug and I am not in a position to travel for so long and then spend all day away from home. I am dealing with personal loss and I don't think it helps me to recover from any illnesses. I am sincerely sorry for informing yourself and Tribunal Board last minute about my absence but I was hoping I will be feeling better today and manage to attend my Tribunal hearing.”*
8. Despite several emails sent by Mr Bremner, following receipt of that email from Ms Kopalska, no further contact was received. Mr Bremner sent further emails as the request of the Tribunal asking Ms Kopalska if:
 - She was content for matters to proceed in her absence
 - If she could supply a medical certificate from her G.P. indicating she was unfit to attend the hearing
 - Whether she was asking for an adjournment

Proceeding in Absence on 16 April 2016 and 28 June 2016

9. On 16 April 2016, Mr Smiley applied for the hearing to proceed in the absence of Ms Kopalska. On that date the Tribunal decided not to proceed in Ms Kopalska's absence and to adjourn proceedings and issue directions.
10. An adjournment decision dated 11 April 2015 sets out the Tribunal's decision and its reasons. In summary, it decided that Ms Kopalska should be afforded a further opportunity to attend the hearing because she had been unwell and because she had previously attended the hearing and she had since engaged by sending a letter dated 11 February 2016.
11. A medical certificate was received by the Tribunal clerk Mr Bremner stating that Ms Kopalska had gastroenteritis on 11 April 2016.
12. On 28 June 2016, Mr Bremner contacted Ms Kopalska who said that she had mixed up the dates and so would not be able to attend the hearing. She further stated that she had a medical appointment for a family member that afternoon. She was offered the opportunity to attend by telephone but no response from her was received.
13. Mr Smiley applied to proceed in the absence of Ms Kopalska.
14. The Tribunal directed itself in accordance with the principles laid down in the following cases : R v Jones (Anthony) [2003] 1 A.C. 1, Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 and GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162.
15. The Tribunal further noted that 17.3 and 17.4 of the Taxation Disciplinary Scheme Regulations 2014 (TDB), allowed the Tribunal to proceed with a hearing in the absence of a defendant where it is satisfied that notice has been properly served.

16. The Tribunal had before it emails showing that Ms Koplaska had been reminded of the adjourned hearing dates on 12 April 2016, 15 May 2016, 19 June 2016 and 27 June 2016. Her email dated 28 June 2016 sent after Mr Bremner had telephoned her said she was *“sorry for missing her appointment..... and I have no excuse for not being there. I have completely different date in my mind and I thought its July for some reason....”*
17. The Tribunal noted that Ms Kopalska had been made aware of the date and time of the adjourned hearing on several occasions but she had nevertheless failed to attend. She had also not responded to the opportunity to attend by telephone.
18. It was persuaded that it was fair to all parties to proceed in her absence because she had not asked for an adjournment and it would waste further resources if the hearing was adjourned again. Furthermore, it was highly unlikely that Ms Kopalska would attend an adjourned hearing date, having not attended two hearing dates; albeit on one occasion due to illness.
19. The Tribunal further concluded that it was in the public interest to proceed with the hearing because it was important that such hearings were completed expeditiously and it had been 6 months since the hearing had begun.

Papers

20. On 16 December 2015, Ms Kopalska had been equivocal regarding charges 2 and 4. The Tribunal had therefore invited the parties to make written submissions regarding the evidence on those charges so it could determine them.
21. Mr Smiley submitted a supplemental skeleton argument dated 4 March 2016 which referred back to his original skeleton argument (undated but available on 16 December 2015). He further submitted three files (File 1, pages 1-322, File 2 pages 1-113, File 3 pages 1-157. This included statements from Ms Hooper, Director of JDH Training and Consultancy Services Ltd (JDH), Ms Kopalska’s

employer at the time of the allegations, and accompanying exhibits and other statements.

22. The Tribunal had before it a transcript of Ms Koplaska's oral response to the charges on 16 December 2016 before the hearing was adjourned and a further response in a letter dated 11 February 2016.

