

Appeal Panel Hearing

Case of

**Mr David Lawal [1159486]
Middlesex, UB10**

On

Listed for Tuesday 7 November 2017 (abandoned on Sunday 5 November 2017)

At

Offices of Messrs Blake Morgan, 6 New Street Square, London

Panel

Sir Michael Burton (Lay Chair)
Helen Riley (Lay Member)
Catherine Audcent (Surveyor Member)

Legal Assessor

Chris Hamlet

RICS Representative

James Lynch

Background

On 27 April 2017, a Disciplinary Panel of RICS determined that Mr Lawal was liable for Disciplinary action under Bye-Law 5.2.2(d) by reason of having been convicted by the Crown Court of Harrow on 16 October 2015 for the following offences:

- (1) 3 x Obtaining Services by deception
- (2) 1 x Attempting to obtain services by deception
- (3) 1 x Sub-letting property without consent

The Panel concluded that the convictions were fundamentally incompatible with continuing membership of the profession and determined that Mr Lawal should be expelled from RICS.

Submissions by the Appellant Mr Lawal

Mr Lawal provided the Panel with written submissions in which he appeared to challenge both the findings of fact of the original Panel and the sanction imposed, on the grounds that it was disproportionate and unfair.

Submissions by the RICS Presenting Officer

Mr Lynch on behalf of RICS provided written submissions by way of skeleton argument to the effect that the Panel's decision on sanction was in accordance with the sanctions guidance and invited the Panel to reject the appeal.

Withdrawal of Appeal

On Sunday 5 November 2017, Mr Lawal contacted RICS by email to indicate his intention to withdraw the appeal:

"I have gone through the skeleton argument sent by James Lynch together with the cases appended to the skeleton argument and have concluded that my attendance at the hearing will not change the decision already made."

He concluded:

"If you would kindly acknowledge this cancellation notice and forward any abortive cost which I would ask to pay in instalments."

The Panel accepted Mr Lawal's application and the appeal hearing was duly cancelled.

Submissions on Costs

Mr Lynch submitted a written application for costs, in accordance with Rule 62 of the Disciplinary Registration and Appeal Panel Rules (DRAP), in the sum of £3,050, expressed to have been calculated in accordance with para 3 of Supplement 2 to the Sanctions Policy. This comprised hearing costs of £2,650 and solicitor costs in considering the papers and preparing for the hearing of a maximum two hours, or £400 "as per supplement 2 to the Sanctions Policy".

Mr Lynch submitted that Mr Lawal had been made aware on 30 October that there would be preparation costs associated with a withdrawal of his appeal and submitted:

"The late stage at which Mr Lawal has withdrawn his appeal has meant that RICS will now incur the full costs of a panel hearing. There has been no change in circumstances and no further evidence has been submitted by either party that would justify Mr Lawal reversing his position. As such it appears that Mr Lawal has simply taken the view that his appeal was unlikely to be successful and withdrawn it as a result... In the absence of a costs order, the cost of preparing for this hearing and convening an appeal panel will fall on the profession as a whole. That is clearly a situation that RICS would seek to avoid."

Mr Lawal responded:

“My decision to withdraw from the appeal hearing was triggered [sic] by the skeleton argument received late Friday 3rd November 2017 and the cost breakdown by email on the 30th October 17.”

However, he submitted it was “unfair and unreasonable” to impose a costs award of £3,050 in addition to the loss of his professional status and job:

“I would never have applied for the appeal hearing or would have withdrawn early if i knew the sanchions [sic] was going to be published before the appeal hearing and if i knew of the cost and the damning skeleton argument.”

Decision on costs

The Panel determined as follows:

1. The Appellant abandoned the appeal on 5 November, after receipt on 3 November and consideration by him of the Skeleton Argument, shortly before the hearing, on the basis that the Skeleton was “damning”.
2. The Appellant was informed on 30 October that (estimated) preparation costs of £1400 had been incurred.
3. The Hearing cost according to paragraph 3 of Supplement 2 to the Sanctions Policy is £2650, and the RICS Solicitor claims that sum. The same paragraph 3 specifies the cost of a Disciplinary hearing without an oral hearing at £600. Whilst this was listed as a full appeal hearing, and the associated costs had been incurred by RICS, in the circumstances of this case it is fair and reasonable to limit the costs of the abandoned hearing to a contribution of £600.
4. The panel welcomes the informed withdrawal of appeals, particularly where such withdrawal constitutes a recognition by an appellant of lack of prospect of success, but such withdrawal should ordinarily be sufficiently early to allow a saving of costs by the RICS and the Panel.
5. The Panel concludes that the Appellant should pay the preparation costs of £1400 plus the additional sum of £600.
6. The total sum of £2000 is payable.
7. The Panel notes that the Appellant may liaise with RICS to establish a mutually acceptable payment plan.

Publication

The Panel considered the guidance as to publication of its decisions. It noted that it is usual for the decisions of the Panel to be published on RICS’ website and in RICS 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.

The Panel orders that this decision be published on RICS’ website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.