

**ROYAL INSTITUTION OF CHARTERED SURVEYORS
DISCIPLINARY PANEL HEARING**

Case of

**Mr Muktar Miah MRICS [1105214]
Essex, IG6**

On

Wednesday 28 January 2015

At

RICS, Parliament Square, London

Chairman

John Anderson

Members

Catherine Audcent (Lay Member)

Andrew Winscom (RICS Member)

Legal Assessor

Mark McConochie

RICS Representative

Daniel Gutteridge

CHARGES HEARD

The formal charges are:

1. You failed to submit in a timely manner the following information that was reasonably requested by RICS in correspondence dated 03 and 30 April 2014, namely:-
 - (a) Evidence/documentation from your previous insurance provider that professional indemnity insurance (PII) run off cover was not available to City Surveyors UK Ltd
 - (b) Confirmation that you had explored the option of personal PII run off cover and the results of that
 - (c) The PII position of the firm on 08 January 2013
 - (d) A copy of the last PII policy that was in force for City Surveyors UK Ltd
 - (e) Confirmation of your employment status

Contrary to Rule 8 of the Rule of Conduct for Members 2007.

2. You failed to co-operate fully with RICS staff in that you failed to return telephone calls and/or reply to correspondence between 08 May 2013 and 18 June 2014, namely:-
 - (a) An e-mail dated 08 May 2013
 - (b) An e-mail dated 19 August 2013
 - (c) An e-mail dated 06 September 2013
 - (d) A letter dated 29 October 2013
 - (e) An e-mail of 26 November 2013
 - (f) A letter of 06 January 2014
 - (g) A letter of 03 April 2014
 - (h) A letter dated 30 April 2014
 - (i) A telephone call and message from 29 May 2014

Contrary to Rule 9 of the Rules of Conduct for Members 2007.

Preliminary Issues

3. Mr Gutteridge appeared on behalf of the RICS. Mr Miah attended the hearing and was not represented.
4. Mr Gutteridge applied to amend paragraph 2(i) of the second charge to read “*a telephone call and message from 29 May 2014*”. Mr Miah did not object to the amendment. The Panel noted that it has discretion under Rule 41(e) of the Disciplinary Registration and Appeal Panel Rules 2009 to amend the Charge after it has been sent to the Member, if that could be done without injustice after hearing from the parties and consulting with the legal assessor. Having done so, the Panel agreed to the amendment being made which it considered did not prejudice Mr Miah.

Determination

5. The Panel carefully considered the contents of the RICS bundle and listened to what Mr Gutteridge had to say on behalf of RICS and to representations made by Mr Miah. The Panel was mindful of the need to consider all of the evidence placed before it and to determine the facts supporting the two charges brought by RICS against Mr Miah on the balance of probabilities, independently, with an open mind and with the burden of proof resting on the RICS.

Findings of Fact

6. The Panel made the following findings of fact on the balance of probabilities:
 - i. Mr Muktar Miah has been a member of RICS since 2004. He was sole principal of a regulated firm, City Surveyors UK Limited (“the Firm”) which was registered with RICS in 2009 and ceased trading on 8 January 2013;
 - ii. In response to Mr Miah notifying RICS that he wished to de-register the Firm, a de-registration form was sent to Mr Miah by RICS on 8 May 2013 by way of email asking for a response by 22 May 2013 along with a copy of the Firm’s professional indemnity insurance (PII) or run off cover;

- iii. The Panel found that Mr Miah did reply to the 8 May 2013 email and made an application for the Firm to be de-registered with effect from 1 February 2013. That application was signed by Mr Miah and although it was not dated until 5 August 2013 it was a reply and not a failure to reply. Within the de-registration form Mr Miah indicated that he did not have appropriate PII or run off cover in place;
- iv. In response to Mr Miah's application and the indication that the Firm didn't have adequate PII cover, emails were sent by RICS to the Firm's email address dated 9 and 19 August 2013 requesting proof of the Firm's PII cover. No reply was received to these emails, but since Mr Miah had indicated in his de-registration form that he did not have any PII or run off cover the Panel found that this is not a failure to co-operate fully with RICS for the purposes of the second charge;
- v. A follow-up email was sent by RICS to Mr Miah dated 6 September 2013 again requesting proof of PII cover. No reply was received to this email but for the same reasons as set out above in relation to the email of 19 August 2013, the Panel found that this was not a failure to co-operate fully with RICS for the purposes of the second charge;
- vi. RICS attempted to contact Mr Miah by telephone using the telephone number stated on the de-registration form on 16 September 2013 without success and a further letter was sent by recorded delivery to Mr Miah's home address on 16 September 2013. This letter was delivered and signed for on 19 September 2013. No reply was received to this letter but Mr Miah did make contact with the RICS Regulation Helpline by telephone on 16 October 2013 requesting copies of certain correspondence about his valuer registration membership, which is not something that is relevant for the purposes of these proceedings;
- vii. The matter was passed for formal investigation and a further letter was sent by RICS dated 29 October 2013 to Mr Miah again requesting the additional information required to process his application for de-registration of the Firm and indicating that a breach of the Rules for Members was being investigated. No reply was received to this letter;

