

Disciplinary Panel Hearing

Case of

Mr Dion S Beard MRICS
Surrey, GU5

On

Thursday 08 September 2016

At

RICS, Parliament Square, London

Chairman

Catherine Audcent

Members

Ian Hastie (Surveyor Member)
Carolyn Tetlow (Lay Member)

Legal Assessor

Ben Kemp

RICS Representative

Annabel Joester

The formal charges are:

1. Between 1 February and 31 March 2015, whilst acting as the Vendor's Estate Agent for a property in Draycott Place you were dishonest in that, after being informed by the potential purchaser introduced to you as 'Boris' that he was intending to use criminal funds to purchase the property, you continued to actively market the property to him by continued correspondence, a further meeting and offering to introduce him to solicitors who would deal with the conveyancing.

You are therefore liable to disciplinary action under Bye-laws 5.2.1(b) and 5.2.2 because you have breached **Rule 3 of the Rules of conduct for Members**.

Or, in the alternative

2. Whilst acting as the Vendor's Estate Agent for a property in Draycott Place you met with a potential purchaser for the property, introduced to you as 'Boris', who told you that he intended to use criminal property to purchase the property. Despite being in possession of this information you breached your professional obligation to make a report to your firm's nominated officer for Money Laundering and/or to make a report to the police when you should have known that a potential purchaser had disclosed to you that he was engaged in money laundering.

You are therefore liable to disciplinary action under Bye-laws 5.2.1(b) and 5.2.2 because you have breached **Rule 4 of the Rules of conduct for Members**.

And

3. You have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) in that you have not recorded your CPD activity for 2015 online

You are therefore liable to disciplinary action under Bye-laws 5.2.1(b) and 5.2.2 because you have breached **Rule 6 of the Rules of conduct for Members**.'

Introduction

1. Mr Beard appears before the RICS Conduct Panel in connection with the above Charges.

Response

2. Mr Beard denied Charges 1 and 2 but admitted Charge 3.

Summary

3. Mr Beard, who was present for the hearing, has been a professional member of the RICS since 1991. He practices as an estate agent in Chelsea, London. He is employed in the Chelsea offices of Bective Leslie Marsh as an Associate Director.

4. In early 2015 a television company conducted an investigation into the practices of estate agencies in London, including Bective Leslie Marsh. As part of the investigation, investigative journalists posed as potential purchasers of properties and their interactions with estate agents were recorded and subsequently broadcast in a television documentary entitled, "From Russia With Cash". Mr Beard was one of the estate agents who featured in the programme. Charges 1 and 2 arise from the conduct of Mr Beard during a fictitious scenario created by the programme makers. Mr Beard was not told at the time either that the scenario was fictitious or that the scenario was being filmed for the purposes of a television documentary.
5. Charge 3, in relation to CPD, arises from the investigation subsequently conducted by the RICS.

Burden and standard of proof

6. The RICS is required to prove the allegations to the civil standard; that it is more likely than not that any event material to those allegations occurred. That is a single unwavering standard of proof, though the more unlikely an allegation the more cogent the evidence that the Panel might require to prove it. There is no requirement for Mr Beard to prove anything. The Panel has in mind throughout its deliberations that the right to practise a profession is involved in these proceedings and proceeds upon the basis that the Human Rights Act 1998 will apply. It bears in mind in particular Mr Beard's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by that Act. The question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action is a matter for the Panel's judgment.

Preliminary matters

7. There was a preliminary application from the RICS solicitor to amend Charge 3. This had the effect of reducing the extent of the alleged breach and was not opposed by Mr Beard. The Panel, having considered, granted the application. Charge 3 is set out in its amended form above.

Evidence

8. The Panel has considered carefully the RICS solicitor's bundle of documents, running to 220 pages. The Panel had before it in particular a written transcript of the relevant television documentary and a written statement from Amy Duff, a Regulation Officer in the RICS Regulation Department, produced by the RICS in support of Charge 3. The Panel had the benefit of viewing in open forum a video recording of the relevant section of the television documentary, relied upon by the RICS. The Panel heard oral evidence from Mr Beard, who was subject to cross examination by the RICS solicitor.

