

## **SINGLE MEMBER OF REGULATORY TRIBUNAL DECISION SHEET**

### **RICS Regulatory Tribunal Rules 2020**

#### **Part VI, Regulatory Tribunal Single Member Decision**

**Regulated Member:** David Lopes - 1235394

**Single Member Decision of:** Mohamed Shehata

**Case Number:** CON001642

**Date of Decision:** May 3<sup>rd</sup>, 2023

#### **CHARGE:**

The charge against the Regulated Member is:

*"Between 1 January 2021 and 1 February 2022 you have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) in that you have not completed and recorded, or caused to be recorded, at least 20 hours of CPD on the RICS CPD portal. An extension period was granted by RICS until 26 May 2022 by which date you had still failed to complete and record or cause to be recorded at least 20 hours of CPD on the RICS CPD Portal for the period between 1 January 2021 and 1 February 2022"*

**Contrary to Rule 6 of the Rules of Conduct for Members 2007 version 6**

**The Regulated Member is therefore liable to disciplinary action under Bye-law 5.2.2(c)**

#### **ALLEGED RULE/S BREACH**

1. Rule 6 of RICS' Rules of Conduct for Members 2007 Version 6 requires that Members shall comply with RICS' requirements in respect of continuing professional development.
2. RICS' requirements in respect of CPD are set out in the document 'CPD Requirements and obligations. They include requirements that *'All members must undertake a minimum of 20 hours CPD each calendar year (January to December)'* and that *'Members must record their CPD activity online by 31 January.'*

3. All members must maintain a relevant and current understanding of our professional and ethical standards during a rolling three-year period. Any learning undertaken in order to meet this requirement may count as formal CPD.

## **MATERIALS CONSIDERED**

4. I have been provided with a case bundle (investigation report) of Seventy-Three (73) pages, and have considered and reviewed the following information and material:
  - a) Section A - RICS Rules, Guidance, Law and Procedure
  - b) Section B - Investigation Report Part 1 ("Report P1") – Facts and LDA (submissions and evidence)
  - c) Section C - Investigation Report Part 2 ("Report P2") – Sanction (submissions and evidence)
  - d) Section D - General Correspondence with Member, Disclosure and Response
  - e) Section E - Head of Regulation Recommendation

## **BACKGROUND**

5. RICS Members are required to complete 20 hours of CPD activity by 31 December each calendar year and to record, or cause to be recorded, details of that CPD.
6. Paragraph 22.1 of the Sanctions Policy 2020 states that the policy for CPD breaches is as follows:
  - a) First breach – Fixed Penalty (caution)
  - b) Second breach within 10 years of receipt of a caution - Fixed Penalties (caution and fine)
  - c) Third breach within 10 years of receipt of a caution – referral to Single Member or Disciplinary Panel with presumption of expulsion.

## **FINDINGS OF FACT**

7. Before considering any evidence, I reminded myself of the burden and standard of proof in these proceedings. The burden of proving the charges rests with RICS throughout. The standard of proof is the Civil Standard, normally described as the balance of probabilities. Another way of expressing this is to ask whether a fact in issue is more likely than not to have occurred.

