

Disciplinary Panel Hearing

Case of

**Mr Mikhail Zeldin [0000103248]
St Petersburg
Russia**

On

Wednesday 4 April 2018

Paper Hearing

By telephone

Panel

Mr John Anderson (Lay Chair)
Ms Gillian Seager (Lay Member)
Mr Ian Hastie (Surveyor Member)

Legal Assessor

Ms Margaret Obi

The formal charge is:

On 21 October 2014 you were convicted of committing a crime as provided for by Part 3, Article 30 and Part 4 of Article 159 of the Criminal Code of the Russian Federation and were sentenced to a period of imprisonment.

You are therefore liable to disciplinary action under RICS Bye-Law 5.2.2(d)

Response

1. Mr Zeldin did not respond to the Listing Questionnaire and therefore the Panel proceeded on the basis that the above charge was not admitted.

Service and Proceeding in Absence

2. A Notice of Hearing, dated 6 March 2018, was sent to Mr Zeldin. The Notice was sent by email and by courier to his postal address. A copy of the Notice of Hearing and the email confirmation was produced as proof that the Notice was sent.
3. Rule 23 of the Disciplinary, Registration and Appeal Panel Rules (Version 7) (the Rules) confirms that good service requires RICS to:
 - confirm the charge;
 - confirm the date, time and venue of the hearing;
 - enclose the Disciplinary, Registration and Appeal Panel Rules 2009 (as amended);
 - invite the Relevant Person to indicate whether he wishes to request an oral hearing.
4. Rule 43a of the Rules, which relates to paper hearings, states:
 - The Head of Panel Management will give the Relevant Person notice of the hearing which shall not be less than 28 days from the date of the letter.
 - The Relevant Person and RICS will submit documents on which they intend to rely and written representations to the Disciplinary Panel no later than 14 days before the date of the hearing.
5. The Panel was satisfied that RICS had complied with Rule 23 and Rule 42a. Therefore, the Panel concluded that good service had been effected.
6. Having determined that service of the Notice of Hearing had been properly effected, the Panel went on to consider whether to proceed with the paper hearing or adjourn in order to conduct an oral hearing.
7. The Panel determined that it was fair, reasonable and in the public interest to proceed with a paper hearing, in Mr Zeldin's absence, for the following reasons:
 - a) Although Mr Zeldin has not engaged with the regulatory process since 2017 and did not return the Listing Questionnaire. In these circumstances, the Panel was satisfied that it was reasonable to conclude that Mr Zeldin had chosen not to request an oral hearing and had deliberately and voluntarily waived his right to make such a request.
 - b) There has been no application to adjourn and no indication from Mr Zeldin that he would be willing to attend an oral hearing on an alternative date or submit written representations and therefore re-listing this hearing would serve no useful purpose.

- c) There is a strong public interest in ensuring that substantive hearings take place as expeditiously as possible.

Background

8. Mr Zeldin has been a member of RICS since May 2009. At the time of the events leading to Mr Zeldin's conviction, he was working as Deputy General Director for Appraisal at OOO Avers Assessment Centre in St Petersburg.
9. On 21 October 2014, Mr Zeldin pleaded guilty to, and was convicted of criminal activity amounting to attempted fraud. The courts decision was appealed and on 3 March 2015, the court initially set aside the previous decision and referred the matter to a new court for a re-hearing. However, on 3 July 2015, the decision to overturn the original conviction was itself set aside by the court and the matter was referred back to the Court of Appeal to consider Mr Zeldin's original appeal.
10. On 20 August 2015, an Appeal Court considered Mr Zeldin's appeal and upheld the conviction. The appellate court commented that, *'having checked the criminal case materials, having discussed the facts set out in the appeal petitions, the Judicial Board finds no grounds for cancelling the court decision.'* However, the Appeal Court reduced the sentence by suspending the period of imprisonment for a period of two years and reduced the fine from one million rubles to 300,000 rubles.
11. The underlying conduct which resulted in the criminal conviction was as follows:
 - Mr Zeldin during the period from May to June 2013 conspired with other top managers of OOO Avers Assessment Centre in St Petersburg to commit fraud.
 - The proposed fraud related to the valuation of assets of MISKINAP Cinema Equipment Factory, a state owned asset, being valued for the purposes of privatisation.
 - The conspirators made contact with representatives of a third party company seeking to acquire the company. It was alleged that they misrepresented their ability to influence the valuer of the assets, which in turn would result in the third party being able to acquire the asset at a reduced price.
 - In return they sought the sum of 23,250,000 rubles (approximately £483,000 as at April 2013).
 - The conspirators were ultimately unable or unwilling to influence the valuer and the valuation report submitted was accurate.