Submissions by RICS presenting solicitor

9. The RICS solicitor submitted, in relation to Charge 1, that Mr Beard had been 'dishonest' in continuing to market the property in question to the character introduced to him as 'Boris' when he was in possession of information from 'Boris' that he was intending to use stolen funds to purchase the property. In the footage of the documentary Mr Beard is clearly told that 'Boris' is a Russian Government minister and is in possession of 'stolen funds' which he intends to use for the purpose of the purchase. Mr Beard nonetheless continues to proffer information about the property and attends a further meeting with 'Boris', during which he agrees to introduce 'Boris' to a solicitor to deal with the transaction. The sale did not proceed further because 'Boris' withdrew without making an offer. The RICS solicitor acknowledges that the scenario was ultimately fictitious- fabricated by the producers of the television documentary- but, given that this was unknown to Mr Beard, his conduct demonstrated dishonesty, in breach of Rule 3 of the RICS Rules of Conduct for Members (the Rules).
10. In the alternative, if the Panel is not persuaded to uphold Charge 1, the RICS solicitor submitted in support of Charge 2 that Mr Beard breached Rule 4 of the Rules because he should have recognised that 'Boris' had disclosed to him evidence that he was engaged in money laundering activity and should as a result have made a 'Suspicious Activity Report' to his firm's Money Laundering Reporting Officer and/or the police, which he failed to do. The RICS solicitor relied in this respect on the relevant RICS Money Laundering guidance, referring also to the provisions of the Proceeds of Crime Act 2002 from which that Guidance is derived. Mr Beard had as a result, in her submission, breached Rule 4 of the Rules.

11. The RICS submitted finally, and in addition (Charge 3) that Mr Beard had breached the RICS CPD requirements, in that he had failed to record any CPD for the CPD year, 2015. RICS imposes mandatory obligations on its members, including Mr Beard, in relation to both the undertaking and recording of CPD, such recording to be done using an online facility designed for the purpose on the RICS website. Mr Beard had as a result breached Rule 6 of the Rules.
12. The RICS solicitor submitted that, individually and collectively, these breaches give rise to a liability to disciplinary action.

Submissions on behalf of Mr Beard

13. Mr Beard accepted that, with hindsight, it should have been apparent to him that the situation described to him by 'Boris' clearly suggested money laundering. He accepted that, at the time, he was unaware that the scenario with which he was presented was fictitious. His position was that, at the time, it did not occur to him that what was being suggested was illegal. He pointed to the fact that the situation was unusual and stressful, with a number of things happening and being said during the property visit at the same time. There were 4 people in attendance in addition to 'Boris': his purported 'agent', a 'bodyguard' and Boris's 'girlfriend'. There was an element of secrecy, insofar as 'Boris' was insisting upon secrecy and discretion. Mr Beard was not made aware of 'Boris's' full name or contact details. This of itself was not unusual in high value residential conveyancing of this sort. Mr Beard accepted that, with hindsight, he should have realised, and been suspicious of, what was being proposed and should have raised a concern on his return to his office. He accepted that he had at the time inadequate awareness and understanding of the relevant statutory obligations in relation to money laundering, including in particular the Proceeds of Crime Act 2002, in their application to estate agents, and the related guidance produced by the RICS. Mr Beard denied however that he had been dishonest, or that he was of dishonest character. Mr Beard stated that his firm had improved its procedures in relation to money laundering checks and procedures in light of the documentary as, he suggested, had other estate agents in the same sector.

Findings of fact

14. The Panel found the following facts, insofar as material to the charges, to be proved, upon the basis of the evidence and (in relation to Charge 3) on the admission of Mr Beard.

15. It found as follows, in relation Charge 1.

16. Between 1 February and 31 March 2015, whilst acting as the vendor's estate agent for a property at Draycott Place, London, Mr Beard;-

- i. met with a prospective purchaser introduced to him as 'Boris';
- ii. was informed by Boris that he was intending to use funds obtained illegally from the Russian Government in order to purchase the property;
- iii. continued thereafter to market the property to Boris, including through a second meeting, continued correspondence and the offer of an introduction to solicitors for the bringing about of a sale.

17. The Panel found, in relation to Charge 2, that Mr Beard did not make a money laundering report to his firm's nominated officer for money laundering and/or to the police.

18. In relation to Charge 3, the Panel found that Mr Beard had not recorded on the RICS website any Continuing Professional Development (CPD) activity for 2015, as required by the RICS.

Discussion and conclusion

19. The Panel was not persuaded by Mr Beard's evidence and submission that he did not understand at the viewing that the funds which 'Boris' proposed to use for the transaction emanated from a criminal or illegal source. This was explicit in the evidence from the written transcript and video recording of the dialogue which took place. Mr Beard appeared shocked when told by 'Boris' as follows:

".....Basically I'm a government minister. I work for healthcare. I run the procurement of all drugs for Russia. You know how it is. From every contact, a little bit I put in my pocket.....Stolen funds. Money. Who says? It's by way of compensating. Needless to say the money for this- that's a huge amount- comes from a government budget. And there is no way that I can be linked to this transaction. I can't put it in her name either. She's not my

wife. I have a wife and kids. So it has to be corporate. It has to be done in a way that nobody will ever find out who is behind it. I will put my money out of Russia into Cyprus.”