8. I have been provided with a case bundle of Seventy-Three (73) pages which include a CPD print out from RICS' online system for Mr David Lopes, a witness statement from a RICS Investigation Specialist (Natasha Reid), email correspondence between RICS and Mr David Lopes, and a witness statement from RICS Regulations Support Team Manager (Claire Hoverd).
9. I have considered the statement of RICS' Investigation Specialist, Natasha Reid. Mr David Lopes' CPD record for the years 2013 to 2020 is set out at paragraph 4 of that statement. No hours are recorded for 2020 and 2021. Also, the CPD hours for 2019 were only eight hours.
10. Document 2, Report P2 in Section C contains a statement from Ms Natasha Reid. The evidence by Ms Natasha Reid shows that this is Mr David Lopes' third breach of the requirement to complete and record his CPD online in accordance with Rule 6 of the Rules of Conduct for Members 2007. Natasha Reid statement shows that Mr David Lopes received a caution for a breach in 2019 and a caution and fine for a breach in 2020.
11. Furthermore, Ms Natasha Reid exhibits copies of the notifications that were sent to members, informing them of those earlier sanctions. Those sanctions will have been notified to Mr David Lopes if RICS held a contact address on their systems (see statement of Claire Hoverd – see Section C, Document 1, Report P2).
12. Ms Natasha Reid confirms that RICS held an address on their systems to send notice of such sanction, and therefore Mr David Lopes ought to have been aware of any previous sanctions imposed.
13. Furthermore, Mr David Lopes has paid the fixed penalty for the second year breach and paid his membership fees. Payment of the fixed penalty may suggest the Member acknowledges the second year breach and therefore would have been aware of his obligations to comply. Payment of membership fees may suggest the Member has intention to practise without complying with CPD requirements.
14. Moreover, Mr David Lopes has previously recorded CPD in 2013, 2014, 2015, 2016, 2017 and 2018, therefore demonstrating that he was well aware of his CPD obligations.
15. Finally, it may be suggested in due course that Mr David Lopes has not received any or all of the CPD reminders sent to them by RICS and that they are not liable

to disciplinary action as a result. Whilst RICS has made efforts to communicate with members via email to remind them of their obligations in respect of CPD (and these are detailed in the statement of Claire Hoverd – see Document 3, Report P1), it is not necessary for RICS to prove receipt of those emails to prove the facts of the charge or to establish that there is a liability to disciplinary action. The obligation to complete and record CPD is contained within the rules and is not dependent upon Mr David Lopes receiving a CPD reminder from RICS.

16. Any submissions received from Mr David Lopes, including their completed listing questionnaire (if returned), and correspondence between RICS and the Member, is contained in Section D.
17. I am satisfied that Mr David Lopes was fully aware of the requirement to complete 20 hours CPD in the calendar year 2021, and therefore find as a matter of fact that Mr David Lopes has failed to comply with the CPD requirements, and the formal charge is proved.
18. I accept that if the printout does not contain an entry for a particular year, then that indicates that no CPD was recorded for that year. There was no entry on Mr David Lopes' CPD print out for the year 2021. Also, no explanation, evidence or representations has been provided by Mr David Lopes for this failing. There are no concessions for 2021 that would exempt him from RICS' CPD requirements.
19. I am therefore satisfied that there is a realistic prospect of establishing liability to disciplinary action, and accordingly, I find the factual allegations proved, based on the documentary evidence produced.

## **LIABILITY FOR DISCIPLINARY ACTION**

20. I am satisfied that the RICS requirement to complete and record CPD is reasonable and that Mr David Lopes' failure to comply with these requirements is sufficiently serious to give rise to a liability for disciplinary action.
21. In reaching this conclusion I considered the fact that the CPD policy has been approved by the Regulatory Board and is an expressly stated RICS rule. In addition, the Sanctions Policy makes it clear that even a single breach of CPD requirements is sufficient to give rise to a liability for disciplinary action. I note that the purpose of the CPD requirements is to ensure that there are consistent standards within the profession and that members maintain up to date knowledge in their area of expertise in the interests of protecting the public and the wider public interest. All

members agree to adhere to the RICS Rules, Regulations and Bye-Laws and accept that they may be subject disciplinary action if they fail to do so.

22. Mr David Lopes ignored a clearly expressed Rule and requirement from his professional regulator despite being given every opportunity to comply with the CPD requirements. RICS Bye-Laws (B5.6) provide that matters will be dealt with in accordance with the rules, regulations and bye-laws which were in force at the time that the matter was brought to the attention of RICS. The alleged breach took place on 1 February 2022 although RICS had granted a further extension until 26 May 2022. The extension had the effect that RICS would not take disciplinary action if compliance was achieved by that date. Accordingly, the Regulatory Tribunal Rules Version 1 with effect from 2 March 2020 apply to this matter.
23. In conclusion, I am satisfied that Mr David Lopes is liable to disciplinary action under Bye-Law 5.2.2(c).