Findings of Fact

Panel's Approach

12. The Panel was aware that the burden of proving the facts was on RICS. Mr Zeldin did not have to prove anything, and the Allegation could only be found proved, if the Panel was satisfied, on the balance of probabilities.
13. In reaching its decision the Panel took into account the documentary evidence including the sealed judgments, the written representations from RICS and Mr Zeldin's email communications with RICS. The Panel was aware that in accordance with Rule 41(b) of the Disciplinary, Registration and Appeal Panel Rules (version 7), it could not go behind the conviction and was required to accept a certified copy of the conviction (or equivalent) as conclusive proof of the conviction itself and Mr Zeldin's commission of that offence.

Decision

Allegation – Found Proved

'On 21 October 2014 you were convicted of committing a crime as provided for by Part 3, Article 30 and Part 4 of Article 159 of the Criminal Code of the Russian Federation and were sentenced to a period of imprisonment.'

14. The Panel was provided with sealed judgments which referred to Mr Zeldin by name. The Panel accepted the sealed judgments were equivalent to a Certificate of Conviction and was satisfied that they provided conclusive evidence that Mr Zeldin was convicted of a criminal offence on 21 October 2014 and was made subject to a 2 year suspended sentence. The Panel noted that Mr Zeldin had pleaded to the offence.
15. Accordingly, the Panel found the factual allegations proved, based on the documentary evidence produced.

Liability to Disciplinary Action

16. The Panel noted that Mr Zeldin stated in his email communication with RICS that according to Russian criminal law, if the accused enters a guilty plea, the court does not examine the substance of the underlying charges. He also suggested that he entered a guilty plea to avoid a far more draconian and unfair sentence. Mr Zeldin referred to a number of 'absurdities and mistakes' by the court and stated that the MISKINAP valuation was entirely accurate.

17. The Panel noted that there appeared to be little difference between the process adopted in the criminal courts in Russia and those in England and Wales with regards to guilty pleas. The appeal judgment, dated 20 August 2015, states that, *'the convicted M. A. Zeldin, without contesting the guilt and qualification of the offence, expresses his disagreement with the court's decision, considered unfair in view of the excessive severity of the punishment imposed.'* It appeared that Mr Zeldin's complaint was essentially that the court had not given enough weight to the mitigating circumstances at the sentencing stage. The Panel noted that at no point during the appeal did Mr Zeldin appear to have disputed the accuracy of the underlying facts or the safety of the conviction. Furthermore, the Panel noted that the Appeal Court upheld the conviction and that the only change was to the sentence. The Panel was unable to identify any reason why the judgments should not be relied upon with regards to the issue of liability to disciplinary action.
18. In these circumstances the Panel was satisfied that Mr Zeldin was properly convicted on the basis of his guilty plea and concluded that his conduct represented a significant breach of Rule 3 (Ethical Behaviour) which states, *'Members shall at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with their professional obligations.'* The Panel was satisfied that based on Mr Zeldin's conviction his conduct fell far below the standard expected of a RICS member. Mr Zeldin was involved in a property valuation which is a surveying activity and therefore, his professional status is likely to have supported his credibility and reliability. The Panel concluded that Mr Zeldin's conduct and behaviour brought his profession into disrepute.
19. As a consequence, the Panel was satisfied that public confidence in the profession and in RICS as a regulator would be undermined if a finding of liability to disciplinary action was not made, given the nature and seriousness of Mr Zeldin's conviction.
20. Accordingly, the Panel concluded that Mr Zeldin is liable to disciplinary action.

Sanction

Panel's Approach

21. The Panel accepted the advice of the Legal Assessor. The Panel took into account the RICS Sanctions Policy and the overriding principles. The Panel was mindful that the purpose of any sanction is not to punish Mr Zeldin twice for the same offence, but to protect the public and the wider public interest. The public interest includes maintaining public confidence in the profession and RICS as its regulator and upholding proper standards of conduct and behaviour. The Panel applied the principle of proportionality by weighing Mr Zeldin's interests with the public interest and by considering each available sanction in ascending order of severity.
22. The Panel took into account the written submissions made by both parties, its factual findings and its determination that Mr Zeldin is liable to disciplinary action.

Decision

23. In determining the appropriate sanction, to impose the Panel first identified what it considered to be the mitigating and aggravating features of the case.

24. The Panel identified following mitigating factors:

- Mr Zeldin's previous good character and the absence of any of previous disciplinary findings;
- his guilty plea to the criminal charge;
- his current ill health.

