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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT
2017 EWHC 3684 (Admin)

CO/3827/2017

The Rolls Building
Thursday, 23rd November 2017

Before:

MR JUSTICE STUART-SMITH

B E T W E E N :

CHUKWUMA EMELE

Appellant

- and -

BAR STANDARDS BOARD

Respondent

J U D G M E N T

APPEARANCES

THE APPELLANT appeared in Person.

MR C CRINION appeared on behalf of the Respondent.

MR JUSTICE STUART-SMITH:

1 In and from about 2008 the appellant was involved with the solicitors practice called Credo. He was at that time a foreign registered lawyer.

2 The outline chronology is as follows. On 15th December 2008 Mr Emele's registration as a registered foreign lawyer was terminated. On 20th July 2009 the SRA intervened to in Credo's practice and the practice closed. On 25th January 2010 Mr Emele contacted Lincoln's Inn in order to join them as a qualified transferred lawyer and to be called to the Bar. On 1st February he signed his admission declaration for Lincoln's Inn. On the same day he signed an application for call to the Bar by Lincoln's Inn.

3 On 3rd February 2010 Mr John Goodwin, a solicitor advocate acting on behalf of the SRA wrote to Mr Emele telling him that he had been instructed to institute disciplinary proceedings in the Solicitors Disciplinary Tribunal against Mr Emele. The terms of that letter were as follows:

"I am instructed by the Solicitors Regulation Authority to institute disciplinary proceedings, in the Solicitors Disciplinary Tribunal, against you.

I am in the process of drafting the allegation statement pursuant to the Solicitors (Disciplinary proceedings) Rules 2007 which will set out the allegations against you.

The allegation statement and supporting documents will be served upon you by the Clerk to the Solicitors Disciplinary Tribunal in due course".

4 On the 5th February 2010 Mr Emele was admitted a Member of Lincoln's Inn. On 9th February 2010 he sent an email to Lincoln's Inn, informing them of the letter from Mr Goodwin. That email said,

"I write to bring to your attention in line with my Admission declaration that I will promptly inform the Under Treasurer of the Inn in writing if there are disciplinary proceedings against me by a professional body, i.e. in this case the Solicitors Regulation Authority ("SRA"). There is none.

Just this morning, 9th Feb 2010 I received a letter from Jonathan Godwin Solicitor Advocate (the letter attached for ease of reference), intimating he is about to draft allegation statement on issues that the same SRA had by its letter dated 29th Jan 2010, had closed... by virtue of the fact that I had not registered with the body over the period that the SRA no longer holds any jurisdiction over my conduct and in these circumstances I will not be pursuing matter further".

That last quote was a reference to another letter which Mr Emele had received, dated 29th January 2010. The date upon which he had received that letter is not known, but he sent both that letter of 29th January 2010 and Mr Goodwin's letter of 3rd February 2010 as attachments to his email. The email continued,

"As indicated in the Jonathan's letter [sic] the allegations are still being drafted. I will keep the Inn informed promptly on the matter".

5 On 11th February 2010 Lincoln's Inn sent an email back to Mr Emele in which the writer, who was the Students Administrator for the Inn wrote,

"Thanks for your email. I have passed this on to the Under Treasurer for his comments and to see if anything more is required.

I will get back to you in due course."

6 Mr Emele has told the Court today, and I accept, that at some stage before he was called to the Bar he was called in and had an interview with a Bencher in which he gave an account to himself in answer to any questions that were asked.

7 On 24th February 2010, or thereabouts, the Solicitors Disciplinary Tribunal letter, serving the disciplinary proceedings, was sent to Mr Emele and served on him on or about that date. Whether that is the correct date does not really matter because on 8th March 2010 Mr Emele sent an email to the SDT attaching the listing questionnaire and denying the allegations against him. It is therefore apparent that the SDT proceedings had been served on him before 8th March 2010. The only reason why that might be significant is that three days later, on 11th March 2010, Mr Emele was called to the Bar. It is not suggested, and has never been suggested, that he drew the attention of Lincoln's Inn before being called the contents of the disciplinary proceedings which had been served on him in February or March.

8 The disciplinary proceedings before the Solicitors Disciplinary Tribunal took their course. Mr Emele was charged with various offences, including inadequate accounting. However, far and away the most serious charge was a charge that he had dishonestly appropriated clients' money.