- viii. RICS managed to speak with Mr Miah over the telephone on 26 November 2013. In that conversation Mr Miah confirmed that he had received some correspondence from RICS about PII cover for the Firm and he said that he was likely to get the insurance cover arranged within a week of 26 November 2013 and that a copy would be provided to the RICS;
- ix. Mr Miah denied receiving a copy of the RICS's letter dated 29 October 2013. The telephone conversation was followed up by RICS with an email dated 26 November 2013 attaching a copy of the 29 October 2013 letter and requesting a response within 14 days;
- x. Having heard no further from Mr Miah, the RICS investigations team wrote to Mr Miah on 6 January 2014 again seeking the additional information sought;
- xi. A further letter was sent to Mr Miah on 27 January 2014 indicating a potential breach of Rules 8 and 9 of the Rules of Conduct for Members in light of Mr Miah's lack of engagement with his regulator. This letter was sent by recorded delivery and signed for on 28 January 2014;
- xii. Mr Miah sent an email to RICS on 3 February 2014 with a letter attached and dated 31 January 2013 (the Panel found that this should have been dated 31 January 2014). Mr Miah apologised for the delay, indicating that he had been unable to obtain PII cover as of the date of that letter. The Panel was therefore satisfied that Mr Miah did reply to the letter from RICS dated 6 January 2014 and the Panel noted that the RICS thanked Mr Miah for his response to their letter of 6 January 2014 in their letter of 3 April 2014;
- xiii. A series of follow-up questions were raised in a letter from RICS dated 3 April 2014 to Mr Miah to which no reply was received by 25 April 2014 as requested, followed by a letter dated 30 April 2014 again to which no reply was received. Mr Miah denied having received either of these letters. The Panel noted however that the letter dated 3 April 2014 was sent by email and by recorded delivery and was signed for on 5 April 2014. The 30 April 2014 letter was posted, albeit not by recorded delivery, and was also sent by email for which there is a delivery receipt in the RICS bundle. The Panel was therefore satisfied

that Mr Miah did receive the letters dated 3 and 30 April 2014 and that he failed to respond;

- xiv. Telephone contact was made with Mr Miah by RICS on 19 May 2014 in which he again confirmed that he had been unable to secure cover but that he agreed to make further contact with RICS by the end of that week;
- xv. Follow-up emails were sent from RICS to the Firm's email address dated 29 May 2014 and 16 June 2014 and a voicemail message was left on Mr Miah's mobile telephone on 29 May 2014. The Panel found on the balance of probabilities that the message was left as alleged and that Mr Miah failed to respond to it;
- xvi. Mr Miah emailed RICS on 18 June 2014 confirming that he had still been unable to obtain cover but that as far as he was aware he had not been engaged in any work that may be subject to a claim. He indicated that he would be happy to pay for cover if RICS was able to obtain it for him;
- xvii. RICS pointed out in an email dated 18 June that it was unable to assist Mr Miah with finding PII cover but did refer Mr Miah to an insurance broker who may be able to assist. RICS again requested the outstanding information from Mr Miah by 23 June 2014;
- xviii. No further correspondence having been received from Mr Miah, in a letter dated 1 July 2014, RICS informed Mr Miah that his case would be referred to a Disciplinary Panel.

Decision

- 7. Mr Miah faced two charges both of which he has denied. The first related to failing to submit in a timely manner information reasonably requested by the RICS in correspondence dated 3rd and 30th April 2014. Based on its findings of fact as set out above, the Panel found this charge proved;

8. The second charge related to a failure on the part of Mr Miah to co-operate fully with RICS in failing to respond to correspondence and telephone calls between 8 May 2013 and 18 June 2014. Based on its findings of fact as set out above, the Panel found this charge proved.
9. Having found the two charges proved the Panel found Mr Miah liable to disciplinary action contrary to Bye law 5.2.2 in that he failed to adhere to RICS Rules governing Members' conduct.

Penalties

10. The Panel was mindful of the need to comply with the provisions of the RICS Sanctions Policy when imposing sanctions and to take into account proportionality and the need to take action in order to protect the public interest and promote regulatory compliance.
11. The Panel noted that Mr Miah explained that he should have found the time to respond to RICS correspondence, despite the employment and personal difficulties he faced. When he did find employment, Mr Miah explained that he was training to gain additional skills and found it difficult to find the time to supply the information being repeatedly requested by RICS pursuant to his application to de-register his Firm.
12. The Panel considered whether it needed to impose any sanction at all but decided that the facts of this case are sufficiently serious to justify a sanction.
13. Starting with the least serious, the Panel considered each sanction available to it.
14. The Panel considered a caution. The Sanctions Policy provides that a caution is likely to be given in circumstances where the Member has acted through incompetence, the breach is minor or is unlikely to be repeated. The Panel did not consider that to be the case here. The Panel considered the aggravating and mitigating features in relation to breaches of Rule 8 for Members set out in the supplement to the Sanctions Policy. The Panel further had regard to the public

interest, the reputation of the profession and the need to promote regulatory compliance. In order to maintain that public confidence the Panel considered it important that Members fully co-operate with the RICS in a timely manner in order to ensure effective and robust regulation.

15. The Panel noted that Mr Miah has no previous disciplinary record.

16. Having considered the full range of sanctions available the Panel has decided to reprimand Mr Miah as the correct and proportionate sanction in this case.

Determination on Publication and Costs

Publication

The Panel invited the parties to address it on publication of this decision. Mr Gutteridge invited the Panel to order publication in accordance with the RICS sanctions policy. Mr Miah objected to any form of publication based on the potential impact on him and on his employment. The Panel carefully balanced the importance of ensuring, in the public interest, that disciplinary outcomes are made available to the public, against the private interests of Mr Miah and the impact of publication upon him.

On balance, the Panel decided to direct publication on the RICS website and in MODUS but not in a newspaper local to where Mr Miah lives. The Panel considers the potential impact of this on Mr Miah to be disproportionate on the particular facts of this case.

Costs

The Panel order that Mr Miah contribute towards the costs of the hearing in the sum of £4000 against a claim by RICS of £5,284. The reduction in costs to that claimed by the RICS is to reflect the Panel's view of Mr Miah's ability to meet those costs based on his statement of means and the representations that he made to the Panel.

Appeal Period

Mr Miah has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules.

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.