



CODE OF CONDUCT

MR MOHAMMED JAWDAT AYESH MUSTAFA AL BARGUTHI

(Complainant)

and

MR ROBERT MITCHLEY

(First Respondent)

and

BSA AHMAD BIN HAZEEM & ASSOCIATES LLP

(Second Respondent)

CODE OF CONDUCT DECISION 1 OF 2019 DECISION OF THE DEPUTY REGISTRAR NOUR HINEIDI

Summary

1. A formal complaint was lodged on 20 June 2018 by Mr Mohammad Jawdat Ayesh Mustafa Al Barguthi ("Mr Al Barguthi") against BSA Ahmed Bin Hazeem & Associates LLP ("BSA") and Mr Robert Mitchley ("Mr Mitchley").
2. Mr Al Barguthi's complaint is that BSA and Mr Mitchley purported to act on his behalf in DIFC Court proceedings CFI-033-2017 (the "Proceedings") without Mr Al Barguthi's instructions, or his authority to do so ("Complaint").

Procedural history - Complaint

3. Mr Al Barguthi filed his Complaint with the Dispute Resolution Authority's Academy of Law

("AoL") on 20 June 2018.

4. The Complaint was initially investigated by the AoL, by way of letter and email correspondence, with a series of questions to the Complainant and the Respondents for a period of approximately 6 months until the matter was then referred to me.
5. After the Complaint was referred to me, I continued to investigate it, by correspondence, with further questions to the Complainant and Respondents, as well as a request for affidavit evidence from Mr Mitchley which he then filed on 18 February 2019.
6. Following a thorough review of all the correspondence on file, I decided to call a formal meeting between Mr Al Barguthi, Mr Mitchley and BSA on the basis that the investigation could not be concluded due to the lack of information and evidence available to me. Despite the detailed questions put to Mr Mitchley and BSA during the written investigation process, the responses from them were vague and unhelpful. To ensure that Mr Mitchley and BSA were given ample opportunity to understand the seriousness of the Complaints in question, and provide explanations for their conduct, I called a formal meeting.
7. On 5 May 2019, a formal meeting took place before me (the 'Meeting'). Mr Al Barguthi, along with his counsel, Mr Alain Farhad and Ms Dilpreet Danoa of Squire Patton Boggs attended, as well as Mr Mitchley, Mr Jimmy Haoula (Managing Partner of BSA) ("Mr Haoula"), and two members of the DIFC Courts' Registry team – Ms Delvin Sumo and Ms Jennifer White.
8. The purpose of the Meeting was to help gather all necessary facts to conclude the investigation of the Complaint. So that the meeting could be formally recorded, Mr Al Barguthi, Mr Mitchley and Mr Haoula were sworn in and provided sworn testimony under oath. Mr Al Barguthi was first given the opportunity to detail, in his own words, the Complaint. Mr Mitchley was then given a chance to respond to the Complaint and provide his side of the story, followed by Mr Haoula, on behalf of BSA. By way of general observation, it should be noted that Mr Haoula did not say much when he was given the opportunity to speak.
9. A copy of the recording is saved under a private electronic network available only to authorised members of the DIFC Courts' Registry team.

Details of the Complaint

10. As above, the Complaint arose in connection to the Proceedings.
11. Mr Al Barguthi, in his letter of 20 June 2018, to the AoL ("Letter"), wrote:

On 5 September 2017, unbeknownst to me at that time, BSA wrongly purported to represent me in a claim that had been brought against me and five other Defendants before the DIFC Court...In Particular, BSA filed an acknowledgment of service which purported to acknowledge service on my behalf as one of three named defendants to the Claim. The statement of truth on the acknowledgment of service was signed by Robert Mitchley, as Associate at BSA....

12. Mr Al Barguthi goes on to say at paragraph 3 of his Letter:

I never received the Claim Form and never had any contact or communications with ...BSA, let alone authorized them to represent me in relation to the Claim or any other matter. I would have never chosen BSA to represent me. Given that BSA were acting against me in ongoing proceedings, I do not understand how BSA could also purport to have represented me in relation to another claim. As a consequence of BSA wrongly claiming to represent me, I was deprived of my right to seek proper legal representation in relation to the Claim made against me until after judgment in default was entered in the Claimant's favour on 29 October 2017...

