

Disciplinary Panel Hearing

Case of

Mr Lawrence Conway MRICS
Enfield, EN2

On

Tuesday 08 November 2016

At

RICS, Parliament Square, London

Chairman

John Anderson (Lay Chair)

Members

Andrew Winscom (Surveyor Member)
Gillian Seager (Lay Member)

Legal Assessor

Christopher Hamlet

RICS Representative

Annabel Joester

Relevant Person's Representative

Marc Beaumont

The formal charge is:

1. On 2 September 2015 Mr Conway was convicted at Wood Green Crown Court of:
 - a. Being knowingly concerned in fraudulent evasion of income tax by self/another
 - b. Being knowingly concerned in fraudulent evasion of income tax by self/another

- c. Being knowingly concerned in fraudulent evasion of VAT
- d. Entering into/concerned in the acquisition/retention/use or control of criminal property.

He is therefore liable to disciplinary action under Bye-law 5.2.2(d).

Introduction

1. Mr Conway, represented by Mr Beaumont of counsel, appeared before the RICS Disciplinary Panel in connection with the charge set out above.

Response

2. Mr Conway admitted the charge and conceded that he is liable to disciplinary action.

Summary

3. The case presented concerned a criminal conviction on three counts of fraudulent evasion of tax and one count of being knowingly concerned in the acquisition, retention, use or control of criminal property. The offences occurred, in total, over a period of some 12 years. The combined value of the frauds was £212,922.17. The offences came to light following an investigation by HMRC. On 30 September 2015, Mr Conway was sentenced to 18 months' custody and is currently on licence.

Burden and standard of proof

4. 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 Conway to prove anything. The Panel has in mind throughout its deliberations that the right to practice 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 Conway'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

5. Mr Conway provided further material for inclusion in his bundle. Ms Joester invited the Panel to remove from the RICS supplemental bundle all references to previous decisions of the Disciplinary Panel, except for that of RICS v Sweett Group Plc.
6. Mr Beaumont made an application to the Panel to hear submissions relating to Mr Conway's health in private. RICS did not oppose this. The Panel accepted the advice of the Legal assessor. The Panel acceded to the request.

Evidence

7. The Panel carefully considered material from both parties, including the RICS solicitor's bundle of documents and supplement concerning the prior decision in RICS v Sweett Group Plc, as well as material provided on behalf of Mr Conway.

Findings of fact/liability to disciplinary action

8. The factual allegations were admitted by Mr Conway. He further conceded that he was liable to disciplinary action.
9. Taking into account those submissions and the fact of the conviction, the Panel found the charge proved and determined Mr Conway was liable to disciplinary action.

Submissions on sanction by RICS presenting solicitor

10. RICS referred to the sentencing remarks of the Judge following conviction which included the observation that "...The fraud that you undertook was extensive and long-running...that together with the quantities involved means that this is a serious matter...."

11. It was highlighted that Mr Conway had not declared his income to HMRC for work as a chartered surveyor which he had conducted on behalf of another firm of surveyors and also that VAT was charged for Mr Conway's surveying services at a time when he was not registered for VAT.
12. RICS suggested that both fraud and dishonesty were elements in this course of conduct.
13. RICS submitted that whilst £135,325 of the total sum of the fraud related to non-surveying activity, the remainder was in relation to surveying matters.
14. With regard to the Sanctions Policy, RICS submitted that the policy is contained within the Guidance to RICS Disciplinary, Registration and Appeal Panel Rules and Supplements and referred the Panel to those existing documents. It was submitted that there had been no change of policy arising from or related to the Sweett case.

Submissions on sanction on behalf of Mr Conway

15. Mr Beaumont provided the Panel with a written form of submissions and supplemented these with oral submissions. It was submitted that Mr Conway had already been punished severely by the term of imprisonment. He asserted that the Sweett case represented a "sea change" in RICS sentencing and was a "demonstrable change of policy, practice or approach", of which Mr Conway should be given the benefit.
16. Reference was made by Mr Beaumont in private session to Mr Conway's health and the potential impact of a penalty upon that.
17. It was submitted that it was appropriate and proportionate for this Panel to impose a fine, together with undertakings or conditions that confirmed compliance with all income tax and VAT obligations.
18. It was submitted that this outcome would be "consistent with the need to promote the tribunal's general reputation...for consistency and rationality in its decision-making."