Background

23. Ms Kopalska was employed by JDH under a contract of employment dated 30 April 2013. Amongst other responsibilities she was the payroll manager. Her contract stipulated at clause 2.4 *“you must not engage in any other work outside working hours, paid or unpaid, without the prior permission of the Company. Permission will not be granted for you to engage in any activity that the Company believes to be direct or indirect competition with the Company's business or which in the Company's view does or might impair your ability to perform your duties for the Company fully and efficiently.”*

24. It was alleged that Ms Kopalska carried out work for a number of persons/entities when she was specifically instructed not to do so.

25. Mr Smiley submitted that Ms Kopalska was running a firm called Quantum Accounting with her partner.

26. It was further alleged that when carrying out some of the work for unauthorised persons/entities Ms Kopalska:

- i) used the JDH IT system without the authorisation of JDH and
- ii) did so without any licence for the relevant software
- iii) acted contrary to her contract of employment and
- iv) did so (at least in part) during JDH working hours.

27. Ms Hooper stated that Ms Kopalska acted dishonestly. She further stated that Ms Kopalska's actions had caused JDH lost earnings, loss of time when Mr

Kopalska should have been working for JDH clients and that Ms Kopalska earned a profit from wrongfully carrying out such activities.

28. Ms Hooper made a complaint to the Taxation Disciplinary Board dated 3 December 2014.
29. Ms Kopalska responded to the complaint by letter dated 27 January 2015 in which she admitted that she had disobeyed instructions and had run a payroll for a customer although instructed not to do so. She further admitted that she had helped a friend with bookkeeping and accounting and assisted the Polish Saturday School free of charge, but that Ms Hooper was aware of the same. She also admitted she was not insured to carry out work for her friend.
30. Ms Kopalska admitted in a letter dated 19 April 2015, that she had breached Data Protection.

Charges 1, 3, 5 and 6 – Admissions made by Ms Kopalska on 16 December 2015

31. Ms Kopalska admitted Charge 1: The Unauthorised Work Charge, in that she carried out work for clients of her employer contrary to the instructions of her employer, and thereby breached rules 2.1 and 2.2.1 of The Professional Rules and Practice Guidelines 2011 (PRPG).
32. Ms Kopalska admitted Charge 3: The PII Charge, in that she carried out the work referred to in respect of Charge 2 without professional indemnity insurance (PII) and thereby breached rule 2.7.1 of the PRPG.
33. Ms Kopalska admitted Charge 5: The Unauthorised Use of Facilities and Equipment Charge, in that she used the facilities of her employer when carrying out the work referred to in respect of Charge 1 and Charge 2 and thereby breached rules 2.1 and/or 2.6.1 of the PRPG.
34. Ms Kopalska admitted Charge 6: The Confidentiality Charge, in that she caused and/or permitted the confidential and/or personal data of those persons who

were not her employer's clients to be available to her employer and thereby breached rules 2.5.2 and/or 13.7.1 of the PRPG.

35. The Tribunal found charges 1, 3 and 6 proved on the basis of Ms Kopalska's admissions and on the basis of evidence contained within the papers supplied.

Charges 2 and 4

Charge 2: The Unauthorised Third Party Work Charge.

36. Ms Smiley referred to a list of persons who were non-clients of JDH which he said Ms Kopalska had carried out work for. This, he submitted, was contrary to the instructions of her employer and/or her contract of employment. He submitted that if the Tribunal found Ms Kopalska had done so, this was in breach of rules 2.1, 2.2.5, and/or 4.1.2 of the PRPG.

37. The Tribunal referred to the statements of Ms Hooper dated 28 October 2015 and 24 February 2016, Ms Booton, Ms Cibi and Mr Flores and accompanying exhibits produced by Ms Hooper.