9 In 2012 the solicitors disciplinary proceedings found some at any rate of the charges against Mr Emele to be proved. Of most significance for present proceedings they found the allegations of dishonest mishandling of clients' money to be proved. In the course of so doing the Tribunal said as follows, starting at para.170.20,

"The Tribunal was satisfied beyond reasonable doubt that E had misappropriated at least £2,000 of Mr K's money in that he had received it, had used it for some unknown or unclear purpose such that it was no longer available on account to be refunded to the client, and that E had not been entitled to deal with Mr K's money as he had.

170.21 The Tribunal noted that the allegation was pleaded as being a matter of dishonesty. The test for dishonesty applied by the Tribunal in such matters is that set out in *Twinsectra Ltd. v. Yardley & Ors.* [2002] UKHL 12, [2002] All ER 377.

170.22 The Tribunal found that in receiving £2,500 from Mr K, not holding that sum on client account, not recording when or how it was disbursed or used, and being unable to account to Mr K for the £2,500 on request, E's conduct was dishonest by the standards of reasonable and honest people. Having heard and seen E give evidence, and heard his various explanations for the way he had dealt with Mr K's money, the Tribunal was satisfied so that it was sure that E did not have an honest belief that he was entitled to do with Mr K's money as he did, and therefore that he knew that what he was doing was dishonest by those same standards. In giving his various explanations to Mr Grehan, to the client, and to the Tribunal, E must have lied in at least one of those explanations. However, what the Tribunal was concerned with was whether the misappropriation of Mr K's money in January 2009 was dishonest, and the Tribunal was so satisfied beyond reasonable doubt.

170.23 Accordingly, this allegation including the allegation of dishonesty, had been proved against E".

10 Mr Emele appealed, as he was entitled to do. His appeal came before His Honour Judge Bidder, who delivered judgment on 26th October 2016. At para.53 the judge said,

"At paras. 170.21 to 170.23 the Tribunal makes its findings. The Tribunal were not impressed with the various explanations, not all consistent, that Mr Emele had given for his dealings with Mr Kadzani's money and they decided, having seen and heard

him, that he had been dishonest. At para. 143 in its judgment the Tribunal directed itself as to the standard of proof it should apply to this allegation which was a specific allegation of dishonesty. They applied the criminal standard."

His Honour Judge Bidder concluded that the appeal was completely without merit and dismissed it.

11 In the light of those findings the Bar Standards Board brought these proceedings. Initially there were six charges; however, two charges (Charges 4 and 5) were withdrawn on the morning of the hearing when Mr Emele was able to demonstrate to the Tribunal that he had sent Mr Goodwin's letter of 3rd February 2010 as an attachment to his email of 9th February 2010 to Lincoln's Inn, who had acknowledged it as I have outlined above. Mr Emele places great weight upon that forwarding of the letter and on the fact that he was subsequently interviewed because he says it is consistent with honesty on his part.

12 The remaining charges were as follows:

"Charge 1. Statement of Offence. Professional Misconduct contrary to paragraph 902 of the Code of Conduct of the Bar of England and Wales (8th edition).

Particulars of Offence. Chukwuma Emele engaged before Call in conduct which was dishonest or otherwise discreditable to a barrister, namely the conduct in the running of Credo Law Office which the Solicitors Disciplinary Tribunal subsequently found in its written judgment dated 25th April 2012 he had engaged, which conduct was not, before Call, fairly disclosed to the Benchers of the Inn calling him.

Charge 2. Statement of Offence. Professional misconduct contrary to paragraph 902 of the Code of Conduct of the Bar of England and Wales (8th edition).

Particulars of Offence. Chukwuma Emele engaged before Call in conduct which was dishonest or otherwise discreditable to a barrister, namely declaring in his Admission Declaration to Lincoln's Inn on the 1st February 2010 that, 'I am not aware of any matter which might reasonably be thought to call into question my fitness to become a practising barrister' when he had in fact engaged in the conduct in running Credo Law Office which the Solicitors Disciplinary Tribunal had subsequently found he had engaged in, which false declaration was not, before Call, fairly disclosed in writing to the Benchers of the Inn calling him.