Discussion and conclusion

19. Having heard the submissions from both parties together with advice from the Legal Assessor, the Panel determined that it was not bound by the decisions of prior Disciplinary Panels, including that of RICS v Sweett Group Plc. As noted in the Policy, the circumstances of every case are different and each case must be considered on its own individual facts. The Panel was satisfied that a fair and consistent approach to the case and that of sanction was maintained by the adherence to the prevailing Rules and Guidance applicable to these proceedings.

Decision as to sanction

Summary of decision (delivered to parties in advance of full written reasons):

20. Mr Conway having admitted the facts and conceded his liability to disciplinary action, the panel have made their decision as to the appropriate penalty in this case. This is a summary of that decision and full reasons shall be provided to the parties in the written determination to follow.

21. The panel has given careful consideration to the submissions made by both parties, including those made by Mr Beaumont on Mr Conway's behalf. This case concerns a conviction for serious acts of fraud by Mr Conway, committed in total over a 12 year period and involving a significant sum of money.

22. The panel has considered the sanctions available to them in accordance with the Rules in ascending order of restrictiveness and concluded that the only appropriate and proportionate penalty in this case in order to protect the public and uphold the good reputation of the profession is that of expulsion.

23. This order will take effect immediately. The relevant person is entitled to appeal against this decision within 28 days of notification of this decision, in accordance with Rules 59- 70.

24. 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 RICS as its regulator and to protect the public interest. Sanctions must be proportionate to the matters found proved.

25. The Panel paid careful heed to the advice of the Legal Assessor (delivered in open forum), and to the Sanctions Guidance of RICS. It considered carefully the mitigating and aggravating factors of this case. The Panel considered carefully the testimonials provided by Mr Conway.

26. The Panel had decided that Mr Conway was liable to disciplinary action. Having done so it 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 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. If conditions are to be imposed they must be proportionate, workable and address the issues raised in these proceedings.

27. The Panel considered that the following mitigating factors were present:

- Mr Conway has repaid the total sum concerned and penalties in full
- Mr Conway pleaded guilty to the criminal offences
- Mr Conway has cooperated with the RICS' investigation
- There is evidence of some insight in the correspondence provided to RICS
- Mr Conway's health

28. The Panel considered that the following aggravating factors were present:

- The case involves serious acts of criminal dishonesty
- The acts were committed and repeated over a number of tax years
- It involved a considerable loss to the public purse
- It was for personal gain
- The conduct was brought to an end only by the intervention of HMRC

29. The Panel considered the matters too serious for no sanction to be imposed. In view of the circumstances and the aggravating features, the Panel considered it wholly inadequate to impose a caution or reprimand in this case. The Panel further considered whether undertakings or conditions would be sufficient in meeting the public interest in upholding and declaring proper standards of conduct and behaviour. These included those proposed by Mr Conway. In addition, the Panel had regard to the Sanctions Policy, paragraph 21, which provides that conditions must be "...specific, measurable, achievable, realistic and time bound."
30. The Panel was concerned that there were no conditions that could be devised to address Mr Conway's dishonesty nor that conditions in principle would meet the gravity of his wrongdoing.
31. Accordingly the Panel ordered that the appropriate and proportionate sanction in this case was expulsion. In light of this decision, the Panel considered the imposition of a fine would serve no useful public interest in upholding standards of conduct and behavior and maintaining the reputation of the profession.

Publication and Costs

32. The Panel heard further submissions from the parties on publication and costs. RICS submitted an application for the costs of bringing these proceedings. Mr Beaumont submitted that Mr Conway should not be liable to meet any of RICS' costs incurred after 28 July 2016, following Mr Conway's offer to resign his membership as part of RICS concluding the proceedings. It was suggested that the decision not to accept that as a means of disposal should forfeit RICS' right to secure their costs from Mr Conway. Reference was made to Bye-Law B5.2.3.
33. The Panel took account of the legal advice in relation to Rule 9 and concluded that once this matter had been referred to a Disciplinary Panel for consideration, a decision by the Panel regarding liability to disciplinary action was the only means of concluding proceedings in the terms envisaged by B5.2.3. The Panel went on to conclude that Mr Conway's offer to resign in those circumstances had no bearing on their decision on whether to award costs.

34. Having considered all the circumstances, including material concerning Mr Conway's means, the Panel duly awarded RICS costs in full. The Panel orders that Mr Conway pay to RICS costs of £4,632.50.

35. The Panel went on to consider 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 practice. The parties did not oppose this. 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.

36. The Panel orders that this decision be published on the RICS website, in Modus and in a newspaper local to Mr Conway.

Appeal Period

37. Mr Conway may appeal against this decision within 28 days of notification of this decision, in accordance with Rules 59- 70.

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