

Disciplinary Panel Hearing

Case of

Mr Mohammed Basharat MRICS

On

Monday 5 November 2018

At

Remotely by phone

Panel

Angela Brown (Lay Chair)
Joshua Askew (Surveyor Member)
Ron Barclay-Smith (Lay Member)

Legal Assessor

Alastair McFarlane

Hearing Officer

Jae Berry

The formal charges are:

1. On 8 December 2016 you were convicted of conspiracy to defraud and sentenced to 42 months imprisonment.

You are therefore liable to disciplinary action in accordance with Bye-law 5.2.2 (d)

DETERMINATION

Hearing on the Papers and Service

1. The case of Mr Basharat, the Relevant Person, had been referred for consideration on papers in the absence of the parties, pursuant to Rules 4(d) and 43a of the Disciplinary, Registration and Appeal Panel Rules 1 April 2009 (Version 7, 1 January 2017) (“the Rules”).
2. The Panel first considered the issue of service of the Notice of Hearing. The Legal Assessor reminded the Panel that:
 - The case had been referred to the Disciplinary Panel under Rule 4(d) for consideration in accordance with Rule 43(a), that is at a hearing on the papers;
 - Rule 43a(a) requires that not less than 28 days’ notice of a paper hearing be given;
 - Rule 23(e) provides that in cases referred to the Panel under Rule 4(d), the Notice must require the relevant person to indicate within 7 days whether he requires an oral hearing;
 - Rule 43a(d) provides that there will be no oral hearing of the case unless an application has been made under Rule 23(e), or unless the Panel decides that it is necessary in the interests of justice or in the public interest to refer the case for an oral hearing.
3. The Panel received a witness statement from Mrs J Berry, Regulatory Tribunal Executive for RICS, dated 23 October 2018. The statement confirmed that the Notice of Hearing had been sent to the Relevant Person on 21 August 2018, to the email

address and postal address held on RICS' system. The email was exhibited to the statement of Mrs Berry. The Panel also had sight of the postal delivery and email delivery receipt confirming delivery of the sending the Notice of Hearing.

4. The Panel noted that the Notice of Hearing gave the required notice of the hearing date and informed the Relevant Person of the right to request an oral hearing within 7 days.
5. The Panel noted that by an e-mail dated 26 October 2018, the Relevant Person sought to adjourn this hearing pending his next hearing in court, which he stated was on 23 November 2018 on the basis that he was appealing his conviction. RICS opposed this application, stating in an email in response, dated 31 October 2018:

"There is a strong public interest in this matter being resolved, particularly given that the conviction dates back to December 2016.

This is a conviction case and the issues are very narrow. RICS relies upon the certificate of conviction as prima facie evidence of the conviction and Mr Basharat's commission of that offence.

There is no evidence before the panel to suggest that the conviction is unsafe and should not be relied upon.

Whilst Mr Basharat has suggested that he is appealing the decision, it is notable that his conviction was in 2016 and leave to appeal would be required before he was able to appeal that decision. No evidence has been produced to suggest that Mr Basharat has passed even that preliminary hurdle."

6. The matter was referred to the Chair for a determination under Rule 35, who, having considered the written representations of both parties and taken the advice of the Legal Assessor, refused the application for the following reasons:

"I have considered carefully Mr Basharat's application to adjourn contained in his email to you dated 26 October 2018, and Mr Lynch's response opposing the application, set out in his email to you dated 31 October 2018.

I note Mr Basharat mentions that he is appealing his conviction and has a date in an unspecified court for an unspecified hearing on 23 November 2018. I note that no documentary evidence of any appeal process has been supplied by Mr Basharat. I consider that there is merit in Mr Lynch's submissions.

I note further the age of his serious conviction in December 2016, and that as no appeal has yet been made, balancing all factors and in particular the public interest, I consider there is no valid basis to adjourn the hearing that will proceed on the papers on Monday 5 November 2018.”

