

Disciplinary Panel Hearing

Case of

Kemal Mustafa [0094278]
Bexley Heath, Kent

On

Monday 9 July 2018

At

RICS, 55 Colmore Row,
Birmingham B3 2AA

Chairman

Gillian Seager, Lay

Members

Justin Mason (Surveyor Member)

Catherine Brown (Lay Member)

Legal Assessor

Fiona Barnett

RICS Representative

Kelly Sherlock

Mr Mustafa was present and represented by Mr Jonathan Goodwin, solicitor advocate.

RICS application to amend allegation 1

Ms Sherlocka applied to remove the words "*failed to act with integrity at all times*" from allegation 1, so that the charge should read, "*That he has failed to avoid any actions or situations that are inconsistent with his professional obligations, contrary to Rule 3 of the Rules of Conduct for Members 2007*".

Mr Goodwin did not oppose the application.

The Panel was satisfied that the amendment, which was agreed by Mr Goodwin, could be made without injustice. The Panel also noted that charges 2 and 3 made reference to the winding up of Langleys CPM Limited as having been in 2016, when it was in fact in 2015. The Panel therefore amended the charges to correct this error, which would cause no injustice to the parties.

The Charges:

The formal charges amended against Mr Kemal Mustafa are:

1. That he has failed to avoid any actions or situations that are inconsistent with his professional obligations, contrary to Rule 3 of the Rules of Conduct for Members 2007.

Particulars

- a) That between 7th June 2016 and 26th January 2017, a company, LCS Surveyors LTD of which Mr Kemal Mustafa was a director was displaying the RICS logo on its website when it was not, and never had been, a firm that was regulated by RICS, and describing itself on its website as a firm of Chartered Surveyors regulated by RICS, when it was no so regulated by RICS.
- b) That between 7 June 2016 and 26 January 2017 Mr Kemal Mustafa failed to apply to RICS to register the company LCS Surveyors Ltd, of which he was a director, for regulation when he was required by Rule 3 of the Rules for Registration of Firms to do so.
- c) Between 31st May 2016 and 28th June 2016, a company, LCS Surveyors LTD, of which Mr Kemal Mustafa was a director was struck off the register of Companies and dissolved so that all assets, property and rights vested in or held in trust for LCS Surveyors LTD, the Member's trading entity, were deemed to be bona vacantia.

Mr Kemal Mustafa is therefore liable to disciplinary action under RICS Bye-Law 5.2.2(c).

2. That he has failed to ensure that his professional finances are appropriately managed, Contrary to Rule 7 of the Rules of Conduct for Members 2007.

Particulars

That on 29th June 2015 a company, Langleys CPM Limited of which Mr Kemal Mustafa was a director was made subject of a compulsory winding up order on the petition of HMRC.

Mr Kemal Mustafa is therefore liable to disciplinary action under RICS Bye-Law 5.2.2(c).

3. That he failed to submit in a timely manner such information and in such form as the Regulatory Board may reasonably require, contrary to Rule 8 of the Rules of Conduct for Members 2007.

Particulars

That Mr Kemal Mustafa failed to advise RICS Head of Regulation that the company, Langleys CPM Limited of which Mr Kemal Mustafa was a director, was made subject of a compulsory winding up order on the petition of HMRC, within 7 days of 29th June 2015 in breach of Rules 1.2 and 5.1 c) and e) Rules for the Registration of Firms 1.4.2009, as amended.

Mr Kemal Mustafa is therefore liable to disciplinary action under RICS Bye-Law 5.2.2(c)

4. That he failed to cooperate fully with RICS staff and any person appointed by the Regulatory Board, Contrary to Rule 9 RICS Rules of Conduct for Members.

Particulars

Between 6th July 2016 and 5th December 2016, Mr Kemal Mustafa failed to respond fully and timeously to requests for information concerning the insolvency of his regulated company, Langleys CPM Limited, the formation of his successor company, LCS Surveyors LTD and required details and information regarding the registration of LCS Surveyors LTD, when requested by a RICS investigator in correspondence dated 6.7.16, 1.8.16, 3010.16 and 5.12.16.

Mr Kemal Mustafa is therefore liable to disciplinary action under RICS Bye-Law 5.2.2(c)

Background

1. Mr Mustafa has been a member of the RICS since 1994.
2. The vehicle via which Mr Mustafa originally practised as a sole trader was, "Langleys," a RICS regulated firm, licensed in 2007. Langleys subsequently became an incorporated body known as Langleys CPM Limited, ("Langleys"), which was regulated by the RICS in place of the original sole trader entity. Mr Mustafa was a Director of Langleys and the contact officer.

