

## **Appeal Panel Hearing**

### **Case of**

**Mr Ismaila Ajenifuja [1172509] Essex RM18**

### **On**

Wednesday 18 September 2019

### **At**

RICS 55 Colmore Row, Birmingham

### **Panel**

Sir Michael Burton (Lay Chairman)

Ferdinand Balfourt (Lay Member)

Helen Riley MRICS (Surveyor Member)

### **Legal Assessor**

Ben Kemp

### **RICS Presenting Officer**

Kelly Sherlock

### **Hearing Officer**

Miss Maria Choudhury

## **Appeal Hearing**

1. The Appeal Panel heard an appeal by Mr Ajenifuja (“the Appellant”) against a decision of an RICS Disciplinary Panel following a hearing which took place on 05 and 06 June 2019.

## **Decision of the Disciplinary Panel 06 June 2019**

2. The Disciplinary Panel found the following charges against the Appellant proved:

1. He failed in his professional obligation to register his firm, Freelance Chartered Building Surveyor & Registered Valuer (the “Firm”), in 2015, when required to do so under Rule 3.1 of the Rules for the Registration of Firms.

### **Contrary to Rule 3 of the Rules of Conduct for Members 2007**

2. In one or more of the following ways, he purported to be a RICS Registered Valuer when he knew or ought to have known that he was not entitled to do so:
  - 2.1 By sending emails between 11 May 2017 and 5 July 2018 which included the words “Registered Valuer” after his name;
  - 2.2 By advertising himself as being a “Registered Valuer” on the Firm’s website;
  - 2.3 By referring to himself as a “Registered Valuer” within a letter to Ms P dated 19 September 2017;
  - 2.4 By referring to himself as a “Registered Valuer” within an invoice to Ms P dated 15 September 2017;
  - 2.5 By referring to himself as a “Registered Valuer” within an undated letter to Ms P;
  - 2.6 By referring to himself as a “Registered Valuer” within a Building inspection report dated 12 April 2018; and/or
  - 2.7 By referring to himself as a “Registered Valuer” on his LinkedIn profile.

In doing so, he failed to act with integrity and/or failed to comply with his professional obligations.

### **Contrary to Rule 3 of the Rules of Conduct for Members 2007**

3. In one or more of the following ways, he used the RICS logo thereby holding the Firm out to be regulated by RICS when he knew or ought to have known that he was not entitled to do so:
  - 3.1 By advertising as such on the Firm’s website;
  - 3.2 On an invoice to Ms P dated 15 September 2017;
  - 3.3 Within an undated letter to Ms P; and/or
  - 3.4 Within a Building inspection report dated 12 April 2018.

In doing so, he failed to act with integrity and/or failed to comply with his professional

obligations.

### **Contrary to Rule 3 of the Rules of Conduct for Members 2007**

4. He failed to respond substantively or at all with RICS staff during the course of any or all the following RICS regulatory investigations:
  - 4.1 Concerns/queries raised following submission of an application for Valuer Registration;
  - 4.2 Concerns raised in relation to Ms P's complaint; and/or
  - 4.3 Concerns raised in relation to Ms M's complaint.

### **Contrary to Rule 9 of the Rules of Conduct for Members 2007**

3. The Disciplinary Panel found the Appellant liable to disciplinary action. The Panel expelled the Appellant from membership of RICS. He was ordered to pay RICS costs in the sum of £5,250 and the decision of the Disciplinary Panel was to be published.

## **Background**

4. The Appellant has been a member of RICS since 22 November 2002. Having qualified in Italy, the Appellant now resides in Essex, England, where he undertakes building survey work. He is also a mentor in respect of the RICS Assessment of Professional Competence (APC).
5. The nub of this case relates to the Appellant' persistent failure, as found by the Disciplinary Panel, to comply with different aspects of RICS' regulatory compliance requirements.
6. In arriving at its determination the Disciplinary Panel had before it documentary evidence to the effect that;-
  - 6.1 The Appellant was trading as a sole practice by the name of "Freelance Chartered Building Surveyor and Registered Valuer", incorporated as a sole practice on 20 May 2015 ("the Firm")
  - 6.2 The Firm was carrying out valuation work in England and, as such,

required to be, but has never been, registered with RICS.

6.3 The Appellant had persistently used the RICS logo in connection with the Firm, which he was not entitled to do because the Firm was not registered with RICS.

6.4 The Appellant had continued to refer to himself as an RICS Registered Valuer, despite having his Registered Valuer status removed by RICS in May 2017.