20. Mr Beard responded: *“Don’t talk to me about how it comes here. I don’t need to know.”*
21. Mr Beard in his evidence stated that he had himself referred to the Money Laundering Regulations in the course of the dialogue, albeit that this part of the discussion had been edited out of the broadcast documentary. The viewing had lasted about 30 minutes but the relevant section of the broadcast had been edited down to about 4 minutes.
22. The Panel finds that Mr Beard had some awareness of the existence of the legal framework in relation to money laundering, and that he was aware at the time that what was being proposed to him was the use of illegally sourced funds.
23. The Panel has considered very carefully whether Mr Beard’s conduct amounted to dishonesty, as alleged in Charge 1. He ought not to have continued to try to sell the property in question once he had been made aware by ‘Boris’ that he intended to use criminal funds for the purposes of the purchase. In attending a further meeting and engaging in further correspondence with a view to the sale of the property, Mr Beard in effect closed his mind to the underlying concern about the legality of the funds to which ‘Boris’ had explicitly alluded at the first meeting.
24. The Panel considered and accepted the advice of the legal assessor in relation to the test for dishonesty, having regard in particular to the two stage test set out in [Twinsectra Ltd -v - Yardley & Others](#) [2002] UKHL 12, as subsequently judicially interpreted and commented upon. The two stage test is that he acted dishonestly by the ordinary standards of reasonable and honest people; and that he himself was aware that by those standards he was acting dishonestly.
25. Applying this test, the Panel was ultimately not satisfied that Mr Beard had demonstrated dishonesty in continuing the dialogue with ‘Boris’ and his representative to the extent that he did. The Panel reaches this conclusion with some hesitation. It is concerned by the conduct of Mr Beard in not immediately raising a concern about the legality of the transaction. On the other hand, it does not consider that Mr Beard’s failure to react proactively to what he was

told in the course of a relatively rapid conversation, or his agreement to pursue the dialogue to the extent of a further meeting and some limited further correspondence in relation to the appointment of a solicitor, of themselves satisfy either limb of the Twinsectra test. The Panel was mindful that the dialogue was still at a very early stage in terms of a property transaction, and that no offer to purchase had yet been made. It accepts that 'Boris' was not Mr Beard's client and that consequently there was no requirement up to that point for Mr Beard or his firm to undertake money laundering checks in relation to 'Boris'. The Panel was mindful also that, while it had had the benefit of viewing the documentary, this had been subject to substantial editing and that it had not had the benefit of the full context in which the dialogue occurred. The Panel is conscious of the unusual circumstances of this case, which related to an entirely fictitious and contrived scenario. While it is clear that Mr Beard was acting upon the basis that he believed the scenario presented to him was real, the evidence considered overall was not quite sufficient to support a specific finding of dishonesty. The Panel might have been inclined to find that Mr Beard's failure to act amounted to a lack of integrity, rather than dishonesty, had this been open to them. The RICS solicitor accepted that it was not, on Charge 1, as presented. The Panel accordingly, with a degree of hesitation, dismisses Charge 1.

26. In relation to Charge 2, the Panel was satisfied that Mr Beard should have known that a potential purchaser had disclosed that he was engaged in money laundering. That being the case, he had a professional obligation to make a report to his firm's nominated officer for Money Laundering and/or to the police. Although he denied this charge, Mr Beard accepted in his evidence that, with the benefit of hindsight, he ought to have done so.

27. The RICS has produced guidance on money laundering for its members (the Guidance), of which Mr Beard ought to have been aware. The Guidance is derived from the obligations on estate agents and others under the Proceeds of Crime Act 2002. It has been formally approved by HM Treasury. It states explicitly that it may be taken into account for the purposes of a range of proceedings, including disciplinary proceedings. The Guidance makes clear the obligation of property professionals, including estate agents, to be wary of all types of crime that may be connected to the sale and purchase of property. It makes clear that the obligation to report concerns in relation to money laundering is not limited to a concern about the immediate client, nor is it acceptable for an estate agent to rely upon the diligence which might be undertaken by an appointed solicitor. Mr Beard ought in

accordance with the Guidance immediately to have reported the evident concern about the legality of the funds to be used for the proposed purchase, to his Money Laundering Reporting Officer (MLRO). Mr Beard has confirmed that his firm had an appointed MLRO. The Guidance deals specifically with the position of estate agents, such as Mr Beard, who have particular obligations under the legislation.