Charge 3. Statement of Offence. Professional Misconduct contrary to paragraph 902 of the Code of Conduct of the Bar of England and Wales (8th edition).

Particulars of Offence. Chikwuma Emele engaged before Call in conduct which was dishonest or otherwise discreditable to a barrister, namely declaring in his Admission Declaration to Lincoln's Inn on the 1st February 2010 that, 'I am not aware of any matter which might reasonably be thought to call into question my fitness to become a practising barrister' when he in fact knew that in July 2009 Credo Law Office had been the subject of an intervention by the Solicitors Regulatory Authority and when informed of such intervention he was specifically informed that his conduct was in question and in particular that there were alleged breaches of the Solicitors Accounts Rules and that the cessation of his registration as a foreign lawyer was material to the same, which false declaration was not, before Call, fairly disclosed in writing to the Benchers of the Inn calling him.

Charge 6. Statement of Offence. Professional Misconduct contrary to paragraph 901.8 of the Code of Conduct of the Bar of England and Wales (8th edition).

Particulars of Offence. Chukuma Emele, having been convicted by the Solicitors Disciplinary Tribunal on the 25th April 2012 of misconduct under the rules of an Approved Regulator, namely the Law Society/Solicitors Regulatory Authority, has committed misconduct".

- 13 It is important to note in relation to Charge 3 that before the Tribunal and before this court Mr Crinion, who appears for the Bar Standards Board, both now and below, accepted that the mere fact of intervention in a practice does not of itself amount to a matter which might reasonably be thought to call into question a person's fitness to practise. More is needed and is provided in Charge 3 by the following words, namely,

"... and when informed of such intervention he was specifically informed that his conduct was in question and in particular that there were alleged breaches of the Solicitors Accounts Rules and that the cessation of his registration as a foreign lawyer was material to the same ..."

Proof of that part of the charge would therefore be essential before a finding could be made that Charge 3 was found proved.

- 14 At the hearing before the Tribunal the Bar Standards Board relied upon documents, calling no oral evidence. Most importantly, it relied upon the finding of the Solicitors Disciplinary Tribunal, as affirmed in 2016. That was permissible and inevitable because of Rule E146.3 under the Disciplinary Tribunal Regulations 2014 which states,

"Decision of a court or tribunal.

In proceedings before a disciplinary tribunal which involve the decision of a court or tribunal in previous proceedings to which the defendant was a party, the following rules shall apply.

...

3. The finding and sentence of any tribunal in or outside England & Wales exercising a professional disciplinary jurisdiction may be proved by producing an official copy of the finding and sentence and the findings of fact upon which that finding or sentence was based shall be proof of those facts unless proved to be inaccurate; ..."

- 15 So the Bar Standards Board was entitled to rely upon the findings in the as Solicitors Disciplinary Tribunal as proof of the facts found by that tribunal unless proved to be inaccurate. Mr Emele gave evidence to the Tribunal in the course of which he strenuously denied any dishonesty, as he has done today. He was cross-examined and then made submissions which the Court has read. The essence of what he was saying was that he was not dishonest and that his conduct in early 2010 was consistent with honesty and not with dishonesty.

- 16 After retiring to consider, the Tribunal announced its decision as follows:

"This Panel has given careful consideration to all the arguments put before it on behalf of the Bar Standards Board and on behalf of Chikwuma Emele. We have considered each charge separately. Because each charge involved an allegation of dishonesty we have operated on the burden of proof operating on the Bar Standards Board to make us sure whether each of these charges, considered separately, has been proved beyond a reasonable doubt.

Having weighed up the factors and the arguments put before us today, we are unanimously of the following Findings which will be later set out in a full written

judgment: We find Charges 1, 2, 3 and 6 proved against Mr Emele. Charges 4 and 5 have been withdrawn.

Our reasons are that Mr Emele engaged in dishonest conduct when running the Credo Law Office. He would have known that his conduct was dishonest at that time yet, nevertheless, he failed, before his Call, to disclose to the Benchers of Lincoln's Inn that his conduct had been dishonest. He failed to declare in his Admission Declaration that his conduct at Credo had been dishonest or to state anything about the matters set out in Charge 3; and there were plainly matters to be disclosed as they might reasonably be thought to call into question his fitness to be a barrister".

That is the unanimous finding.

