

Disciplinary Panel Hearing

Case of

Sterling Consulting Limited

London SW16

on

Thursday 29 October 2020

By Video Conference

Panel

Gillian Seager (Lay Chair)
Ruth Brutnall (Lay Member)
Adrian Davey (Surveyor Member)

Legal Advisor

Ben Kemp

RICS Presenting Officer

Shaun Moran

CHARGE

The Formal charge against the firm is:

- 1. Between 27 February 2019 and 20 September 2019, Sterling Consulting Limited ("the Firm") failed to submit an Annual Return for 2018/2019 as reasonably required by the RICS Regulatory Board.*

Contrary to Rule 14 of the Rules of Conduct for Firms 2007

And that the Firm is therefore liable to disciplinary action under Bye-Law 5.3.2©.

DETERMINATION

Introduction

1. The Firm was not represented at the hearing.

Preliminary Matter

2. The legal advisor noted and placed on record that he had approximately five years previously worked professionally with the RICS Presenting Officer at another organisation. The Presenting Officer had worked for approximately twelve months as a solicitor within the department for which the Legal Advisor had overall responsibility. The Presenting Officer did not report directly to the Legal Advisor, and was physically based in a different geographic location and office. They had not worked together in any capacity in respect of this case or prior to today on any RICS matter. Mr Moran confirmed the circumstances in which he and the Legal Advisor had worked together, and that he did not consider that those circumstances gave rise to a conflict or risk of bias, actual or apparent.
3. The Panel retired without the Legal Advisor to consider the matter. It noted that the professional relationship had been of relatively short duration and some five years previously. There was no question of actual conflict in relation to the circumstances of this case. It was satisfied that there was no risk of apparent conflict or bias, and in particular that the fair-minded and informed observer would not have grounds for considering that the independence of the Legal Advisor, Tribunal or its decision-making were compromised. Having considered the point carefully, it was satisfied that it was appropriate to continue to hear the case.

Proceeding in Absence

4. A Notice of Hearing was served by email (with a delivery receipt) upon the Firm to its preferred address held by RICS on 27 July 2020. A copy of the electronic delivery receipt for the Notice of Hearing had been produced to the Panel showing that delivery had been effected on the same date. The evidence bundle had been sent separately to the Firm by email.
5. The Panel was satisfied that Notice had been properly served in accordance with Rule 23 of the RICS Disciplinary Registration and Appeal Panel Rules 2009 (the Rules). The Panel next considered whether to proceed in the absence of the Firm. The legal advisor's advice was sought and accepted. The Panel was referred to the case of R-v -Jones [2002] UKHL 5, which the case of Tait v The Royal College of Veterinary Surgeons (RCVS) [2003] UKPC 34 states is also applicable to professional conduct proceedings.
6. The Panel, whilst recognising that it should only proceed with caution, also had regard to the case of General Medical Council v Adeogba [2016] EWCA Civ 162. It noted in

particular the observations of Sir Brian Leveson P in that case in relation to the distinction in this context between criminal and disciplinary proceedings, and of the importance of ensuring the, “*fair, economical, expeditious and efficient disposal*” of disciplinary allegations against professional people. The Court in Adeogba noted that, unlike in criminal proceedings, the professional regulator cannot enforce the attendance of a Respondent and suggested that the responsibility of the regulator, “*is to communicate with the practitioner at the address he has provided; neither more nor less. It is the practitioner's obligation to ensure the address is up to date...*”

7. The Panel noted the Firm’s RICS Contact Officer had latterly corresponded with RICS, by email dated 27 October 2020. He had indicated that he would not be attending the hearing because, “*I’m not in the Country and so the hearing can go on without me*”. No application or request had been advanced on behalf of the Firm to adjourn today’s hearing. RICS had made clear to the Firm’s Contact Officer that his being overseas would not prevent his attending what was in any event a virtual hearing, by telephone or video conference. He had elected not to do so.
8. The Panel was satisfied in the circumstances that it was appropriate and in the public interest for it to proceed to consider this case, in the absence of the Firm. It considered further that the Firm had through its RICS Contact Officer voluntarily waived its right to be represented.

Burden and standard of proof

9. The burden of proof is on RICS and the standard of proof is the balance of probabilities.

Background

10. The Firm has been regulated by RICS since 27 March 2018. Its RICS Contact Officer is Mr Augustine Egyabin-Mensah, director and sole principal of the Firm and a registered member of RICS (the Contact Officer). The Firm was required to complete and submit to RICS an Annual Return, providing information about its practice and matters such as its professional indemnity insurance, client money handling, dispute resolution arrangements, and details of any complaints received in the relevant period.
11. This case arises from the failure of the Firm to submit its first Annual Return, for 2018/19, due to be submitted to RICS by 29 March 2019.