7. The Panel had before it a substantial volume of correspondence between the Appellant and the RICS, concluding that the Appellant had failed to provide any satisfactory explanation for the various and persistent breaches charged, to the extent that he had demonstrated a lack of integrity. Having also heard oral evidence from the Appellant at the hearing, the Disciplinary Panel concluded that the Appellant had failed adequately to engage with RICS as his regulator, finding that his responses to RICS *“were unhelpful, lacked detail and.....were designed to frustrate and delay”*. The Panel found that the Appellant had been, *“deliberately obtuse in his engagement with the RICS”*.
8. In finding a liability to disciplinary action, the Disciplinary Panel concluded that the Appellant’s non-compliance was serious, noting that he had, *“repeatedly ignored express direction by RICS about his use of the term “Registered Valuer” and the RICS logo”*. The Panel found that the Appellant’s conduct had, *“the clear potential to damage the reputation of and trust in the profession”*. The Panel stated further that the Appellant’s, *“refusal to acknowledge his wrongdoing raises real concern as to his insight and the risk of his repeating he same or similar conduct”*. In reaching these conclusions it had before it evidence not only of RICS’ own investigations, but of two third party complaints about the Appellant, as referred to in Charge 4.

## The Appellant's Grounds of Appeal

9. The Appellant's Grounds of Appeal, insofar as discernible from his written Grounds of Appeal and oral submissions at the Appeal hearing, may be summarised as follows:-

9.1 He was not accorded a fair hearing because, he asserts, the Disciplinary Panel failed to attach sufficient weight to evidence introduced and presented by the Appellant, particularly in his response to Charge 1.

9.2 The Disciplinary Panel failed to make appropriate or sufficient allowance for the fact that the Appellant was not represented at the hearing.

9.3 The Disciplinary Panel failed to attach sufficient weight to evidence before them that Firm registration was not required in Italy, unlike England, and to consider that this difference in requirement might have given rise to misunderstanding on the part of the Appellant and that such misunderstanding, rather than a lack of integrity, was the reason for his non-compliance.

9.4 The decisions of the Disciplinary Panel on sanction and costs were excessive and not commensurate with the gravity of the allegations and findings.

10. The Appellant invites the Appeal Panel either (1) to set aside the decision of the Disciplinary Panel and dismiss the case, or (2) to quash its decision and to appoint the case to be reheard afresh by a new Panel.

11. In his oral submissions before the Appeal Panel, the Appellant argued that RICS had been unreasonable in its expectations of him as a member, and that compliance with its demands and requirements presented difficulties for him and his clients. In particular, it would have been problematic for him and his business to cease using the RICS logo. He noted that he was a longstanding member of hitherto good standing. The Appellant, in response to questions from the

Chairman, confirmed that he was aware that, from May 2017, he had had his status as an RICS Registered Valuer removed and was therefore from that point onwards no longer entitled to refer to himself as such. The Appellant noted his application shortly thereafter to have his Registered Valuer status reinstated, and payment made at the same time in the amount previously demanded. It was quite clear from the evidence however, and the Appellant accepted, that his application had never been accepted by RICS, pending the resolution of questions and concerns which it put to him relevant to his application. The position is similar in relation to the registration of his Firm; namely that, although he had made an application, it was never accepted, so that his Firm was never registered.

12. The Appellant further argued that the decision of the Disciplinary Panel had been excessive in relation to sanction, being disproportionate to what he characterised in effect as compliance breaches. This was not a case, as he put it, in which his competence as a surveyor had been brought into question, or in which there was any evidence of actual harm to the public. He disputed the complaints of Ms P and Ms M.

### **RICS' Response to the Appeal**

13. Ms Sherlock submitted on behalf of RICS in response that the grounds and arguments adopted by the Appellant were substantively the same as those he had advanced before, and which had been taken into account by, the Disciplinary Tribunal. She reminded the Appeal Tribunal that the scope of its consideration was one of review and that it should only interfere with the decision of the Disciplinary Tribunal if there was a clear basis to conclude that its decision was wrong. Ms Sherlock submitted that there was no such basis. It was clear from the Disciplinary Panel's decision, and from the full transcript of proceedings before the Disciplinary Tribunal, that it had had regard to all of the evidence in the case, including the evidence presented by the Appellant. Its reasoning was clear and the sanction imposed plainly within the range reasonably available to it

considering the evidence it had received and heard. It had been properly advised by its legal assessor, including explicitly in relation to the appropriate approach to its finding on integrity, and to the question of sanction. No criticism had in any event been made of that advice, which the Disciplinary Panel had clearly followed.