- 17 The Tribunal then moved to consider sentence. Their attention was drawn to the relevant guideline and to the extreme seriousness of a finding of dishonesty against a person who is a barrister. Having heard further from Mr Emele, they disbarred him on each of Counts 1, 2, 3 and 6. The formal report, which I take to be the formal written judgment to which the Tribunal Chairman referred when giving the decision of the Tribunal on finding and sentence, reported as follows,

"Findings.

30. On the resumption of the hearing the Tribunal confirmed that it had given careful consideration to all the arguments advanced by the BSB and Mr Emele. The charges involved dishonesty. The Tribunal had considered each charge separately.

31. The Tribunal said that the burden of proof was on the BSB to make the Tribunal sure that each charge was proved beyond reasonable doubt.

32. The Tribunal was unanimous in its findings. Charges 1, 2, 3 and 6 had been proved. Charges 4 and 5 had been withdrawn and so were dismissed.

33. The Tribunal said that Mr Emele had engaged in dishonest conduct when running Credo Law Office as set out in Charge 3 in the previous Tribunal's findings in 2012 and in the 2016 on his unsuccessful appeal. He would have known that his conduct had been dishonest, yet he failed before his Call on 11th March 2010 to disclose to the Benchers of Lincoln's Inn that his conduct been dishonest or to inform the Inn of the nature of the matters that were being pursued against him and that proceedings against him had been served on 24th February 2010, two weeks approximately before his call to the Bar. He had failed to declare in his admission declaration that his conduct at Credo had been dishonest or to state anything about the matters set out in Charge 3 which were plainly matters to be disclosed as they might reasonably be thought to call into question his fitness as a barrister".

- 18 The Tribunal also recorded the submissions that had been made on sentence and the sentence that they were passing and reasons at length, taking into account Mr Emele's mitigation, including his sending of the letter of 9th February 2010 plus attachments.
- 19 Mr Emele now appeals. He has raised a number of legal objections but in my judgment the legal position is clear. I deal first with Charges 1, 2, and 3. Mr Emele submits that because he has shown that the factual basis of the BSB's case was wrong in that he has proved that he sent the email on 9th February 2010 with attachments. The tribunal should have struck out these three charges because of what he calls suppression of facts and lies. There is no substance in this submission. The question for the Tribunal was whether it was satisfied to the requisite standard on the evidence that remained whether these charges were proved. The Tribunal was not obliged to dismiss these charges without consideration of the merits. It

would have been wrong to do so. There was no basis upon which it would have been justifiable to characterise what happened as "lies and suppression of the truth". The BSB's evidence was wrong about the 9th February letter in that the BSB had said that there were no attachments. When it was shown to be wrong Charges 4 and 5, to which the 9th February letter was most directly relevant, were withdrawn. That was a proper and proportionate response.

- 20 The second objection is essentially that the Tribunal came to the wrong conclusion in finding the charges proved. Today Mr Emele went so far as to submit that there was no evidence upon which the Tribunal could properly have found Charges 1 to 3 proved.
- 21 Dealing with Charges 1 and 2 there is no substance in this submission. The Tribunal were entitled to rely upon the findings of the Solicitors Disciplinary Tribunal as they clearly did (see Rule E146.3 to which I have already referred). That provided proof of his dishonesty unless proved to be inaccurate. It is clear from their findings that they did not consider the findings of the Solicitors Disciplinary Tribunal were inaccurate.
- 22 Mr Emele, before this court, repeatedly asserted that he knew nothing that might alert him to even a suggestion that he was dishonest, either before Call or by 1st February 2010 when he signed his declaration to Lincoln's Inn. Even ignoring the fact that he had received notice of the SDT proceedings before he was called, there is no substance in this submission. Once it is found that he was in fact dishonest in relation to his dealings with Credo he needed no letters or reminders. The terms of the Solicitors Disciplinary Tribunal finding were clear and unequivocal. If the tribunal in these proceedings was minded to accept them, the absence of any letter reminding him of his dishonesty or alerting him to the fact that his dishonesty had been uncovered or was being alleged is a complete irrelevance. He already knew. His submission to the contrary assumes that he was innocent. That begs the question which the Tribunal answered on sufficient evidence.
- 23 Charge 3 is different. What was required to be proved was,
"... When informed of such intervention he was specifically informed that his conduct was in question and, in particular, that there were alleged breaches of the Solicitors Accounts Rules and that the cessation of his registration as a foreign lawyer was material to the same ..."
- 24 I have already cited what the Tribunal said about this charge. However, on closer examination it has appeared today that there was in fact no evidence to sustain a finding of the critical words. In relation to this charge the Tribunal appears to have treated the material conduct as being the same as for Charges 1 and 2. However, that was not what Charge 3 said. By the end of submissions Mr Crinion realistically, and in my judgment correctly, conceded that the material required to sustain Charge 3 was not before the Tribunal. The decision on Charge 3 will therefore be set aside.
- 25 I turn now to Charge 6. The relevant provision of the Code of Conduct is para.901.8 which states,
"It shall be misconduct under this Code for a barrister to be convicted of misconduct under the rules of another approved regulator and the barrister shall be liable to disciplinary action by the Bar Standards Board accordingly".
- 26 As a preliminary objection Mr Emele submitted that this provision did not come into force until 6th January 2014. That is incorrect. It came into force on 6th October 2010. His second objection is that the provision is unclear about what constitutes misconduct for the purposes of the paragraph. It is not. The paragraph is clear in stating that being convicted of misconduct under the rules of another approved regulator is itself misconduct and may