3. Mr Mustafa registered a further company, Langleys Surveyors Limited, trading as Langleys Chartered Surveyors, (“LCS”) with Companies House. This company was not registered with/regulated by the RICS and the RICS was not informed about its existence. Mr Mustafa was a director of LCS, and from June 2011, he was the sole regulated practitioner within the practice, which was providing surveying services to the public.
4. On 7 June 2016, a member of the public informed the RICS that a firm he had known as “Langleys” had gone into liquidation. Subsequently, the RICS commenced an investigation. Enquiries revealed that Langleys was the subject of a High Court winding up order, made on 29 June 2015, following a petition from the Commissioner of HMRC. Langleys owed £44,133 to HMRC. It is alleged that Mr Mustafa did not inform the RICS about the insolvency/winding up of Langleys.
5. It was discovered during the RICS investigation that LCS had received notification from Companies House in March 2016 that it would be dissolved and struck off the register of companies unless it could show cause for not doing so. Subsequently, LCS was dissolved and struck off the register of companies on 31 May 2016, but was restored on 28 June 2016.
6. RICS also made enquiries in relation to the website of LCS on 7 June 2016. It is alleged that the RICS logo was displayed on the website and that LCS represented that it was a RICS regulated firm, when this was not the case. This remained the position when the website was rechecked by the RICS on 26 January 2017.
7. During the RICS investigation, a number of requests for information were made to Mr Mustafa. It is alleged that he did not respond fully and timeously to these requests.

Evidence

8. The Panel had before it the RICS solicitor’s bundle of documents, running to 79 pages, and the bundle of testimonials produced by Mr Mustafa.

Charges

9. Mr Mustafa admitted all of the charges, as amended.
10. The Panel accepted these admissions and found all the charges proved.

Liability to disciplinary action

11. Mr Mustafa admitted that he is liable to disciplinary action. However, notwithstanding this admission, this is always a matter for the Panel in the exercise of its own judgment.
12. The Panel bore in mind that Mr Mustafa has admitted breaching a number of the RICS Rules of Conduct for Members. These breaches occurred over a prolonged period of time, during which Mr Mustafa failed to comply with his obligations in a number of respects. He did not keep the regulator informed of important matters which impacted on their ability to regulate his business and risked bringing the reputation of the RICS into disrepute. The winding up order and the striking off order give rise to concerns that Mr Mustafa was not managing the affairs of his businesses effectively and competently. Furthermore, his use of the RICS logo on his website, when his business was not registered with the RICS, could severely damage the reputation of the RICS and the surveying profession.
13. Overall, the Panel was in no doubt that Mr Mustafa's conduct fell seriously short of the standards expected of a chartered surveyor, and found that he is liable to disciplinary action.

Mitigation

14. Mr Goodwin told the Panel that Mr Mustafa apologises sincerely for his actions. He explained that in April 2012, Mr Mustafa's cousin, an accountant, sadly died. Shortly thereafter, Mr Mustafa's father became seriously ill. Mr Mustafa took on the responsibility for looking after his cousin's family and business, and his father. Mr Goodwin said that Mr Mustafa now recognises, with hindsight, that he placed too much effort on dealing with the competing interests, and did not fulfil his own regulatory obligations. Mr Goodwin said that Mr Mustafa was under immense pressure, particularly in 2012 and 2014, and that he has still not fully recovered from his cousin's death.
15. Mr Goodwin explained that Mr Mustafa suffered matrimonial problems in 2013, and also became ill himself. As a consequence of his efforts to manage his cousin's business, Mr Mustafa's own business suffered and clients were lost. Mr Mustafa's accountant advised that the company could not be saved, and HMRC took steps to wind it up. At that time, Mr Mustafa was suffering from significant stress and anxiety. Tragically, his father also passed away in September 2017. Mr Goodwin said that Mr Mustafa has now taken steps to reduce his workload and reconstruct his business. He is not seeking to take on any new clients, has no plans to expand the business and has decided to take more of a "step back". Two of Mr Mustafa's daughters and an architect are now working in the business, in addition to Mr Mustafa's secretary.
16. In relation to allegation 1, Mr Mustafa accepts that he was not up to date with the RICS regulations for registering the business, and accepts that he should not have displayed the RICS logo on his website. Mr Goodwin said that the company which was struck off was restored within a short time. In relation to allegation 4, Mr Goodwin submitted that

correspondence provided by Mr Mustafa to RICS demonstrates that he was doing his best to respond to the RICS but that doing so provided additional stress for him. Mr Goodwin emphasised that none of the regulatory breaches were deliberate, and that Mr Mustafa's personal circumstances at that time had contributed to the breaches.

17. Mr Goodwin said that Mr Mustafa is a respected, hardworking practitioner who is not a risk to the public. He referred the Panel to the testimonials submitted on Mr Mustafa's behalf and invited the Panel to impose the lowest appropriate sanction, submitting that Expulsion would not be appropriate.

