Regulation

RICS

Disciplinary Panel Hearing

Case of

Mr Tam Yau-Wa, (0083716)

Hong Kong

On

Tuesday 14 March 2023

Paper hearing by video conference call

Panel

Mr Nick Turner, FRICS (Surveyor Chair)
Mr Gregory Hammond (Lay member)
Mr Ron Barclay-Smith (Lay member)

Legal Assessor

Mr Ben Kemp

CHARGE

The formal charge against Mr. Tam is:

Between 1 January 2020 and 1 February 2021, 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 activity on the RICS CPD portal.

Contrary to Rule 6 of the Rules of Conduct for Members 2007.
Mr Tam is therefore liable to disciplinary action under Bye-law 5.2.2(c).

INTRODUCTION

1. Mr Tam had exercised his right, by email dated 11 April 2022, to have this case heard afresh before the Disciplinary Panel under Rules 115-118 of the applicable RICS Regulatory Tribunal Rules (the Rules). Prior to the hearing, the Chair had granted an (unopposed) application by RICS to have the case considered on the papers, in accordance with Rule 67(c) of the Rules.

2. A few days prior to the hearing, by email dated 08 March 2023, Mr Tam had indicated his wish, "to withdraw my appeal and give up my membership with the Institution", and he reiterated the point in a further email timed at 0436 on the day of the hearing. Mr Tam confirmed that he no longer wished to participate in these proceedings and offered no objection to the matter being dealt with in the circumstances upon the basis of papers only.

DETERMINATION

Background

3. Mr Tam has been a professional member of RICS since March 1990.

4. From January 2013 RICS members were obliged to complete 20 hours' Continuing Professional Development (CPD) activity by 31 December of each calendar year.

5. Rule 6 of the RICS Rules of Conduct for Members provides: *"Members shall comply with RICS' requirements in respect of Continuing Professional Development."*

6. CPD requirements for members (including Mr Tam) are: –

    - Members must complete at least 20 hours' CPD, of which at least 10 hours must be formal CPD. The remainder may be informal CPD.
    - All members must record (or cause to be recorded) their CPD activity online, via the RICS secure portal, by 31 January of the year following the CPD year in question.

Service

7. Notice of this hearing was served by letter dated 12 January 2023, sent by email to the email address notified by Mr Tam to RICS, in accordance with Rule 53 of the Rules. The documentary bundle was also served by email on Mr Tam.

8. The email address used was the preferred address held on the RICS system, which Mr Tam has indicated is his preferred address for correspondence with RICS. A written statement produced by Maria Choudhury-Rahman, a RICS- employed officer, spoke to notice having been served upon Mr Tam. RICS had produced the relevant email delivery receipt.

9. The Panel was accordingly satisfied that service had been properly undertaken in accordance with Rules 53 and 54, notice and service having been provided not less than 56 days prior to the date of this hearing.

10. The Panel noted that Mr Tam had additionally made clear his awareness of the hearing, in correspondence with RICS.

Burden and standard of proof

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

Findings of Fact

12. The Panel had regard to a documentary bundle running to 101 pages, including written submissions from RICS, correspondence with Mr Tam and three witness statements produced by RICS employees, speaking amongst other things to relevant CPD and membership records pertaining to Mr Tam.

13. The Panel noted two witness statements produced by Jamie Edwards, lead investigator employed by RICS. This witness spoke to having undertaken a review of the RICS computer system and the records kept on that system relating to Mr Tam. They confirmed Mr Tam's relevant contact details and that no CPD was recorded by Mr Tam in 2020, as confirmed by the copy electronic CPD record produced.

14. The Panel further noted from the evidence of Jamie Edwards that Mr Tam had been subject to disciplinary action which had been taken by RICS on three separate occasions previously in relation to Mr Tam's CPD compliance. In 2013 Mr Tam did not record any CPD and received a Caution. In 2014 he again did not record any CPD and received a Caution and fine. Mr Tam was then referred to a Disciplinary Panel in respect of further non-compliance in 2015. The evidence confirms that Mr Tam was then compliant in 2016, 2017 and 2018, and was subject to an exemption regarding the recording of CPD for 2019.

15. The Panel had regard additionally to a written statement produced by Claire Hoverd, also an RICS employee within its Regulation department. This witness spoke to the fact and content of a number of communications and reminders which would have been issued by RICS to Mr Tam prior to and shortly following the expiry of the 2020 CPD year.

16. The Panel was satisfied that RICS had taken appropriate and sufficient steps to ensure that Mr Tam understood RICS' regulatory requirements, and the present charge. Mr Tam had moreover not disputed the fact of his non-compliance for the 2020 CPD year.

17. Accordingly, the Panel finds the factual allegation proved, upon the basis of the evidence produced by RICS.

Liability for Disciplinary Action

18. The Panel was satisfied that Mr Tam had in 2020 breached Rule 6 of the Rules of Conduct for Members 2007, and this was such as to render him liable to disciplinary action. Its reasons are as follows.

19. Liability to disciplinary action is a matter of judgment for the Panel. While not every breach of the rules amounts to liability to disciplinary action and each case is fact specific, the Panel's view was that Mr Tam's failure to comply with the CPD requirements and his breach of Rule 6 of the Rules of Conduct for Members amounted to a serious failure to meet his professional obligations. The requirement to complete and record CPD is important to ensure that members keep their knowledge up to date and thereby to ensure public protection. The Panel's view was that the failure to fulfil professional obligations is likely to undermine public confidence in the profession. RICS has clearly communicated the importance it attaches to both the completion and recording of CPD, as set out in the CPD policy approved by its Standards and Regulation Board. Non-compliance is tantamount to ignoring an express and clear rule imposed by Mr Tam's professional regulator. Mr Tam has, in becoming a member, accepted that he is subject to RICS' rules, and that non-compliance may give rise to disciplinary action. The requirements to complete and record CPD, as imposed by RICS, are in the Panel's opinion legitimate and reasonable ones. In order to be meaningful, it is important that they are treated seriously, including if necessary and appropriate being subject to formal enforcement. In the circumstances, the Panel, having taken advice from its legal assessor, was satisfied that Mr Tam was liable to disciplinary action.