expose a barrister to disciplinary action by the BSB. There is no retrospectivity involved since the misconduct occurs when the barrister is convicted after the implementation of the rule. There is a clear public policy justification for such a rule of professional conduct, namely the need to maintain confidence in the integrity of the profession. Once these objections are cleared away it is apparent that the finding by the Tribunal on Count 6 was unimpeachable, if not inevitable.

- 27 It was not, and is not, disputed that the Solicitors Disciplinary Tribunal made findings of misconduct against Mr Emele that involved a serious finding of dishonesty that was sufficient to justify, and did justify, the finding of the Tribunal on this charge.
- 28 Accordingly, the Tribunal's finding and sanction on Charge 3 is set aside. The findings on Charges 1, 2, and 6 are upheld.
- 29 I turn to sanction. The dishonesty alleged under Counts 1 and 2 was not solely dishonesty in running Credo but also, and primarily, dishonesty or discreditable conduct in failing fairly to disclose to the Benchers of Lincoln's Inn that he had been dishonest. The Tribunal sentenced him on that basis. In doing so they referred expressly to para.6.2 of the Sentencing Guidance, which provides,

"Any dishonesty on the part of a member of the Bar, in whatever circumstances it may occur, is a matter of great seriousness. It damages the reputation of the profession as a whole, quite apart from its effect on the reputation of the individual barrister. Dishonesty is incompatible with the duties placed on barristers to safeguard the interests of their clients and their overriding duty to the court. Public interest requires, and the general public expects, that members of the Bar are completely honest and are of the highest integrity. Therefore, in cases where it has been proved a barrister has been dishonest, even where no criminal offence has been committed, disbarment will almost always have to be considered ..."

- 30 The Tribunal noted that the dishonesty found proved under Charges 1 and 2 followed shortly after his dishonesty with Credo. In relation to Charge 6 the Tribunal said that contesting the charge showed lack of insight which could be regarded as an aggravating feature. They observed that the rule had been introduced to protect the public and to maintain the highest standards of integrity.
- 31 In the light of those considerations they disbarred him under Charge 6 as well. In my judgment, by contesting sanction, as he did today, Mr Emele showed a continuing lack of insight. These were very serious charges, coming as they did after, and in the light of, his proven dishonesty while running Credo. Once the findings were made, disbarment was an entirely proportional sanction. It is upheld.

MR CRINION: My Lord, there is an application for costs here.

MR JUSTICE STUART-SMITH: Have you filed a schedule?

MR CRINION: Yes, it is just for the costs of the transcript. No other costs are sought here. The form has been filled out and sent to the court. It comes to a figure of £820.80.

MR JUSTICE STUART-SMITH: Can I just see it if it has been sent to the court? Have you seen it?

MR EMELE: I just saw it this morning. Can you give me a copy, please?

MR JUSTICE STUART-SMITH: It is just for the costs of the disciplinary hearing below?

MR CRINION: No. It is just for the costs of the transcript provided to the court.