## **REGULATORY SANCTION**

24. Mr David Lopes has completed 0 hours CPD for 2021 and is therefore in breach of RICS' CPD requirements for 2021. This is the Member's third breach of CPD requirements in a 10-year period. I note that in addition to the failure to complete CPD hours in 2021, no CPD hours were recorded by Mr David Lopes in 2020. Also, Mr David Lopes completed only eight CPD hours in 2019.
25. I consider the RICS Sanctions Policy and Mr David Lopes' disciplinary history which is as follows:
- a) 2019 – Fixed Penalty caution (First Year CPD Breach)
  - b) 2020 – Fixed Penalty caution and fine (Second Year CPD Breach)
26. The bundle documents reveal that Mr David Lopes has paid the fixed penalty for the second year breach and paid his membership fees. Payment of the fixed penalty may suggest the Member acknowledges the second year breach and therefore would have been aware of his obligations to comply. Payment of membership fees may suggest the Member has intention to practise without complying with CPD requirements.
27. I note from the bundle that numerous reminders were sent to Mr David Lopes' preferred email addresses by Ms. Claire Hoverd between the period of 15/11/2021

to 07/06/2022. I am satisfied that the reminders were correctly addressed to the preferred address then held on file for Mr David Lopes.

28. It is accepted that non-receipt of that email communication is capable, in certain circumstances, of constituting mitigation, however, it is noted that the RICS emailed Mr David Lopes on 5 August 2022, regarding his non-compliance with CPD requirements. No response was received from Mr David Lopes. All this information can be found in section B.
29. I am therefore satisfied that the Mr David Lopes was aware of his CPD responsibilities.
30. RICS is a professional membership organisation and set standards for its members as a condition of membership. The completion and recording of CPD is an essential part of membership and provides protection to the public and ensures that professional standards are maintained. The overwhelming majority of RICS members complete and record at least 20 hours CPD each year. It is not unreasonable for RICS to impose sanctions on those members who do not do so.
31. I bear in mind that the purpose of sanctions is not to be punitive, although it may have that 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 breach and all the circumstances, and a decision should be reached after considering any mitigating and/or aggravating factors.
32. I am not aware of any mitigating circumstances which may have prevented Mr David Lopes from complying with CPD requirements in 2021, and I have not been provided with any mitigation by or on behalf of Mr David Lopes.
33. I consider that the following aggravating factors are present in case:
  - a) there has been no engagement from the member despite frequent reminders
  - b) Mr David Lopes clearly understands the process of recording CPD as hours were successfully recorded in other years. Moreover, Mr David Lopes paid his membership fees for 2021. Payment of fees may suggest the Member has intention to practise without complying with CPD requirements
  - c) this is his third breach of the regulation within 10 years of receipt of caution

34. I first considered whether to impose any sanction at all. This is a third breach of CPD requirements, and I conclude that imposing no sanction would be neither proportionate nor appropriate.
35. I went on to consider whether to impose a caution. I concluded that a caution would not reflect the seriousness of this case given that this is a third offence and noting that two cautions have already been imposed for previous breaches. I also considered the imposition of a reprimand but similarly concluded that this would not reflect the seriousness of Mr David Lopes' repeated failures.
36. I considered whether to impose an undertaking and noted the mandatory nature of the CPD requirements. I do not consider it would be appropriate or proportionate to impose an undertaking on a member that merely sets out his professional obligations. Further I conclude that imposing such a sanction would undermine public trust and confidence in the regulatory process.
37. I then considered whether to impose a fine. I note that a fine was imposed on Mr David Lopes for not complying with his required CPD hours for the year 2020. Furthermore, Mr David Lopes has made payment for the fine issued in 2021 for non-compliance in 2020. Therefore, I conclude that it would not be appropriate to impose a further financial penalty as the last one had not resulted in compliance with the CPD requirements. Indeed, a further fine could, and in my view would, undermine the need to uphold the standards expected of all members and would undermine the deterrent effect on other members of the profession.
38. I went on to consider conditions. It is my view that it would not be possible to formulate conditions that would be realistic or achievable as any conditions would merely set out the requirements for members to comply with CPD regulations. Conditions are not likely to be appropriate for breaches of CPD requirements.
39. Having considered all sanctions short of expulsion and determined that none would meet the wider public interest, I have considered expulsion. I recognise that expulsion is the ultimate sanction and should be reserved for those categories of cases where there is no other means of protecting the public or the wider public interest. I am satisfied that a case of repeated failures to complete and record CPD hours is such a case. Mr David Lopes has repeatedly failed to comply with the CPD requirements of the profession, and he has not engaged with the investigation and subsequent disciplinary process.