13. Mr Al Barguthi claims that section "SPD C-8" of the Supplementary Code of Conduct Practice Direction No. 1 (the "SCC") was breached by Mr Mitchley and BSA. Section "SPD C-8" states:

- (i) Before a Practitioner obtains the written consent of each client to act for the other client, he must:*
 - (a) satisfy himself that it is reasonable for him to act for all the clients and that it is in the best interests of each of the clients;*
 - (b) satisfy himself that the benefits to the clients of him doing so outweigh the risks; and*
 - (c) satisfy himself that, after he has explained the relevant issues and risks to the clients, those clients have a reasonable belief that they understood those issues and risks.*
- (ii) SPD C-8(i) shall also apply to any law firm to which the Practitioner*

belongs.

14. In addition to those provisions listed by Mr Al Barguthi, it would also be helpful to highlight these articles of the Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts, issued on 3 September 2014 (the "Code of Conduct") which are also particularly relevant to the Complaint:

...Practitioners shall ensure that they are familiar with the Rules and in particular, with the provisions of the Overriding Objective (Part B, Article 1).

... Practitioners shall never knowingly or recklessly make any incorrect or misleading statement of fact or law to the Court and shall correct any material incorrect or misleading statement of fact or law at the earliest opportunity (Part B, Article 4).

... Practitioners shall fearlessly advance, defend and protect the interests of their client before the Court without regard to any consequences to themselves or any other person (Part C, Article 7).

... Practitioners shall only agree to act in proceedings before the Court if they can handle them promptly and without undue interference from the pressure of other work (Part C, Article 9).

Findings

A. No Consent to Act (the "Misrepresentation")

15. At paragraphs 6 and 7 of his Letter, Mr Al Barguthi explains that his legal representative, Squire Patton Boggs, wrote to BSA on 21 January 2018 to enquire as to the basis on which BSA purported to act on the Third Defendant's behalf ("21 January Letter").

My legal representative wrote to BSA [on] 21 January [2018] [sic] to enquire as to how they could possibly have purported to act on my behalf...[in] BSA's reply dated 25 January 2018 (the "Reply"), BSA confirmed that it:

- 1. received instructions from Fast Telecom General Trading LLC to act on behalf of all the Defendants set out in the Claim form under*

CFI-033-2017 [paragraph 2 of the Reply]; and

2. *did not have direct communication with Mr Al Barguthi. However from the communication, [BSA] believed and understood that [it] was acting for him and that he was abreast of developments from his communication with the Fast Telecom representatives [paragraph 3 of the Reply];*

16. During the Meeting, Mr Mitchley agreed that the paraphrased statements (as above) set out in the 21 January Letter, were correct.
17. Further to the above, Mr Mitchley and Mr Haoula were each asked, during the investigation, on what basis they were taking instructions from Fast Telecom, on behalf of Mr Al Barguthi. Mr Mitchley was also asked, whether he or anyone else at BSA had verified that Ahmad Chehouri (who was apparently the Head of Investment and Strategy of the Pragma Group – a parent company of Fast Telecom) (“Mr Chehouri”) had a valid Power of Attorney in his favour from Mr Al Barguthi. In response, Mr Mitchley said at paragraphs 7 and 8 of his affidavit dated 18 February 2019 (“Affidavit”) (and later confirmed this during the Meeting):

When I received a copy of the POA, in or about March 2018, I did not make enquiries as to whether it had been revoked, or if the 1st Defendant was in possession of the original thereof.

The POA was only sent to BSA after the fact by Fast Telecom to justify Mr Chehouri’s instructions to me that BSA was authorized to represent all the Defendants in CFI-033-2017.

Mr Haoula was unable to offer any further explanation to what Mr Mitchley had set out.

18. It should be noted at this stage that the POA (which was in any event, revoked) was made by Mr Al Barguthi in favour of Mr Ali Mohammed Salem Abu Adas (“Mr Salem”) and not Mr Chehouri. It is evident from the facts, that it was Mr Chehouri, and not Mr Salem, who was the person giving instructions on behalf of Mr Al Barguthi.
19. Mr Mitchley was also asked, during the Meeting what other steps he (or anyone else at BSA) had taken to verify that Ahmad Chehouri - who at the time, was giving Mr Mitchley instructions on behalf of Mr Al Barguthi - had the authority to do so. Mr Mitchley responded with: *“I had no reason to disbelieve Mr Chehouri...”*
20. When Mr Mitchley was asked whether he had built sufficient rapport, with Mr Chehouri, to

the point where it would have not been unreasonable for him to rely on Mr Chehouri's statements (on face value), Mr Mitchley confirmed that he did not know or meet Mr Chehouri prior to his interaction with him in the Proceedings.