28. Mr Beard ought to have been aware that the source of the purchase funds in this case was a matter of concern, and, as an estate agent, ought to have reported that concern promptly to his MLRO. He failed to do so and was as such in breach of Rule 4 of the Rules.
29. The Panel additionally finds Charge 3 proved, as admitted, and that Mr Beard has a result breached Rule 6.
30. On the basis of the facts and breaches found the Panel had to decide whether or not Mr Beard is liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the legal assessor. This question is one for the Panel's judgment. The Panel had no difficulty in finding Mr Beard liable to disciplinary action, upon the basis of Charges 2 and 3 (but not 1, for reasons given above), considered individually and collectively.

Decision as to sanction

31. The Panel bore in mind that the purpose of sanctions is not to be punitive, though that may be their effect. The purpose of sanctions is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of the RICS as its regulator and to protect the public.
32. Sanctions must be proportionate to the matters found proved.
33. The Panel accepted, in mitigation, that the circumstances giving rise to charge 2 were unusual and possibly stressful to Mr Beard. It further accepted that Mr Beard had, at the hearing, demonstrated a degree of insight, insofar as he had recognised that he had been insufficiently informed as to his professional obligations and that he should, with hindsight, have been alert to the importance of raising the concern regarding the source of the purchase funds.

34. The Panel received, appropriately at this stage in the proceedings, information as to Mr Beard's previous record. It was concerned to note that Mr Beard had received penalties for non compliance with the RICS CPD requirements in the two previous years, 2013 and 2014. The penalty for 2014 had included a fine of £250, which had remained unpaid. This was a significant aggravating consideration, not least in the circumstances of this case, where significant concerns had arisen as to Mr Beard's knowledge and understanding in relation to the money laundering requirements. Had he been more attentive to the importance of the professional requirement to undertake continuing professional development he might have been more aware of his obligations in relation to money laundering and the proceeds of crime.
35. The Panel paid careful heed to the advice of the legal assessor (delivered in open forum), and to the indicative sanctions guidance of the RICS, including the guidance in relation to breaches of CPD recording requirements for three years. The Panel considered carefully the submissions presented by Mr Beard.
36. The Panel first has to decide whether to impose a sanction, and if it so decides the Panel commences at the lowest sanction, and only if it decides that sanction is not appropriate does it move to the next level of sanction. Having arrived at a sanction that it is minded to impose, the Panel then reviews the next sanction above so as to satisfy itself that this would be too severe a sanction. The Panel bears in mind that more than one sanction may be imposed.
37. The Panel was very concerned at Mr Beard's apparent disregard for his professional obligations in general and for the importance of the money laundering requirements in particular, as well for the public interest importance of ensuring diligent attention to continuing professional development. There was a clear risk in relation to Charge 2 that his conduct had brought the profession of surveyor into disrepute.
38. The Panel considered that the seriousness of the issues in this case necessitated the imposition of a sanction.

39. The Panel further considered that the imposition of a caution or reprimand would be insufficient given the gravity of the issues in this case.
40. The Panel considered a fine, or the imposition of conditions, but again concluded that neither would address the seriousness of this case, considered in its totality and taking account of the serious aggravating concern arising from Mr Beard's pattern of previous breaches.
41. Given the seriousness from a public interest perspective of the Panel's findings in relation to Charge 2, compounded by the repeated failure over three consecutive years to comply with the RICS CPD requirements, demonstrating a pattern of disregard for professional requirements, the Panel concluded that it has no alternative but to expel Mr Beard from membership of the RICS. It so orders.

Publication and Costs

42. The Panel considered the guidance as to publication of its decisions. It accepted the legal assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be posted on the RICS website, published in Modus, and in a newspaper local to the member. 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.
43. The Panel orders that this decision be published on the RICS website, in Modus and in a newspaper local to Mr Beard.
44. The RICS presenting solicitor asked for costs, and had provided a schedule to Mr Beard in advance of the hearing.
45. The Panel considered carefully the costs sought. The figure for the hearing is the average cost of a hearing day, and the Panel has no reason to doubt it.
46. The Panel paid careful attention to the means of Mr Beard but concluded that it was fair to make a costs order in this case. Otherwise the cost of the proceedings falls on the profession as a whole. It did not consider it necessary to make any reduction in view of the

fact that one of the three charges had not been upheld. Charges 1 and 2 had been pleaded in the alternative, had both been denied and it was unlikely that Charge 1 in itself had had a material impact on the level of the RICS costs, which appeared reasonable, considered overall.

47. The Panel orders that Mr Beard pays to RICS its costs in full, in the total sum of £5,804.

Right of Appeal

48. Mr Beard has a right of appeal of this decision, such appeal to be lodged within 28 days of service of notification of this decision, in accordance with Rules 59- 70 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009.