40. Mr David Lopes has failed to offer any reasonable explanation for failing to comply with RICS' CPD requirements.
41. The evidence before me is that Mr David Lopes has committed a third breach of CPD requirements. I consider that there is no sanction other than dismissal that is both proportionate and appropriate in this case and determine that Mr David Lopes should be expelled from RICS.
42. In reaching my conclusion I have carefully balanced the wider public interest against the interests of Mr David Lopes and his professional standing. Whilst recognising that expulsion may have a major impact on Mr David Lopes, I consider that the interests of the public and the profession far outweigh the interests of the member in this case.
43. Finally, I have found no reason to go against the presumption in paragraph 21.1 of the Sanctions Policy which states that expulsion is likely where there is a third breach of Rule 6 of the Rules of Conduct for members within 10 years of receipt of a caution for breach of the same rules.

## **ORDER MADE**

44. Having read the papers and considered the evidence, in accordance with Part VI of the Regulatory Tribunal Rules, I make the following order:

**That Mr David Lopes shall be expelled from membership of the RICS**

## **TAKING EFFECT OF ORDER**

45. In accordance with Part VI of Regulatory Tribunal Rules, this order will take effect 14 days from service of the Single Member's decision upon the Regulated Member, unless notification in writing is received from the Regulated Member or RICS stating that they consider that the findings and/or the Regulatory Sanction imposed by the Single Member are wrong.
46. In accordance with Rule 114 of the RICS Regulatory Tribunal Rules:

*'114. Following the expiry of 14 days from the service of the Single Member's decision upon the Regulated Member, the Regulatory Sanction will be deemed to be accepted by the Regulated Member and the Regulatory Sanction imposed will take effect forthwith, unless notification has been received under Rule 116.'*



*115. Within 14 days of service of the Single Member decision, the Regulated Member or RICS must notify the Head of Regulatory Tribunals in writing if s/he considers that the findings made by the Single Member are wrong and/or considers that the Regulatory Sanction imposed by the Single Member is wrong.'*

## **COSTS**

47. I note that RICS has applied for costs of **£350** which is in line with Supplement 2 to the Sanctions Policy – Fines, Costs and Administration Fees. Mr David Lopes has not made any representations regarding his liability to pay the requested costs or made any submissions about his financial situation.
48. I accept that it is appropriate that Mr David Lopes should bear the costs reasonably incurred by RICS in bringing these proceedings, in order that those costs should not be borne by the RICS membership as a whole.
49. In accordance with Part VI, Rule 119 of the Regulatory Tribunal Rules 2020, I make the following order in respect to costs:

**Mr David Lopes will pay RICS' costs in the amount of £350**

## **PUBLICATION**

50. I am not aware of any factors in this case indicating that this decision or any part of it should not be published.
51. This decision will be published in accordance with Rule 120 of the RICS Regulatory Tribunal Rules which states the following:

*'120. In accordance with the Regulatory Sanctions Publication Policy*

***a** pending the expiry of 14 days following service of the record of decision upon the parties, the Regulated Member's name, charge(s) and Single Member's decision as to whether the charge(s) were found proved or not proved, and Regulatory Sanction if applicable will be published in accordance with the Sanctions Policy and*

***b** the Single Member's recorded decision will be published following the expiry of 14 days.'*