Decision as to sanction

18. The Legal Assessor reminded the Panel, amongst other matters, that any sanction imposed must be proportionate. If the Panel is minded to impose a sanction, it must consider the sanctions in order of severity, starting with the least severe. It must satisfy itself that any sanction it imposes is the minimum necessary to meet the public interest.
19. The Panel had regard to the RICS indicative sanctions guidance, (the Guidance). It considered carefully the mitigating and aggravating factors of this case. The Panel considered carefully the testimonials provided by Mr Mustafa.
20. The Panel found that there were a number of mitigating factors. Mr Mustafa admitted all the charges at an early stage, and had no previous regulatory findings against him. He has apologised for his actions and the Panel accepted that he has some insight into the seriousness of his actions. He has made no financial gain, nor is there evidence of any actual loss to clients. The Panel also accepted that Mr Mustafa was under significant pressure from a series of extenuating personal circumstances all of which occurred within a relatively short period of time. It also noted that there was a significant delay between the referral of this matter to a disciplinary panel and the actual hearing date.
21. Mr Mustafa has also taken steps to rectify his misconduct, such as reducing his workload, and bringing additional staff into his business. The Panel also had regard to the testimonials, which showed that some clients held Mr Mustafa in high esteem as a surveyor. The testimonials, however, were "double-edged" in that they also served to emphasise that Mr Mustafa's kindness towards his clients, on occasions, led him to put the interests of his clients ahead of his own interests, those of his business, and those of the profession.
22. The Panel found that the following aggravating factors were present: the breaches occurred over a sustained period of time and Mr Mustafa's acts/omissions placed the public at risk of harm and brought the profession into disrepute. Mr Mustafa has taken steps to rectify his misconduct, although in the Panel's view, there was a considerable delay between the misconduct and any such steps being taken.

23. The Panel, nevertheless, had concerns about the steps taken by Mr Mustafa to ensure that matters were put right and that there was no risk of repetition. The Panel was assured that Mr Mustafa has reflected on these events and is not now seeking to grow his business. However, it notes, that Mr Mustafa expressed a commitment to certain steps, such as undertaking relevant CPD, but he provided no further details or evidence of his plans . Further, Mr Mustafa acknowledged that there are still ongoing issues with payments from clients despite his attempts to be more rigorous. It was also clear that Mr Mustafa was placing heavy reliance on his secretary to ensure his compliance with regulation. Whilst some delegation could be perceived as a positive step, Mr Mustafa needs to recognise his own responsibilities for regulatory compliance. It appeared to the Panel that Mr Mustafa's understanding of his regulatory requirements and obligations as a director was growing, but that he does not yet have a full understanding. Given the Panel's concerns, it concluded that there remains a risk of repetition.
24. The Panel first considered whether to impose a sanction. It decided that the admitted facts and breaches of regulations were too serious for no sanction to be imposed.
25. The Panel next considered, in order of seriousness, a Caution and a Reprimand but decided that the breaches were too serious for either of these sanctions. It found that neither would be sufficient to meet the public interest.
26. The Panel next considered whether the imposition of conditions on Mr Mustafa's registration would be an appropriate and proportionate disposal. The Panel decided that workable conditions could be formulated which would address the risks to the public and minimise the risk of repetition. The Panel decided to impose the following conditions on Mr Mustafa's registration:
- i. He must attend/and or undertake, at his own expense, and pass/satisfactorily complete, the RICS Business Management Masterclass Course within 12 months of today's date, (or an equivalent course which must be approved by the RICS).
 - ii. He must provide evidence to the RICS that he has passed/satisfactorily completed the course in condition (i) above, within 14 days of being notified that he has passed/satisfactorily completed the course.
27. The Panel decided that these conditions should protect the public, however, given the serious nature of the wrongdoing, its view was that these conditions alone would not be sufficient to maintain public confidence in the profession. The Panel therefore decided to impose a fine in addition to the conditions. It bore in mind that it had heard no specific submissions from Mr Goodwin about Mr Mustafa's means, and decided that a fine of £1000 was an appropriate and proportionate amount. This fine, together with the conditions imposed, should send a signal to the public and the profession that such conduct will not be tolerated.

28. The Panel concluded, having weighed the aggravating and mitigating factors, and having balanced the interests of the public with Mr Mustafa's interests, that the conditions and fine set out above were an appropriate and proportionate combination of sanctions.

29. Mr Mustafa must bear in mind that a failure to comply with the conditions set out above shall result in disciplinary action.

Publication

30. The Panel considered the guidance as to publication of its decisions, which is that it is usual for the decisions of the Panel to be posted on the RICS website and published in Modus. Mr Goodwin did not oppose this, and 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.

31. The Panel orders that this decision be published on the RICS website and in Modus.

Costs

32. The RICS presenting solicitor did not make an application for costs.

Appeal Period

33. Mr Mustafa has 28 days from service of the notification of this decision to appeal this decision in accordance with Rules 58 and 60 of the Disciplinary, Registration and Appeal Panel Rules.

34. In accordance with Rule 60 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009 the Honorary Secretary has 28 days from the service of the notification of this decision to require a review of this decision.