21. Mr Mitchley was also asked to explain the relationship between Mr Chehouri and Mr Salem, including whether, to Mr Mitchley's knowledge, Mr Chehouri appeared to have the requisite authority to act on behalf of Mr Salem (and on behalf of those people who granted a Power of Attorney in Mr Salem's favour). Mr Mitchley could not provide any substantial response in this regard.
22. Finally, when it was put to Mr Mitchley during the Meeting "*in light of what you have said can you confirm that you didn't have Mr Al Barguthi's express consent [to act for him]?*", Mr Mitchley answered a clear and affirmative '*yes – we were acting on what Mr Chehouri had conveyed to us*', admitting his misconduct in terms of the misrepresentation.
23. SPD C-8 (i) clearly states that *before* a Practitioner obtains the written consent of each client to act for the other client he must:

(a) *satisfy himself that it is reasonable for him to act for all the clients and that it is in the best interests of each of the clients;*

(b) *satisfy himself that the benefits to the clients of him doing so outweigh the risks, and;*

(c) *satisfy himself that, after he has explained the relevant issues and risks to the clients, those clients have a reasonable belief that they understand those issues and risks.*

B. Failure to conduct the proper enquiries, failure to identify conflicts of interest and failure to act in the client's best interests (file a Defence / seek an EOT)

24. Even if Mr Mitchley and BSA had the proper authority to act for Mr Al Barguthi, there are other causes for concern in respect of Mr Mitchley and BSA's conduct. As facts unfolded during the investigation, including during the Meeting, it quickly became apparent that Mr Mitchley's carriage of Mr Al Barguthi's case (albeit short-lived), was reckless.
25. While it might, to an extent, seem understandable that Mr Mitchley and BSA, upon receiving the instructions of Mr Chehouri to act for Mr Al Barguthi, sought to urgently file an Acknowledgment of Service (so as not to miss the filing deadline), what should have

necessarily followed immediately after the filing of the Acknowledgment of Service, was a detailed fact finding and enquiry exercise.

26. Mr Mitchley was asked about the extent to which, after filing the Acknowledgment of Service, he then conducted the proper enquiries and due diligences to reach out to each of his purported clients, to gauge their statuses as Defendants in the Proceedings, understand why each was being sued and where each of their defence narratives stood in light of the Proceedings. This exercise would seem to me, to be a logical and reasonable exercise to be undertaken by any prudent lawyer.
27. Mr Mitchley's responses, in respect of the enquiry exercise, were considerably unsatisfactory and disappointing, admitting that he did not feel the need to immediately carry out any such due diligences to help determine the nature of the Defendants' defences (and this was despite the fact that he had already come on the record to act for each of the Defendants and had filed Acknowledgments of Service on their behalf). Rather, Mr Mitchley's explanation justifying the lack of enquiry in respect of the Defendants' legal positions was that he was waiting for the Claimant to file its Particulars of Claim in an effort to better understand the case. Given that Mr Mitchley had the substantial task of then preparing seven separate Statements of Defence, for each of his clients, it is striking that Mr Mitchley had not – as late as one month after receiving the initial instruction to act for Mr Al Barguthi - identified even basic information in respect of Mr Al Barguthi's Defence to the Claim, including whether Mr Al Barguthi was indeed a guarantor to the loan agreement (subject of the Proceedings).
28. Mr Mitchley was questioned about other necessary enquiries which ought to have taken place for the purposes of preparing a retainer agreement, or an engagement letter for BSA's provision of legal services, for Mr Al Barguthi, in respect of the Proceedings. Mr Mitchley confirmed that no such enquiries took place, and this was to the extent that he had not obtained even basic information for Mr Al Barguthi, including his contact phone number or residential address.
29. Had Mr Mitchley engaged in a basic 'Know-Your-Client' and due diligence exercise, it is likely that it would have come to his attention that BSA was acting against Mr Al Barguthi in proceedings (albeit, unrelated) in the Dubai Courts. Mr Mitchley would have then had the opportunity of ensuring that BSA had Mr Al Barguthi's express consent to act on his behalf consequently preventing any potential conflict of interest, or breach of Part C Article 7, of the Code of Conduct, from arising.
30. The final point to make under this section is that of Mr Mitchley's failure to file a Defence on

behalf of Mr Al Barguthi. Up until the Defence was due to be filed, Mr Mitchley confirmed that he was still very much under the impression that he was acting for Mr Al Barguthi (and that he had remained on the record as his lawyer).