Findings of Fact

12. The Panel had regard to a bundle of documentary evidence produced by RICS, including postal and email correspondence from RICS to the Firm relating to the requirement on the Firm to produce its 2018/19 Annual Return. The bundle included Companies House records of the Firm's status as a legal entity, as well as a written statement from RICS Regulatory Tribunal Manager, Mrs Jae Berry, who spoke to the service of notice of the hearing and hearing bundle upon the Firm. At the request of the Panel, RICS produced at the hearing the registration documentation completed on behalf of the Firm by its Contact Officer to register the Firm for RICS regulation, dated 06 February 2018. A registration form completed on behalf of the Firm dated 27 March 2018 provided certain information in relation to the Firm, including the fact that its recorded turnover for the last accounting period had been £75,000. The Firm's registration had been confirmed by RICS by email notification dated 11 April 2018, also produced at the hearing. This confirmation included details of the regulatory requirements which accompanied registration, including specifically the requirement to produce an Annual Return, the first such Annual Return being "due in approximately 10 months".
13. It was apparent from the correspondence bundle that RICS reminded the Firm of its obligation to submit its Annual Return, by emails dated 27 February and 13 March 2019. The Firm having failed to produce its Annual Return by the deadline of 29 March 2019, RICS issued a reminder (allowing an extended deadline) by email dated 2 April 2019. On 24 April 2019 RICS wrote again to the Firm, imposing a fixed penalty of £300 under its Sanctions Policy in respect of its failure to submit its Annual Return. This letter further intimated that the penalty would increase to £500 in the event that the Annual Return was not now submitted within a further 28 days. On 3 June 2019, the Annual Return still not produced, RICS wrote again, increasing the penalty fine to £500, in accordance with its published Sanctions Policy. Still no response was received from the Firm and RICS wrote again, on 20 September 2019, warning the Firm that the case would be referred to a Disciplinary Panel hearing, in the event that the Annual return was not submitted, and the fixed penalty paid, by 27 September 2019. Royal Mail and email receipts were produced to evidence the delivery of this letter.
14. By email dated 29 June 2020 RICS served the hearing bundle on the Firm, at the same time providing a final opportunity and deadline (of 13 July 2020) for the Firm to submit its 2018/19 Annual Return and pay the penalty fine.
15. It was only at this stage, in June 2020 that the Firm, through its Contact Officer, engaged with RICS in relation to this matter. By email dated 29 June 2020, the Firm's Contact Officer responded:

"I've requested several times for the company to be de-listed from RICS regulation but I keep receiving the same reminder. Company no more in operation."
16. To this RICS responded by email of 30 June 2020 that, in order to de-register, the Firm would need to complete the relevant de-registration form and pay the fixed penalty.
17. The Firm's Contact Officer responded the same day, in the following terms:

“Can complete the forms but can’t afford the so called penalty. Where is that one coming from. Haven’t been in operation for a long time. not possible.”

18. It was RICS’ position that the Firm had failed to submit its 2018/19 Annual Return and that the Penalty remained unpaid. The Panel was satisfied in light of the documentary evidence produced that this was the case.
19. The Panel accordingly finds the relevant facts to be proved as charged.
20. The Panel further finds that the Firm’s failure to submit its 2018/19 Annual Return does amount to a breach of Rule 14 of the RICS Rules of Conduct for Firms 2017. In particular, the Firm failed to, *“submit in a timely manner such information about its activities, and in such form, as the Regulatory Board may reasonably require.”*

Liability for Disciplinary Action

21. On the basis of the facts found the Panel had to decide whether or not the Firm is liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the legal advisor. This question was one for the Panel’s judgment.
22. The Panel had regard to the RICS written submissions produced with the documentary bundle, as well as the oral submissions of the RICS Presenting Officer. It considered carefully the limited written correspondence and responses received from the Firm. It noted that the Firm accepted that it had not submitted its 2018/19 Annual Return, but denied that it was liable to disciplinary action. The Firm’s Contact Officer stated in email correspondence that he had, *“.....notified RICS several times to de-regulate my firm since the company hasn’t been in operation for so long but no one seemed to have picked up the messages.”* RICS had not been able to trace evidence of any such communications from the Firm or Contact Officer, seeking to de-register the Firm. No such evidence had been produced on behalf of the Firm. By email of 28 October 2020, the Contact Officer accepted that in seeking to do so, he *“Didn’t follow RICS due process”*. The Firm’s Contact Officer also commented as follows, by email dated 27 October 2020:

“I’ve notified RICS several times to de-regulate my firm since the company hasn’t been in operation for so long but no one seemed to have picked up the messages”

And again;

“I need to make this clear that I somehow prematurely registered [the Firm] to be regulated by RICS even though I didn’t have any business in the pipeline. So literally [the Firm] hasn’t benefited in any way from obtaining RICS regulation controls, I believe the only way out is to de-list [the Firm] from RICS Regulation as [the Firm] is dormant and in the verge of being closed by the taxman. You could see it from company house records.”