38. It noted that Ms Kopalska's admissions in respect of charges 1, 3 and 5 proved that she had worked in a manner which was 'not above board' and was underhand because she had admitted carrying out work for clients of her employer contrary to the instructions of her employer and she had carried out work for non-clients without third party insurance. She had also admitted using the IT systems of JDH for both clients and non-clients and in respect of non-clients she had permitted the confidential or personal data of non-clients to be available to her employer.

39. The Tribunal examined carefully the evidence of Ms Kopalska and of Ms Hooper and supporting witnesses in order to determine if Ms Kopalska had worked for non-clients contrary to the instructions of her employer and/or her contract of employment.

40. The Tribunal noted that in respect of the following non-clients Ms Kopalska had admitted that she had worked for them :

- i) Radoslaw Borowik
- ii) Monika Borowik, Victoria's Dream
- iii) M Kuffel
- iv) EFS Systems
- v) Polish School
- vi) Mr Slaczka and Mrs Slazcka
- vii) John Giwa-Amu, Caragod James, Red and Black Companies
- viii) GA James and GA Hirst (Safelight)
- ix) Noble Training Solutions
- x) H&S Slaczka of SHS Maintenance
- xi) Pandora Ltd

41. In respect of:

- i) P Misaczek
- ii) P Schab

Ms Kopalska stated she had had referred these persons to her colleague.

42. The Tribunal found that it preferred the evidence of Ms Hooper in respect of P Misaczek. It noted that JDH had registered Mr Misaczek (exhibit JDH 21) and corresponded with HMRC on his behalf and filed his return which was completed by Ms Kopalska (exhibits JDH 22 and JDH 23). It therefore considered that Ms Kopalska's recollection in that regard was incorrect.

43. Similarly the Tribunal noted that in respect of P Schab, that his tax return had been submitted by JDH (exhibit JDH 24) and that the returns submitted for him were found on Ms Kopalska's personal computer. The Tribunal therefore preferred the evidence of Ms Hooper to Ms Kopalska and found that Ms Kopalska had done work for this client when she was working at JDH. The Tribunal noted that JDH received no payment for this work. The Tribunal was

unable to determine whether and how much payment Ms Kopalska had received.

44. In respect of Andrzej Borowick, Ms Kopalska stated that she only worked for this person within JDH and he was invoiced for work that was done. Ms Hooper stated that no invoice was raised and that when she did raise an invoice, Mr Borowick told her that Ms Kopalska had offered to do this work free of charge and that this was said at a meeting in her office and was witnessed by other staff. The Tribunal preferred the evidence of Ms Hooper, since no invoice had been raised, and found Ms Kopalska's recollection was incorrect.

45. Ms Kopalska denied receiving payment for the following clients:

- i) Radoslaw Borowik
- ii) Monika Borowik, Victoria's Dream

46. Ms Hooper stated that she had instructed Ms Kopalska not to continue working for Radoslaw Borowik because the client had not paid JDH's fees. The Tribunal did not accept that it was likely that Ms Kopalska would have acted out of sympathy in working for this client contrary to her employer's instructions, especially since she appeared to be working for other clients for payment, also contrary to her employer's instructions.

47. The Tribunal noted that Ms Booton stated she had not set up the payroll for Victoria's dream and that this was in direct conflict to the letter (dated 11.2.16) from Ms Kopalska which she said that Ms Booton had done so. The Tribunal preferred the evidence of Ms Booton to Ms Kopalska because Ms Booton explained that this client was the wife of another client who was not paying JDH so she would not have set up a payroll for a client who she believed might also not pay JDH.

48. The Tribunal noted that in respect of Radoslaw Borowik and Monika Borowik, Victoria's Dream, although Ms Kopalska said she worked for them without payment, JDH had not been paid or was unlikely to be paid. It therefore was

unable to determine whether Ms Kopalska had been paid for work she had done for these clients.

49. The Tribunal considered it likely that if work was done for a non-client or client then the client/non client would pay for that work. However in the absence of Ms Kopalska, the Tribunal could not determine whether or how much Ms Kopalska was paid for Radoslaw Borowik and Monika Borowik, Victoria's Dream.