31. Mr Mitchley was questioned at length, during the Meeting, on what steps he had taken to reach out to Mr Barguthi (or indeed, Mr Chehouri as Mr Al Barguthi's purported representative), to prepare Mr Al Barguthi's defence case (as his apparent legal representative). Mr Mitchley's response was that BSA had "*never received instructions*" and referred to emails to indicate his attempts to reach out to Mr Al Barguthi, through Mr Chehouri and Mr Salem. Mr Mitchley referred to exhibits to his Affidavit marked "RM16", "RM17" and "RM18", marking three attempts to reach out to Mr Chehouri, on 4, 8 and 25 October 2017. I should note, that Mr Salem appeared to be copied into each of those three emails (at a Fast Telecom email address), but with no response from him.
32. I should also note that the Defendants' Statements of Defence in the Proceedings, were due to be filed on 17 October 2017 (being 14 days after service of the Particulars of Claim) and Mr Mitchley ought to have been aware of this. Even if one were to generously assume that Mr Mitchley had strong grounds to believe that the Defence was due 28 days from the date of service of the Particulars of Claim (so that the Defence is due on 31 October 2019), it would seem to me to be somewhat careless to have not – 6 days before Statements of Defence were due for 7 defendants – to have not even vaguely understood what each of the Defendants' Defences were or even apply to the Court for an extension of time for filing the Defences. On this basis, at best, I consider that there has been a breach of Part C, Article 9 of the Code of Conduct, which states: "*Practitioners shall only agree to act in proceedings before the Court if they can handle them promptly and without undue interference from the pressure of other work*". Since Mr Mitchley sells himself as being a practitioner with over 10 years' experience in Dubai and South Africa¹, it is reasonable to expect him to have a grasp of basic Court deadlines and to provide his purported client with correct advice in respect of those deadlines. In actual fact, it is plain from the above that the conduct goes far deeper than simply failing to handle his clients' matters promptly. Mr Mitchley and BSA:
 - (a) first and foremost, did not have instructions to act on behalf of Mr Al Barguthi;
 - (b) failed to provide Mr Al Barguthi or his purported "representative", Mr Chehouri with the correct filing deadlines;

¹ Taken from Mr Mitchley's staff profile on the BSA website at: <https://bsabh.com/lawyer/robert-mitchley/>.

- (c) did not carry out even the most basic of enquiries to help establish Mr Barguthi's Defence, or identify Mr Barguthi's identity for that matter; and
- (d) failed to file a Defence or request an extension of time, from the Court, in respect of the filing of the Defence.

33. Considering the above background, I am satisfied, on the balance of probabilities that Mr Mitchley is in breach of the following provisions of the Code of Conduct and the SCC:

- (a) SSC, SPD C-8(i) on the basis that he failed to meet the most basic of duties in securing Mr Al Barguthi's consent to act for him, as well as well as identify and bring to Mr Al Barguthi's attention, a potential conflict of interest which Mr Al Barguthi (or Mr Salem or Mr Chehouri, as Mr Al Barguthi's apparent representatives) ought to have been made aware of;
- (b) Code of Conduct, Part B, Article 2 on the basis that he had failed to adequately familiarise himself with the DIFC Court Rules and keep abreast of basic Court deadlines;
- (c) Code of Conduct, Part C, Article 7 on the basis that he had failed to act and protect Mr Al Barguthi's best interests by failing to file a Defence on behalf of Mr Al Barguthi or to seek an extension of time from the Court for the filing of the Defence; and
- (d) Code of Conduct, Part C, Article 9 on the basis that he had failed to deal with the matter promptly and efficiently since he failed to conduct the proper enquiries with his purported client in good time.

34. BSA is in breach of SPD C-8(i) of the Supplementary Code of Conduct on the basis that SPD C-8(ii) states that SPD C-8(i) "*shall also apply to any law firm to which the Practitioner belongs*".

C. Duty to inform the Court

35. A final point to make is that once Mr Al Barguthi was made aware of the fact that default judgment was entered against him, in around October 2017, he reached out to BSA and Mr Mitchley. During that meeting, and with reference to "RM22", Mr Mitchley became aware that Mr Al Barguthi had no knowledge that BSA and Mr Mitchley were acting for him in the Proceedings.