## **Determination**

14. The Appeal Panel has experienced some difficulty in this case in discerning the cogent basis either for the Appellant's defence to the charges originally brought, or for his appeal. It has considered carefully all of the documentary evidence which was before the Disciplinary Panel, the reasoned decision of that Panel, the full transcript of its proceedings, and the written and oral submissions of both parties in relation to this appeal. The Panel reminds itself that its role is one of review of the decision of the Disciplinary Panel. This is not a re-hearing. Only where the Appeal Panel considers that the decision of the Disciplinary Panel was wrong may the Appeal Panel allow the appeal. Moreover, in accordance with Rule 66 of the applicable RICS Disciplinary, Registration and Appeal Panel Rules ("the Rules"), the burden is on the Appellant to satisfy the Appeal Panel that the order being appealed was wrong.
  
15. The Appeal Panel finds no basis upon which to conclude that the Appellant did not receive a fair hearing before the Disciplinary Panel. It is plain from its full and clearly reasoned decision, as well as from the transcript, that it had a close grasp of the issues and substantial volume of evidence before it, and moreover went to some length, no doubt recognising that he was unrepresented, to explore with the Appellant his position and response to the various charges. This is sufficient to deal with the first two grounds of appeal, as summarised above.
  
16. The Appellant's argument in relation to the different regulatory position as applicable to Italy was neither, in the Appeal Panel's judgement, relevant or

compelling. The fact was that the Appellant, and he accepted this again before the Appeal Panel, was entirely aware that his Firm both was required in England to be registered with RICS, and was not so registered. He was further aware that, absent such registration, his Firm was not entitled to use the RICS logo.

17. The Appellant was additionally aware that, with effect from May 2017, he was no longer entitled to refer to himself as a RICS Registered Valuer. The Appeal Panel notes that the Disciplinary Panel does not in its decision deal explicitly with the fact that the Appellant did make payment to RICS at this time in respect of his Registered Valuer dues. The critical point is that it is perfectly plain from the evidence bundle that the Appellant was aware that his reinstatement application had not been accepted and that he was therefore, with effect from May 2017, no longer an RICS Registered Valuer, nor entitled to refer to himself as such. Moreover, while the Disciplinary Panel does not deal explicitly with the fact of the payment made by the Appellant in its decision, it is clear from the transcript that it was aware both of the application for reinstatement and the payment made by the Appellant, and took these into account in reaching the conclusions which it did; namely that, in respect of both charges 1 and 2, the Appellant was aware of his RICS regulatory status but chose nonetheless to continue to act in breach of the relevant RICS rules. The Appeal Panel has no difficulty in concluding that the Disciplinary Panel was entitled, upon the basis of the evidence produced, to reach the decisions it did and further, that the Appellant's wilful and persistent defiance of RICS, as his professional body and regulator, brought into question his integrity. This deals with the Appellant's third appeal ground, as summarised above.

18. The Appeal Panel is also quite satisfied that the Disciplinary Panel's decision in relation to sanction was within the range available to it. The Appeal Panel considers that the Disciplinary Panel was quite entitled to treat as seriously as it did conduct which amounted to a stubborn and repeated disregard for its regulatory requirements, and significant non-cooperation, over a significant period



of time. Without the full and timely cooperation of its members, there is a real risk to the ability of RICS to discharge appropriately its responsibility to protect the public interest. Moreover, there was a clear and direct risk in this case of the public being misled as to the Appellant's regulatory status. The Disciplinary Panel was entitled in the circumstances to express concern as to the Appellant's insight and awareness of the importance of his regulatory obligations. While this is sufficient to dispose of the Appellant's fourth ground of appeal, the Appeal Panel is also of the view that expulsion was in these circumstances not only supported and justified, but entirely appropriate.

19. For all of these reasons, the appeal is dismissed.

## **Publication**

20. The Appeal Panel takes account of the relevant RICS guidance as to publication of its decisions. It is usual, in accordance with that guidance, for decisions of the Appeal Panel to be published on RICS' website and in RICS Modus. The Appeal Panel sees no reason to depart from the normal practice in this case. Part of the role of the Panel is to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.
21. The Appeal Panel orders that this decision is published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008, version 6.

## **Costs**

22. RICS has asked for costs associated with this appeal in the total sum of £4,850. It has provided a costs schedule to the Appellant in advance of the hearing.
23. The Panel has considered carefully the costs sought and determines that they are reasonable and proportionate. The Panel orders the Appellant to pay RICS' costs of this appeal in the sum of £4,850, as sought.
24. In addition, the costs award issued by the Disciplinary Panel in this case remains outstanding, pending the outcome of the appeal. That award was in the total sum of £5,250, meaning that the total amount now payable to RICS by the Appellant is £10,100. The Panel has had regard to submissions made by the Appellant as to

his financial position. It orders that the Appellant pays the costs due in two instalments: £5,000 to be payable within 3 months from today's date, and the remaining £5,100 payable within 6 months from today's date.