50. In respect of the following clients Ms Kopalska admitted (letter dated 11.2.16) receiving some payment for work done for them

- i) John Giwa-Amu, Caragod James, Red and Black Companies
- ii) Noble Training Solutions
- iii) H&S Slaczka of SHS Maintenance
- iv) Pandora Ltd

51. The Tribunal was therefore satisfied that on Ms Kopalska's own admissions she had worked for non-clients of JDH when specifically instructed not to do so. Although Ms Kopalska stated her employer was either aware of her work (45(i) above) it found that by doing so Mr Kopalska had acted in breach of her employment contract and contrary to her employer's instructions.

52. The Tribunal preferred the evidence of Ms Hooper who said that the accounts listed at 50(i)-(iv) had been produced on JDH systems by Ms Kopalska. Further the named accountant for John Giwa-Amu and Red and Black companies was Quantum Accounting which was a company registered to the email address of Ms Kopalska and to her old residential address. It therefore concluded that at the least, Ms Kopalska was part-owner of Quantum Accounting.

53. The Tribunal concluded that it was likely that all the accounts for the entities listed at paragraph 50 above had been prepared by Ms Kopalska on JDH systems. It found, in acting in this way, Ms Kopalska had not been open and honest with her employer about the work she was doing or the payment she had received from those entities. It further noted that she had not produced any

invoices or payment receipts corresponding to the work she had done for these entities.

54. In respect of GA James and GA Hirst (Safelight) and Noble Training solutions the Tribunal considered the bank statements supplied by Ms Kopalska. It was satisfied that Ms Kopalska had received payments from Safelight and Noble on 28.5.13 (volume 3 tab 8 page 92).

55. Further, the Tribunal noted that there were various payments on Ms Kopalska's bank statements from firms called 'P Hajimohammadi, accounting service', 'M Szczepaniak accounting service', 'A+A Buildin T/As Merthyr Tydfil', 'Panor Films Ltd, Accounts', 'M Szczepaniak Safelight and Noble, which Ms Kopalska had not explained.

56. The Tribunal accepted that on the basis of Ms Kopalska's own admissions (£930) or on the basis of her bank statements and the companies listed at paragraph 55 above Ms Kopalska had received a total of £2468.50 for work done for various entities.

57. The Tribunal further noted that within the exhibits provided, were various accounts for different entities prepared by Ms Kopalska without JDH's knowledge and the total amount of fees charged in those accounts was £3894, (having totalled the figures shown under the heading "accountancy" in the accounts but omitting figures in the trial balance which may or may not result in an accountancy fee).

58. If the Tribunal then added to the £3894, the amount of £250 which Ms Kopalska said she had received for Pandora films, this amounted to £4144.

59. The Tribunal further considered a schedule prepared by Ms Hooper estimating the least amount Ms Kopalska would have received for the accounts prepared. This totalled £7844. If the estimated fees were deducted, it amounted to £4544.

60. The Tribunal was therefore satisfied that at least £5000 was likely to have been received by Ms Kopalska taking into account all of the information set out above. It concluded that although Ms Kopalska may well have received more than £5000, it could not make such a finding without further questioning of Ms Kopalska.
61. The Tribunal preferred and accepted Ms Hooper's evidence where she stated she had not authorised Ms Kopalska to work on a client or where she had expressly told her not to. It accepted her explanation that she would not have allowed Ms Kopalska to work during office hours for a large number of persons using JDH's software and equipment. Further since Ms Kopalska admitted working for some persons without Ms Hooper's knowledge the Tribunal considered it likely that she would have done so with all the clients that Ms Hooper had identified.
62. The Tribunal was therefore satisfied that where Ms Hooper said she was unaware of the person or entity that Ms Kopalska had worked for, Ms Kopalska had worked for them without Ms Hooper's authorisation or knowledge and in breach of her contract of employment.
63. The Tribunal therefore found Ms Kopalska's actions were contrary to rules 2.1 and 4.1.2 because she was not straightforward and honest with her employer; she did not consider acting in this way was a conflict of interest when it clearly was; and she had thus acted unprofessionally.
64. It further found that Ms Kopalska had failed to provide relevant information to her employer and that by working in this way she did not act with integrity as the work was carried out without her employer's knowledge and to the detriment of her employer. The Tribunal therefore found Ms Kopalska had breached rules 2.2.1 and 2.2.5 of the PPRG.
65. The Tribunal therefore concluded that Charge 2 was proved in its entirety and that Ms Kopalska had gained personally at least £5000.