36. Mr Mitchley had a duty, immediately after his meeting with Mr Al Barguthi, to inform the Court of the Misrepresentation. This duty arises by virtue of Part B, Article 4 of the Code of Conduct which states:

Practitioners shall never knowingly or recklessly make any incorrect or misleading statement of fact or law to the Court and shall correct any material incorrect or misleading statement of fact or law at the earliest opportunity.

37. Mr Mitchley's failure to put the Court on notice of the Misrepresentation, and to even alert the Court that the Misrepresentation could have extended to several other Defendants (on the basis that Mr Mitchley was acting on each of their behalves based on what appears to be false instructions from Mr Chehouri), indicates a blatant and deliberate disregard to his basic professional obligations.

Decision and Sanctions

38. Pursuant to Part F, Article 31 of the Code of Conduct, the Court (acting through the Registrar, the Chief Justice, the Director of the Academy of Law or any nominee of the Chief Justice) has powers to impose sanctions upon any Practitioner found to be in breach of the Code of Conduct or the SCC.
39. Mr Mitchley is in clear breach of a number of significant provisions in the Code of Conduct. As a practitioner of several years' experience, Mr Mitchley ought to have exercised a much greater degree of care in carrying out basic enquiries, checking court deadlines, protecting his client's interests and informing the Court of misrepresentations so that the Court could be put on notice of those Misrepresentations. As a result, Mr Mitchley faces serious sanctions under the Code of Conduct and the SCC, namely:
- (a) suspension from the Register of Practitioners for a period of 3 months for breaching SPD C-8(i) by failing to carry out the proper enquiries and failing to obtain Mr Al Barguthi's consent;
 - (b) suspension from the Register of Practitioners for a period of 1 month for breach of Part B, Article 2 of the Code of Conduct by failing to adequately acquaint with the DIFC Court Rules and keep abreast of basic Court deadlines;
 - (c) suspension from the Register of Practitioners for a period of 3 months for breach of Part C, Article 7 of the Code of Conduct, by failing to act in Mr Al Barguthi's best

interests (as his purported client), in that he did not file a Defence or seek an extension of time from the Court for the filing of the Defence;

- (d) suspension from the Register of Practitioners for a period of 1 month for breach of Part C, Article 9 of the Code of Conduct, for failing to deal with the matter promptly and efficiently since he failed to conduct the proper enquiries with his purported client in good time;
- (e) suspension from the Register of Practitioners for a period of 4 months for failing to put the Court on Notice of the Misrepresentation of Mr Al Barguthi, as well as the potential misrepresentation of the other several defendants in the case (of whom Mr Mitchley was acting for under the same circumstances he had come to act for Mr Al Barguthi); and
- (f) public admonition on the basis that several complaints have been made against Mr Mitchley and BSA by other Defendants in the Proceedings, who have filed complaints similar to the one made by Mr Al Barguthi. These complainants have the right to be aware of the sanctions imposed under this Complaint.

40. BSA, the law firm which employs Mr Mitchley is also in clear breach of the Code of Conduct and the SCC. In the circumstances, I find it appropriate to impose a fine on BSA and also impose a public admonition for the reasons I set out in paragraph 39(f).

41. In summary, with regard to the above facts and in the seriousness of the several breaches of the Code of Conduct, the Court imposes the following consolidated sanctions:

(a) on Mr Mitchley:

- (i) suspension from the DIFC Court Register of Practitioners, for a consolidated period of 12 months, with immediate effect; and
- (ii) public admonition by publishing this decision on the DIFC Courts' website; and

(b) on BSA:

- (i) a fine of USD \$15,000 payable to the DIFC Courts within 30 days; and
- (ii) public admonition by publishing this decision on the DIFC Courts' website.

42. Finally, I shall make a cautionary note. Mr Mitchley and BSA's professional conduct is

currently subject to additional complaints, lodged by two other Defendants to the Proceedings. As such, this Court's decision shall not prevent the other two complaints from being investigated, however, further sanctions will not be imposed on BSA or Mr Mitchley unless, through the investigations, new breaches of the Code of Conduct or SCC are made out, on the balance of probabilities. Once those complaints have been investigated, the Court reserves the right to impose further sanctions, for further breaches of the Code of Conduct or SCC if it deems it necessary to do so.



Issued by:
Nour Hineidi
Deputy Registrar
Date of issue: 4 July 2019
At: 4pm