7. The Panel subsequently received a paginated bundle, numbered pages 1 to 29 from the Relevant Person, which consisted of nine pages of written submissions and supporting documents for the Panel’s consideration at this hearing. The Panel noted that there was no renewal by the Relevant Person of his application to adjourn this hearing. The Panel considered that the requirements of the Rules for the case to be heard on the papers were satisfied. The Panel was further satisfied that the matter could properly be dealt with on the papers and that it was not necessary in the interests of justice or in the public interest to refer the case for an oral hearing under Rule 43 a (d).

Background and RICS Submissions

8. The Relevant Person has been a professional member of RICS since December 2004.
9. On 6 December 2016, the Relevant Person was convicted of conspiracy to defraud and on 8 December 2016, he was sentenced to 42 months imprisonment.
10. RICS relied upon the Judge’s sentencing remarks which indicated that the Relevant Person had been involved in a scheme whereby he would provide reports in support of immigration applications to confirm whether the applicants’ proposed residential premises, were fit for purpose. These reports were carried out in his capacity as a surveyor. The Relevant Person did not attend the premises to undertake an inspection but instead agreed the wording of the report with Law Direct Associate, the firm instructed to make the immigration application by the member of the public. Those reports were fraudulent.

11. RICS relied upon the certificate of conviction, dated 6 February 2017 and the operation of Rule 41 (b) under which a certified copy of conviction is conclusive evidence of the conviction and of the Relevant Person's commission of that offence.
12. RICS noted that the Relevant Person initially indicated that he intended to appeal the conviction upon his release from prison, but has since maintained that he is unable to do so due to the police damaging the evidence upon which he intended to rely.

Mr Basharat's Submissions

13. The Panel has considered all documentation supplied by the Relevant Person. It was mindful that he had entitled it "Mitigation statement" (sic) but determined that it was fair to consider it at the facts stage bearing in mind that the Relevant Person was not legally represented and that it could direct itself to ignore matters of pure mitigation until and if the sanction stage is reached. In his written submissions, dated 1 November 2018, the Relevant Person acknowledged the fact that he has been convicted of this criminal offence and that he has served his custodial sentence, but referred to his submissions as being prepared "solely to present to the RICS my extenuating circumstances in respect of my disciplinary hearing in accordance with Bye-law 5.5.2 (d)."
14. The Relevant Person detailed his career history and asserted that in 2007, having been approached by an immigration solicitor working at the Immigration Advisory Service, he set up "a small side business to do accommodation reports..." In 2008 he set up a new firm undertaking commercial property work and also "offering property accommodation reports in support of visa applications for a variety of immigration solicitors and individuals throughout the Country" (sic). The firm provided a desktop

accommodation report for one fee and a report following a physical inspection for an additional fee. In 2009 the firm started providing reports for Law Direct Associates. It appears from his written submissions that the Relevant Person continues to dispute his conviction and maintains that he is an innocent victim. He stated that after his conviction, he dismissed his entire legal defence team, which he asserted failed him before and during the trial. He repeated that he is in the process of appealing his original conviction, but is still awaiting full disclosure of the material held by the police and that his next court appearance is on 23 November 2018.

Findings of fact

15. The Panel carefully considered the documentary evidence it received.
16. The Panel reminded itself that the burden of proving the charge was on RICS alone and that the standard of proof was the ordinary civil standard, namely the balance of probabilities. The Panel accepted the advice of the Legal Assessor.
17. The Panel has received the signed Certificate of Conviction from Bradford Crown Court, dated 6 February 2017. This certificate recorded a conviction of "conspire to defraud" (sic) on 6 December 2016 with a sentence of 42 months imprisonment.
18. The Panel noted that under Rule 41(b) the Certificate of Conviction is admissible as conclusive evidence of that conviction and of the Relevant Person's commission of the offence.
19. By virtue of the certificate of conviction the Panel finds the factual allegation proved.