Sanction

20. The Panel next considered sanction. It had regard to the RICS Sanctions Policy, bearing in mind the overriding principle of proportionality. It noted the presumption of expulsion for a third failure as set out in Rule 21 of the Sanctions Policy. It received and accepted advice from its legal assessor.

21. It noted that Jamie Edwards' evidence shows that this was the fourth breach of the requirement to complete and record CPD by Mr Tam, since 2013. He had also failed to record any CPD in 2013, 2014 and 2015. Mr Tam had however recorded 40 hours of CPD in 2016, 26 hours in 2017 and 25 hours in 2018, demonstrating his awareness of the requirements, and in particular of the requirement and arrangements for recording.

22. Rule 22.1 of the Sanctions Policy provides that, for those members who fail to comply with the rules relating to CPD in respect of a first breach, the sanction imposed is a Fixed Penalty (Caution). For those who fail to comply in respect of a second breach within a ten-year period, the sanction imposed is a further Fixed Penalty (Caution and fine). For the third breach within a ten-year period, members are referred to a Single Member or Disciplinary Panel, with a presumption of expulsion. The Panel had regard to a Disciplinary Panel decision in 2017 in respect of Mr Tam's third such breach, and noted that it had

imposed a fine of £1,000, together with a direction that Mr Tam comply for 2017, as a condition of his continued membership.

23. The Panel considered that the following were aggravating factors in this case:

- This is Mr Tam's fourth CPD breach since 2013 and his breach was thus part of a pattern of behaviour.
- Mr Tam was clearly aware of and able in practice to comply with the requirements, as demonstrated by his compliance in 2016, 2017 and 2018.
- Mr Tam has engaged only minimally with RICS in relation to this matter.
- The Panel has seen no evidence of insight or remorse.

24. The Panel considered the following was relevant in mitigation:

- Mr Tam has been a Professional Member since 1990, with no other disciplinary record, save for that relating to CPD.
- Mr Tam did appear to make admissions about the facts of this case in his correspondence with RICS prior to the hearing.

25. The Panel was mindful that, from the inception of the compulsory recording of CPD online, RICS has publicised its policy on sanctions for non-compliance. RICS is a professional membership organisation and sets standards for its members as a condition of membership. Mr Tam has previously demonstrated his ability to comply. Compliance is not optional.

26. The Panel was satisfied that it was appropriate in the circumstances to impose a sanction in this case. It considered the sanctions available, starting with the least serious. Given all the circumstances, including the fact that this was the fourth breach, it did not consider that a caution was proportionate or sufficient. Mr Tam has already received two cautions for past breaches of the CPD requirements. The Panel also considered that the imposition of a reprimand would not adequately address the issue of compliance in this case and the risk to the public. It considered that the imposition of a fine would not be adequate, recognising that fines had previously been imposed by RICS, in respect of breaches in 2014 and 2015, but had not ultimately proved effective in encouraging consistent compliance. Given the relatively minimal engagement in this case, it did not consider that there would be any useful purpose to be served in the imposition of an undertaking or conditions. The Panel did not in any event consider that an undertaking or conditions would be likely to be effective.

27. The Panel noted in particular that Mr Tam had not offered any substantive explanation for this latest breach. It takes the importance of CPD very seriously, serving as it does to reinforce the public interest commitment to ongoing professional competence. The Panel notes the presumption in the RICS guidance in favour of expulsion in respect of a third CPD breach. It recognises nonetheless that this is a matter for its judgment. RICS has given Mr Tam every reasonable opportunity to comply. He has repeatedly failed to do so, or to provide any real explanation as to why he could not comply. In the circumstances the Panel considers it necessary and appropriate in this case to direct the expulsion of Mr Tam from RICS, with immediate effect. It so orders.

Publication

28. The Panel has considered the policy on publication of decisions- The Sanctions Policy Supplement 3 - Publication of Regulatory/ Disciplinary Matters- and has decided that there are no exceptional reasons to deviate from the policy. This decision will therefore be notified to Mr Tam, published on the appropriate part of the RICS website, and in the RICS magazine, Modus.

Costs

29. RICS made an application for a contribution to its costs arising from these proceedings in the sum of £1,950 sterling. A schedule of costs was produced, and had been served on Mr Tam by email, in advance of the hearing and in accordance with the Rules. No response had been received from Mr Tam, and the Panel accordingly has no information as to his financial means.

30. The Panel considers that it is appropriate to make an award of costs in this case. The costs of these proceedings, arising from Mr Tam's conduct, otherwise fall to be borne by the RICS membership at large. Mr Tam had elected not to accept the previous decision of a Single Member considering this case. This was his right, but brought with it the inevitable consequence that further costs were incurred.

31. The Panel considers the amount sought by RICS by way of costs to be reasonable in all of the circumstances of this case. It directs Mr Tam to pay costs to RICS in the sum of £1,950 Sterling, as sought.

Appeal Period

32. Mr Tam has 28 days, from the service of the notification of this decision, to appeal this decision in accordance with Rule 153 of the Rules.

33. In accordance with Rule 166 of the Rules, the RICS Chair of Governing Council has 28 days to apply for a review of this Decision.