

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

**RICS Regulatory Tribunal Rules 2022**

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

|                                   |                               |
|-----------------------------------|-------------------------------|
| <b>Regulated Member:</b>          | <b>Elliot Kersh (1124274)</b> |
| <b>Single Member Decision of:</b> | <b>Glenn D Mathieson</b>      |
| <b>Case Number:</b>               | <b>REG0000047888</b>          |
| <b>Date of Decision:</b>          | <b>16 December 2024</b>       |

### **CHARGE**

On 12 March 2024 at Manchester Magistrates' Court, Elliot Kersh was convicted of three counts of racially aggravated criminal damage.

Elliot Kersh is therefore liable to disciplinary action under RICS Bye-Law 5.2.2 (d).

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

Being convicted of a criminal offence which could result in a custodial sentence.

### **MATERIALS CONSIDERED**

My consideration of this case has included the following material:

- The RICS investigation report.
- The schedule of costs prepared by RICS.
- Correspondence involving RICS, Mr Kersh and Mr Kersh's representatives, including detailed information and commentary from Mr Kersh relating to his background, personal circumstances and inter-faith relationships.
- Character references provided in support of Mr Kersh.
- A report prepared by a Dr Jamie Barsky.
- A copy of the Community Order issued to Mr Kersh dated 12 March 2024.

- Various press reports regarding the conviction – for which I have noted only in so far as demonstrating the local publicity arising, and not as sources of reliable information relating to the facts or circumstances.
- A copy of a letter from Mr Kersh's representatives to Mr Kersh, confirming the outcome to the criminal proceedings.
- Crown Prosecution Service papers relating to the criminal case, including a police report and relevant witness statements.
- Representations submitted by Mr Kersh in response to the allegations.

## **BACKGROUND**

This case concerns a conviction, after a guilty plea, for racially aggravated criminal damage, for which Mr Kersh was sentenced by way of a community order on 12 March 2024. The circumstances surrounding the events in question relate to damage caused to property over a period of several weeks following the attacks on Israel by Hamas, and which were targeted at some who had been displaying the Palestinian flag.

## **FINDINGS OF FACT**

I am satisfied from the available papers, as well as Mr Kersh's own acceptance of the matter, that he was indeed convicted of racially aggravated criminal damage and received a community order as a result. I have therefore concluded that the factual aspects of the charges are capable of proof.

## **LIABILITY FOR DISCIPLINARY ACTION**

Being convicted of a criminal offence for which a custodial sentence may be imposed is a breach of RICS Bye-Law 5.2.2 (d). The offence in question, whilst not itself attracting a custodial sentence in this instance, is nonetheless of a serious type, not least owing to the racially aggravated aspects which are involved. As such, I am satisfied that this is a matter which may confer liability to disciplinary action.

## **REGULATORY SANCTION**

I recognise that liability to disciplinary action does not, in itself, inevitably require action to in fact be taken. I also recognise that it is not the role of the disciplinary process to simply punish a member in respect of matters which have already been dealt with by the criminal process. Nonetheless, I am conscious of the need to uphold the reputation of the profession, and do not consider that this can be achieved, given the nature of the offence in question, without disciplinary action being taken.

In determining what action that should be, I have taken into consideration the following aggravating factors:

- The fact of the racially aggravated aspect to the conviction.
- The fact that this was not a 'one off' isolated incident of impulsivity, but was repeated and over a number of weeks.

I have also, however, taken account of the substantive mitigation in Mr Kersh's favour, including:

- The acute personal pressures and stress which Mr Kersh had been facing at the time.
- The fact of his previous good character, both in terms of having no other convictions, and never having previously been subject to disciplinary proceedings.
- The absence of any connection between Mr Kersh's actions and his professional practice.
- The fact that the actions took place in the context of a particularly sensitive and heightened atmosphere in the wake of the Hamas attacks on Israel, and the response of the Israeli government; as opposed to being suggestive of a more general underlying prejudice on Mr Kersh's behalf.
- The extremely positive character references made in support of Mr Kersh.
- That the sentence imposed was towards the lowest end of the spectrum of sentences open to the court to issue.
- Mr Kersh's positive cooperation with the investigation.
- His expressions of remorse and regret, and the insight demonstrated into his actions and the impact of them on others.
- The salutary effect of being the subject of both criminal and disciplinary proceedings.

Approaching the sanctions options available to me in ascending order, I have considered the possibility of taking no action, but feel that this would be insufficient to mark to Mr Kersh and the profession more widely the unacceptability of the conduct, and would similarly fail to uphold the reputation of the profession. I have also discounted the prospect of a caution, as I consider that this is of insufficient weight to reflect the gravity of the conduct.

I note that a reprimand is suitable for more serious wrongdoing, and I consider that this would be more appropriate to reflect the degree to which Mr Kersh's actions have departed from expectations. I do, however, consider that some additional weight is required to be added to a reprimand in order to cater for the gravity of the conduct, and therefore consider that an additional imposition of a fine is necessary and proportionate.

I have gone on to consider the most serious sanction of expulsion from the Register, in order to guard against being unduly lenient. Having done so, however, I am satisfied that this is not a matter for which expulsion is appropriate or proportionate. This is in light of the mitigation previously referred to, as well as the fact of Mr Kersh already having been punished by the criminal courts.

I therefore consider this matter to be appropriate to be closed with the issuing of a reprimand and a fine, and I have concluded that a fine of £500 would be proportionate.

#### **ORDER MADE**

In accordance with Part VI of the Regulatory Tribunal Rules, I make the following order:

**That Mr Elliot Kersh (1124274) be issued with a reprimand, and a fine in the sum of £500.**

#### **TAKING EFFECT OF ORDER**

In accordance with Part VI of the 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

### **COSTS**

In accordance with Part Vi of the Regulatory Tribunal Rules, I make the following order in respect to costs:

**Mr Elliot Kersh (1124274) will pay costs in the amount of £1,050.**

### **PUBLICATION**

In accordance with Part VI of the Regulatory Tribunal Rules, the Single Member's record of Decision will be published following the expiry of 14 days from service of the Single Member's Decision upon the Regulated Member.