Liability for Disciplinary Action

20. RICS submitted that the Relevant Person's conduct and resulting criminal conviction demonstrated that he had fallen seriously below the highest standards of behaviour that RICS expects from its members both in their professional and personal lives. RICS submitted that the conviction was sufficiently serious to render the Relevant Person liable to disciplinary action under bylaw 5.2.2 (d).
21. The Relevant Person's written submissions did not address the issue of liability to disciplinary action.
22. The Panel accepted the advice of the Legal Assessor. It reminded itself that liability to disciplinary action was a matter for the judgment of the Panel. It was satisfied that the Relevant Person's conduct amounted to a serious falling short of his professional obligations. He was convicted of dishonesty and received a lengthy custodial sentence. It had no doubt that that it was sufficiently serious to render him liable to disciplinary action.

Sanction

23. The Panel next considered sanction. It noted the submissions of RICS and the written submissions of the Relevant Person. It accepted the advice of the Legal Assessor. It had regard to RICS' Sanctions Policy and bore in mind the overriding principle of proportionality.
24. The Panel reminded itself that the purpose of sanctions is not to be punitive, though that may be their effect. The purpose of sanctions is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS

as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.

25. While mindful that its function was not to re-sentence the Relevant Person for the criminal conviction, the Panel had regard to observations of the sentencing judge in assessing the seriousness of the conduct. It noted that the Relevant Person's participation was described as "clearly a major element in this fraud for what more persuasive document can there be to those sitting in an office in south-west China who have to be satisfied that the accommodation was such as to be suitable to sustain except etc, what better evidence could there be than a member of the Royal Institute of Chartered Surveyors who was promising the authorities that he had inspected, a date of inspection and at the inspection had all the authority of a qualified surveyor. Your participation was a major element in this fraud". The sentencing judge continued that "each and every one of those reports was based on a fundamental lie" and that he "lied to the Home Office, to the Police, to the court, to your co-accused and, further, you were prepared to contribute to further reports and covering letters, all false. You doctored Home Office emails. You sexed up reports on the state of hygiene. You lied about visits... you did all to try and exculpate yourself" (sic). The learned judge added "you behaved with bewildering, bewildering and staggering deceit and dishonesty for a significant period. As a professional gentlemen, you have brought great discredit upon yourself and your profession and you were of great use, a godsend to those with whom you are working."
26. The Panel considered carefully any mitigating and aggravating factors of this case as well as the issue of proportionality in weighing up the most appropriate response.
27. The Panel was unable to identify any mitigating factors.
28. The Panel considered that the following aggravating factors was present:
 - The conduct involved deliberate dishonesty over a prolonged period

- The failings were repeated.
- A criminal conviction and a lengthy custodial sentence resulted
- The conduct was from financial gain
- There has been no admission or expression of regret or apology, indeed, the Relevant Person continues to maintain his innocence
- There is no evidence of any insight into the impact of such a conviction on the public's perception of the profession.

Decision

29. The Panel reminded itself that acting honestly and within the law are fundamental tenets of the profession and that the reputation of the profession is more important than the fortunes of any individual.
30. The Panel considered the matters are too serious for no sanction at all to be imposed. They considered the sanctions in ascending order of restrictiveness.
31. The Panel considered that a Caution was insufficient to mark the seriousness of the behaviour and to adequately maintain the reputation of the profession and the failings could not be described as "minor".
32. Bearing in mind the seriousness of the conviction and the Panel's judgment as to the highly detrimental impact such serious behaviour has upon the standing and reputation of the profession, it was satisfied that neither a reprimand or conditions accompanied with a fine were sufficient to protect the public and to maintain public confidence in the profession. Neither would such sanctions uphold proper standards of conduct.
33. The Panel determined that the Relevant Person's behaviour was fundamentally incompatible with him remaining a member of RICS and had no hesitation that the

only appropriate and proportionate circumstances was expulsion of the Relevant Person from RICS.

34. Should the Relevant Person successfully pursue an appeal against conviction, he would be at liberty to apply to RICS for re-admission.

Publication

35. The Panel saw no basis for departing from the presumption of publication. The Panel considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. This decision will be published on the RICS website and in the RICS magazine Modus.

Costs

36. RICS made application for costs in the sum of £600.00
37. The Panel noted that this was a standard fee for a hearing on the papers and concluded that it was fair and reasonable to direct that the Relevant Person pay RICS' costs in the sum of £600.00

Appeal Period

38. The Relevant Person has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 60 of the Rules.