MR JUSTICE STUART-SMITH: The transcript of the disciplinary hearing below?

MR CRINION: Yes.

MR JUSTICE STUART-SMITH: So you are not asking for any other costs? Mr Emele, do you want to say anything about that?

MR EMELE: I've not been given a invoice because I was told-- I had a understanding because I was in Nigeria-- I said it's easier for him to apply for the transcript which I believe she did. But I was not shown a invoice. But I was just told the amount. So if I see the invoice I would have not (inaudible).

MR JUSTICE STUART-SMITH: It seems to me in principle----

MR EMELE: That was the understanding we had. I was supposed to do the transcript but I was having difficulty when I was in Nigeria. So if she does that, I will bear the costs. So I have not seen, you know, the invoice for that.

MR JUSTICE STUART-SMITH: So, was the transcript at your request effectively?

MR EMELE: No. If I see the invoice for the (inaudible) I will acknowledge it and I make arrangement (inaudible) If you can show me the invoice----

MR JUSTICE STUART-SMITH: Mr Crinion?

MR CRINION: I think there is an invoice----

MR. EMELE: -- from the company.

MR JUSTICE STUART-SMITH: There is an invoice attached in the sum. (Pause) Can you just show him, Mr Crinion?

MR CRINION: Yes.

MR EMELE: I have seen it.

MR JUSTICE STUART-SMITH: You have seen it. Right.

MR EMELE: Yeah. No objection.

MR JUSTICE STUART-SMITH: There will be costs in the sum claimed, which is £820.80. Is the BSB not registered for VAT?

MR CRINION: I had better check that.

MR JUSTICE STUART-SMITH: Will you check it?

MR CRINION: I will.

MR JUSTICE STUART-SMITH: There is a provision in the CPR, which I can never find, which says that if someone is not registered for VAT the solicitor can issue a certificate to that effect. I have no idea whether you would be registered for VAT or not. But, on the basis that I have asked the question could someone just check?

Mr. Emele, if the BSB is registered for VAT so that they can reclaim the VAT on this invoice, then your liability to costs will be £684. If they are not registered for VAT, or cannot recover the VAT, then your liability will be £820.80.

MR EMELE: (inaudible) when that is? Can you advise me? Can I ask for time to pay off this debt?

MR JUSTICE STUART-SMITH: The way that it would normally be dealt with in this court is that I am not going to specify a time for payment. You can discuss it with Mr Crinion. If you had do not pay pursuant to the order the court, then the BSB have the normal options available to them. But. I am not going to specify a particular time for payment.

MR EMELE: The reason why-- I just want it to be part of the order.

MR JUSTICE STUART-SMITH: Yes, and I can understand that. If you have difficulties, then tell Mr Crinion and I am sure that a sensible arrangement will be made. Thank you very much.

MR CRINION: My Lord, just one other matter. Regarding Mr Emele's appeal against three of the charges----

MR JUSTICE STUART-SMITH: -- is dismissed. Charges 1, 2, and 6 are dismissed.

MR CRINION: Would your Lordship mark them as appeals totally without merit?

MR JUSTICE STUART-SMITH: Yes.

MR CRINION: Thank you, my Lord.

MR EMELE: The reason why I feel bad about that suggestion that they will go back to Nigeria (inaudible) Nigeria. For me, I don't think that is a fair (inaudible) So, if you ask for that (inaudible) trying to (inaudible) themselves. I would suggest we leave it as, you know----

MR JUSTICE STUART-SMITH: Mr Emele, I am sorry to say that that it should be borne in mind that your appeal on Charge 3 has been successful. I am only saying that your appeals on Charges 1, 2, and 6 were totally without merit. But, I am afraid that is my view.

MR EMELE: Because (inaudible) I read your judgment on that and I accept it. But the suggestion that it should be classified as without merit is different from what you ruled. So, I'm afraid that I'm (inaudible)

MR JUSTICE STUART-SMITH: It is not uncommon to be asked. It is reasonably uncommon to make a finding of totally without merit. But, I am afraid to say that I think on Charges 1, 2, and 6 it is totally without merit. But, you have the justification that you have been successful on Charge 3.

I will leave the papers here. There is the bundle. You should find everything I have referred to has got a flag against it but you will not necessarily find it in the order that you want find it.

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This transcript has been approved by the Judge.