Charge 4 – The Unprofessionally Obtaining Work Charge

66. Ms Smiley submitted that Ms Kopalska had obtained the work in respect of Charge 2 in an unprofessional manner and had thereby breached rules 2.1, 2.6.2 and/or 4.1.2 of the PPRG. This charge related to the way Ms Kopalska had obtained work.
67. Although Ms Kopalska said some of the work she did, had been authorised by Ms Hooper or was known about by her, the Tribunal preferred the evidence of Ms Hooper who had explained why she would not have allowed Ms Kopalska to work for so many persons when she was contracted to work full time for JDH and where she had already been authorised to work in the evenings part-time for a University.
68. It appeared to the Tribunal that Ms Kopalska was working for rival firms from names listed as creditors on her bank statements and in some instances obtaining the work of potential clients of JDH. The Tribunal was satisfied that this was a clear conflict with her employment at JDH.
69. The Tribunal was satisfied that in respect of those clients which Ms Hooper states she was unaware Ms Kopalska was working for, which Ms Kopalska in most instances admitted working for, and given the Tribunal's findings that Ms Kopalska had worked for all clients set out at paragraphs 40 and 41 above, the Tribunal found that Ms Kopalska had breached rules 2.1, 2.6.2 and 4.1.2. Ms Kopalska had sought and obtained the work of JDH's rejected or potential clients contrary to her employer's instructions and her contractual obligations without Ms Hooper and JDH's knowledge. In so doing, the Tribunal found she was not straightforward, her actions were a conflict of interests, she was unprofessional, she acted improperly; and she acted in a manner which was discreditable to the profession.
70. The Tribunal therefore found Charge 4 proved.

Sanction

71. The Tribunal was referred to the Indicative Sanctions Guidance (ISG) (April 2016). Mr Smiley referred the Tribunal to the sections on Failure to take due care, Inadequate professional service and ethical issues.
72. He drew the Tribunal's attention to the detrimental financial impact on JDH and he requested that the Tribunal consider an order for compensation of £5000. Mr Smiley referred the Tribunal to the lost billable hours which Ms Hooper had further calculated but he stated that he did not pursue this point, given the Tribunal's findings that Ms Kopalska had earned at least £5000. He noted that the maximum compensation order the Tribunal could make was £5000.
73. Mr Smiley further submitted that Ms Kopalska had acted deliberately and her wrongdoing could be equated with dishonesty. Furthermore she acted on a number of occasions over a period of 3 years (2010-2013).
74. Mr Smiley further highlighted that Ms Kopalska's actions brought the profession into disrepute and also impacted negatively on her work colleagues at the time because of the extra work which they had to do to assist Ms Kopalska. Further, he submitted that Ms Hooper was placed in a difficult position having to answer to some clients who believed they were JDH clients and protected by JDH's insurance and regulation. Ms Hooper had also said she was forced to close down the payroll department due to the actions of Ms Kopalska.
75. The Tribunal considered that all the above matters were aggravating factors to the charges found proved. Further it noted that public confidence in the profession was damaged by Ms Kopalska and that she had breached the trust of her employer.
76. The Tribunal was informed that Ms Kopalska had no previous disciplinary findings against her.