23. This being as it may, and aside from the fact that there was no evidence of any request on behalf of the Firm to de-register, the fact is that the Firm was registered for RICS regulation and failed entirely, despite repeated reminders, to comply with the essential compliance requirements.
24. The requirement to produce an Annual Return is not simply a bureaucratic one; it is an essential tool in enabling RICS to discharge its regulatory responsibilities, to enable it to provide meaningful assurance to the public. The need to cooperate with one's regulator, including the provision of relevant information reasonably requested, is an essential part of what must be a reciprocal regulatory relationship. The Firm in this case had benefited from regulated status, and from the right to use the RICS regulatory brand, without complying with the most basic expectation in return. No reasonable or clear explanation had been provided as to why it had failed to do so, notwithstanding the repeated and persistent efforts of RICS to remind the Contact Officer of the requirement, and to provide further extensions and opportunities to avoid the necessity for these proceedings.
25. The Firm has singularly and continually failed to engage or comply. This is a serious matter and the Panel has no hesitation in finding the Firm liable to disciplinary action.

Sanction

26. The Panel next considered sanction. It bore in mind 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.
27. The Panel paid careful heed to the advice of the legal advisor (delivered in open forum), and to the indicative sanctions guidance of the RICS. It considered carefully the mitigating and aggravating factors of this case.
28. The Panel had decided that the Firm is liable to disciplinary action. Having done so it first has to decide whether to impose a sanction, and if it so decides the Panel commences at the lowest sanction, and only if it decides that that sanction is not appropriate does it move to the next level of sanction. Having arrived at a sanction that it is minded to impose, the Panel then reviews the next sanction above so as to satisfy itself that this would be too severe a sanction. The Panel bears in mind that more than one sanction may be imposed. If conditions are to be imposed they must be proportionate, workable and address the issues raised in these proceedings.
29. The Panel was satisfied that it was appropriate in the circumstances to impose a sanction in this case. It considered the sanctions available, having regard to the relevant RICS Sanctions guidance. The Panel noted that the Respondent Firm had no previous disciplinary record. It had made some effort, albeit very late in the process, to

engage with RICS. Such engagement was however extremely limited and substantially ineffectual in actually addressing the matter in hand. The Panel took account of the extraordinary circumstances which had arisen in 2020 as a result of the global pandemic, but this had not been suggested by the Firm as a reason for its non-engagement, nor in any event could it explain its persistent failure to comply in 2019.

30. The Firm, acting through its sole principal and Contact Officer, had failed to demonstrate any understanding of or insight into the importance of its regulatory relationship with RICS. It had failed to take responsibility for that relationship, and for its status as a Regulated Firm. It had been given multiple opportunities by RICS to do so, but had persistently failed to comply, or to address the concerns raised by RICS.
31. The information requested by RICS was of considerable importance in allowing RICS to discharge its regulatory function, but readily available to the Firm. It delayed and failed to produce this information. The Panel was advised that the Firm had equally not complied with the requirement to submit an Annual Return for 2019/20, demonstrating its ongoing lack of insight and disengagement.
32. The Panel considered in the circumstances that the failure in this case was too serious, and too fundamental, to impose a caution or reprimand. The Panel had no confidence that conditions or undertakings would serve any useful purpose, given the history of non-engagement, and the failure of the Firm to demonstrate responsibility for its regulatory obligations.
33. The information before the Panel suggested that the Firm was still in existence as a legal entity and might still be trading, potentially under the banner of RICS regulation. This represented a significant risk to the public. The Panel considered in the circumstances that the only appropriate, and necessary, course was to remove the Firm's registration for regulation. In addition, the Panel imposes a fine of £1,250, to supersede the Fixed Penalty previously imposed by RICS. The Panel considered that this was appropriate and proportionate, reflecting the seriousness with which it regarded the persistent failure to engage and comply in this case.
34. The Panel imposes a fine in the total sum of £1250 and orders removal of the Firm's registration for regulation.

Publication

35. The Panel considered the guidance as to publication of its decisions. It accepted the legal advisor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be posted on the RICS website and published in Modus. The Panel sees no reason for departing 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.

36. The Panel orders that this decision is published on the RICS website and in Modus.

Costs

37. The RICS Presenting Officer asked for costs, and had provided a schedule to the Firm's Contact Officer in advance of the hearing, in accordance with the Rules. The Firm had not responded to a request by RICS for information about its financial means. There was very little specific information before the Panel as to the financial position of the Firm.
38. The Panel considered carefully the costs sought. It has moderated the solicitor's costs claimed because the hearing has not lasted the full day allocated. It allows £1400 (rather than £1800 claimed) in respect of solicitor's costs, in addition to the fixed costs of the hearing itself (£2,170).
39. The Panel accordingly orders that the Firm pays to RICS costs totaling **£3,570**.

Appeal Period

40. The Firm has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
41. In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days, from the service of the notification of the decision, to require a review of this Decision.