

Registration Panel Hearing

Case of

Professor Alfons Metzger

On

Monday 5 November 2018

At

Remotely by phone

Panel

Angela Brown (Lay Chair)
Joshua Askew (Surveyor Member)
Ron Barclay-Smith (Lay Member)

Legal Assessor

Alastair McFarlane

RICS Representative

James Lynch

Hearing Officer

Jae Berry

DETERMINATION

Notice

1. This case had been listed for an application made by Professor Metzger, the Relevant Person, to be readmitted for membership pursuant to Rule 47(b) of the Disciplinary, Registration and Appeal Panel Rules 1 April 2009 (Version 7, 1 January 2017) (“the Rules”).
2. The Panel received a witness statement from Mrs J Berry, Regulatory Tribunal Executive for RICS, dated 23 October 2018. The statement confirmed that the Notice of Hearing had been sent to the Relevant Person on 26 September 2018, to the email address held on RICS’ system. The email was exhibited to the statement of Mrs Berry. The Panel also had sight of the email delivery receipt confirming delivery of the sending the Notice of Hearing.
3. The Panel accepted the advice of the Legal Assessor and was satisfied that the notice of hearing had been sent in accordance with the Rules.

Proceeding in Absence

4. The Relevant Person has not attended in person or by phone and is not represented. By email dated 29 October 2018 from Mrs Berry, RICS Regulatory Tribunal Executive, the Panel was informed that the Relevant Person had withdrawn his application for readmission.
5. By email dated 1 November 2018 from Mrs Berry, the Panel was informed that RICS had written to the Relevant Person in the following terms:
“I note that the disciplinary registration and appeal panel rules are silent on the issue of withdrawing applications of this nature. Given the proximity of the hearing I suggest

the matter should be disposed of by the panel so that incidental matters such as costs can be concluded.

In particular, RICS is incurred costs in arranging the hearing and preparing a response to the application. RICS will invite the panel to make an order for costs in accordance with rule 34 drap. The total claimed is £2450 (£2650 standard costs £600 from the fact another paper hearing will take place on the same day, plus to our solicitor time at £200).

RICS does not otherwise oppose prof Metzger withdrawing his application.

May I propose that Prof Metzger is given an opportunity to respond on the issue of costs and the disposal of the matter is considered by the panel on Monday on the papers alone." (sic)

6. RICS received a response from the Relevant Person, which was forwarded to the Panel by Mrs Berry in an email dated 2 November 2018. The response stated:

"In behalf of Mr. Prof. Alfons Metzger, I inform you that the withdrawal of the application for readmission is hereby confirmed.

In behalf of your notice I am instructed to accentuate that Prof Alfons Metzger was expelled in 2016 – and is therefor no member of RICS.

Linked to this fact, it's understood that he is not subjected to the rules of RICS.

To the big surprise of Prof. Alfons Metzger and members of RICS this procedure was staged which Prof Alfons Metzger considers as inadequate.

Furthermore Prof Alfons Metzger is not willing to pay the expenses which were caused by staging this procedure.

Prof. Alfons Metzger also registered considerable cost which was caused by this procedure. Taking charge of the cost caused by RICS is out of the question for Prof. Alfons Metzger.

Prof. Alfons Metzger is astonished that the better part of the membership fees from all over Europe goes to RICS Brussels and London and doesn't benefit the members in the remaining chapters.

This is also a reason for Prof. Alfons Metzger's withdrawal of application readmission." (sic).

7. The Panel accepted the advice of the Legal Assessor. It bore in mind that its discretion to proceed in the absence of the Relevant Person under Rule 30 must be exercised with the utmost care and caution. It was satisfied given that this was the Relevant Person's application and he had withdrawn it, that he had voluntarily waived his right to attend and had clearly disengaged from the process. This was confirmed in two e-mails served on his behalf (2 and 5 November 2018). It was satisfied in the circumstances, that it was in the interests of justice to proceed with the hearing in the absence of the Relevant Person.

8. Under Rule 48, hearings before the Registration Panel will be oral hearings, unless the Chair agrees to a request from the Relevant Person for the Panel to consider the matter on the papers alone. There has been no request from the Relevant Person for the application to be determined on the papers alone and therefore this case proceeds as an oral hearing. Under Rule 53 the burden of satisfying the Registration Panel to make an order for readmission is on the Relevant Person.

Jurisdiction

9. The Relevant Person has withdrawn his application for readmission. RICS does not oppose this but seeks the Panel's determination on costs. The Relevant Person has submitted that the Panel has no jurisdiction over him, as he is not a member.
10. The Panel accepted the advice of the Legal Assessor.
11. The Panel rejected the Relevant Person's argument that the Panel had no jurisdiction. Its reasons are as follows. Under Rule 47 the Registration Panel is charged with determining all applications made by a relevant person for readmission. This Rule provides the Panel with jurisdiction over the Relevant Person who is making the application. While noting that the Rules were silent in relation to Registration Panel's powers in relation to costs under Part VI of the Rules, the Panel noted that Rule 34 under Part IV (which was titled "*general procedures for disciplinary registration and appeal panels*") expressly empowered "a" Panel with the power to make such order for costs against the Relevant Person or RICS as it considered fair and reasonable. Self-evidently this includes Registration Panel. This was subject only to the requirement that an estimate of costs incurred by the party shall be served on the other parties at least 24 hours before the hearing.
12. The Panel was therefore satisfied that it had jurisdiction over the Relevant Person and that it was expressly given the power under the Rules to make an award of costs.

Costs

13. The Panel noted that RICS had submitted an estimate of costs to the Relevant Person on 31 October 2108.
14. RICS made application for costs in the sum of £2,450. Mr Lynch relied on fixed hearing costs of £2,650, which he sought to discount by £600 as the Panel was sitting on another case today. A further email was received by RICS on behalf of the Relevant Person this morning (5 November 2108), in which it was repeated that the relevant person "is not willing to accept any cost he has not caused or agreed upon".
15. The Panel noted that it was the Relevant Person who brought this application. It noted that RICS had prepared a written case summary setting out its position and compiled a bundle of documents running to 66 pages. It was satisfied that the Regulator had a duty to present RICS' position in response to the Relevant Person's application for readmission and was satisfied that the preparatory work it undertook was reasonable. Nonetheless, the Panel noted that this was an application that was withdrawn and that the hearing today had taken less than one hour. It appeared that had the Relevant Person notified RICS earlier of his withdrawal, RICS would not have pursued costs. It had no information as to the Relevant Person's means, but considered in all the circumstances that to award the amount claimed by RICS would not be fair and reasonable. The Panel reasonably concluded that it was fair and reasonable to direct that the Relevant Person pay RICS' costs in the sum of £800.

Publication

16. The Panel saw no basis departing from the presumption of publication. The Panel considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. This decision will be published on the RICS website and in the RICS magazine Modus.

Appeal Period

17. The Relevant Person has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 58 of the Rules.

18. 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.