77. The Tribunal considered any mitigating factors. It noted that Ms Kopalska had acted in this regard towards one employer only but her actions had involved multiple clients. Further although she had no disciplinary findings against her she was a student member. It further noted that she had a young child. There was statement of means from Ms Kopalska regarding her finances.
78. The Tribunal was informed by Mr Bremner that Ms Kopalska has not sat any exams since her student registration.
79. The Tribunal considered the sanctions available to it set out at Regulation 20.6 (f) of the Taxation Disciplinary Board Scheme Regulations 2014 in increasing seriousness. It reminded itself the purpose of any sanction was not to be punitive but was in order to protect the public interest and maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and performance within the profession.
80. It decided that the sanctions of a 'warning' or a 'censure' were wholly inappropriate for such extensive wrongdoing over such a lengthy period of time. It further considered whether a suspension order was appropriate and proportionate as a sanction, however it decided that the public would not be protected in the future from Ms Kopalska if she was suspended for a maximum period of two years. Further it noted that the Indicative Sanctions Guidance at page 20 defined 'inadequate professional service' as 'failing to provide an overall standard or quality of service to which the client is entitled'. The Tribunal was satisfied that Ms Hooper had been provided with an inadequate professional service by her employee, Ms Kopalska because Ms Kopalska had worked for other entities during her working hours whilst using JDH's software and equipment. The ISG recommended expulsion for failing to act with integrity under Ethical issues.
81. The Tribunal therefore determined that the only sanction that could be imposed in this case was expulsion due the serious nature of the charges found proved.

82. It further ordered that Ms Kopalska pay Ms Hooper of JDH, £5000 compensation. Regulation 25.1 of the TDB regulations 2014, state that if a finding of inadequate professional service is made the Tribunal may consider compensation as a remedy in respect of such inadequate service and that the Tribunal may direct the Defendant to pay compensation in such sum as was the result of the Inadequate Professional Service rendered by the defendant.
83. Having determined that Ms Kopalska had gained at least £5000, the Tribunal was satisfied that this order was appropriate. Although Ms Kopalska was a student she had nonetheless delivered an inadequate professional service as an employee of JDH and her actions had caused her to gain at least £5000 and the loss caused to Ms Hooper of JDH by her actions was at least as much as £5000.
84. The TDB regulations defined a member as a student at regulation 2.1(y) so this order was applicable to Ms Kopalska. Further regulation 20.6.(f)(xi) states the Tribunal may impose such other sanctions as are appropriate to students. The ISG also stated that an inadequate professional service was one which was failing to provide an overall standard or quality of service. The Tribunal was satisfied that a compensation order should be made in the circumstances of this case.

Costs

85. Mr Smiley applied for costs of £13,811.53. He submitted that the costs should not be reduced due to Ms Kopalska's illness or admissions.
86. The Tribunal considered the costs schedule and determined that Ms Kopalska should pay costs of £10,000. It reduced the costs by £3811.53 on the basis that it had adjourned the second hearing due to the ill-health of Ms Kopalska and that she had supplied a medical certificate.
87. The Tribunal noted that paragraph 5.6 of the TDB's Guidance on Awarding Costs, states that "*where a member challenges a costs order on the grounds that he lacks the means to pay the sums required the Tribunal must require*

evidence. For this reason, if he is likely to seek to challenge a costs order, a member will be advised to come to a hearing with some documentary proof of his or her financial circumstances. If a member does not provide proof of financial means, a Tribunal is entitled to assume that he is able to meet any financial penalty and/or costs that it orders”.

88. The Tribunal decided that since Ms Kopalska had failed to provide disclosure of her means it had no evidence that she did not have the means to pay the costs. It therefore ordered that she pay the costs of £10,000.

Publicity

89. The Tribunal ordered that in accordance with Regulation 28, a record of the decision and findings of the Tribunal, naming Ms Kopalska, would be publicised as soon as practicable.

Valerie Charbit
Chairman

8 July 2016