25. The Panel identified the following aggravating factors:

- The fraud was committed in breach of trust;
- Mr Zeldin received a significant term of imprisonment;
- There has been no evidence of insight, remorse or remediation.

26. The Panel first considered taking no action. The Panel concluded that, in view of the nature and seriousness of Mr Zeldin's dishonest criminal behaviour, to take no action on his RICS membership would be wholly inappropriate. Furthermore, in the absence of exceptional circumstances the Panel concluded that taking no action would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

27. The Panel then considered a Caution and a Reprimand. The Panel noted paragraph 15.1 of the Sanctions Policy which states: '*A caution is likely to be given in circumstances where the breach is minor and is unlikely to be repeated*' and paragraph 16.1 which states, '*A reprimand may be given where there has been/is a risk of harm.*' The Panel determined that a Caution was not appropriate, as the risk of repetition was not sufficiently low, given the absence of any meaningful insight. The Panel also took the view that Mr Zeldin's underlying behaviour could not be described as limited or minor in nature. With regard to a Reprimand the Panel took the view that it would fall well short of meeting the wider public interest in terms of declaring and upholding proper standards or maintain public confidence in the profession. The Panel noted that neither a Caution nor a Reprimand would impose no restriction on Mr Zeldin's practice and therefore concluded that these sanctions would not provide any public protection.

28. The Panel went on to consider Undertakings. The Panel noted that Mr Zeldin's fraud conviction and the underlying facts upon which it is based, involved dishonest conduct which is not amenable to Undertakings, as the basis for this type of behaviour is an attitudinal failing. The Panel also concluded that such behaviour is not amenable to a

financial penalty, either on its own or in combination with another sanction, as it would not address the public interest concerns raised by this case.

29. The Panel went on to consider conditions. The Panel concluded that a criminal conviction for a dishonesty offence has the potential to seriously undermine the trust and confidence the public are entitled to expect from all RICS members. The Panel considered that not only is Mr Zeldin's conviction and underlying dishonest behaviour inherently difficult to remediate, but in the absence of any evidence of insight, remorse or remediation the Panel concluded that there was also no evidence of any realistic prospect that he was willing or able to address these deficiencies in the future. Therefore, the Panel concluded that it was not possible to formulate workable conditions, and in any event, such an order would not adequately meet the wider public interest.
30. In these circumstances, the conditions would not be sufficient to protect the public or the wider public interest.
31. Having determined that a condition would be insufficient the Panel determined that Mr Zeldin should be expelled from RICS membership. In reaching this conclusion the Panel took into account paragraphs 20.1 of the Sanctions Policy which states that in the absence of extenuating circumstances the following types of cases are likely to result in expulsion:
 - Fraud, dishonesty or a lack of integrity;
 - Conviction of a serious criminal offence (an offence for which the penalty could be a custodial sentence).
32. The Panel noted that expulsion is the sanction of last resort. However, the Panel concluded that there was no other way to adequately protect the public and the wider public interest. The Panel noted that Mr Zeldin put his own interests above the interests of the third parties and his professional obligation to act with honesty and integrity at all times. Given the gross breach of trust and the absence of insight the Panel did not consider that there was any way to protect the public other than through expulsion. Furthermore, it is the Panel's view that the public would consider Mr Zeldin's behaviour to be so serious that it must be marked by imposing the ultimate sanction. Any sanction short of expulsion would fail to declare and uphold proper standards and would fail to maintain public confidence in the profession and RICS as its regulator.
33. Accordingly, the Panel determined that expulsion is the appropriate, necessary and proportionate sanction in this case.
34. The Panel had regard to the impact expulsion may have on Mr Zeldin. However, the Panel concluded that Mr Zeldin's personal and professional interests have already been damaged as a consequence of his conviction and was satisfied that his interests were significantly outweighed by the Panel's duty to give priority to the significant public interest concerns raised by this case.

Publication

35. The Panel has considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters. The Panel was unable to identify any reason to depart from the presumption that decisions will be published on the RICS website and in the RICS magazine Modus.

Costs

36. RICS applied for costs of £600.00

37. The Panel considered carefully the issue of costs. The costs figure represents a contribution towards the costs incurred by RICS in preparation for the hearing and the hearing itself. The Panel had no reason to doubt that the costs application was fair and reasonable.

38. The Panel concluded that it was appropriate for Mr Zeldin to contribute towards the costs of bringing this case, otherwise the full cost of these proceedings would fall on the profession as a whole.

39. The Panel ordered Mr Zeldin to pay to RICS costs in the sum of £600.00

Appeal Period

40. Mr Zeldin has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.

41. 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.