

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING BY WAY OF WRITTEN REPRESENTATIONS

Case of

Mr Reuben Barnes [5046936]

London, SE27

On

Wednesday 18 May 2016

Via telephone conference

Panel

Julian Weinberg

Christopher Pittman (Member)

CHARGES HEARD

The Panel considered the following:

Mr Barnes may be liable to disciplinary action under Byelaw 5.2.2(d) by reason of having been convicted by Woolwich Crown Court on 30 January 2015 of three offences of using an instrument which he knew to be false with the intention of inducing somebody to accept it as genuine contrary to S.3 of the Forgery and Counterfeiting Act 1981, and one offence of obtaining property by deception contrary to S.15 of the Theft Act 1968.

DETERMINATION

Findings of Fact

1. Mr Barnes is a student member of RICS, having joined in September 2010.
2. The offences took place on 27 January and 15 June 2004. Mr Barnes applied to Southwark Council on 27 January 2004 for housing accommodation as a homeless person. As part of his application, he produced a document intending to prove that he had the correct immigration status to allow him access to public funds, namely a Home Office indefinite leave to remain letter dated 13 August 2003. However, when verified by an Immigration

Officer, it transpired that Mr Barnes had not been granted a residence permit until 27 January 2004 and he was therefore not entitled to recourse to public funds before that date.

3. Mr Barnes therefore knew that the documents he produced purporting to grant him indefinite leave to remain in the UK dated 15 November 2002 and 13 August 2003 were false. He had presented them to the Council in support of his application for housing with the intention of inducing the Council to accept them as genuine.
4. Mr Barnes, appeared before the Woolwich Crown Court, jointly charged with another. He was tried and convicted on 30 January 2015 of three offences of using a false instrument with the intention of inducing somebody to accept it as genuine contrary to Section 3 of the Forgery and Counterfeiting Act 1981 and one offence of obtaining property by deception contrary to section 15 of the Theft Act 1968. He was sentenced to a term of 18 months imprisonment suspended for 2 years. He was ordered to do 300 hours of unpaid work and to pay costs of £2000. On 27 July 2015, he was made the subject of a confiscation order under the Proceeds of Crime Act 2002 in the sum of £1522.25.
5. The Panel has seen the memorandum of conviction from the Woolwich Crown Court, which confirms the conviction. The Panel therefore finds the conviction proved.

Panel's Decision

1. The Panel next considered whether Mr Barnes' conviction was for a criminal offence, which could result in a custodial sentence within the terms of RICS Bye-Law 5.5.2 (d).
2. The Panel noted that at the time, Mr Barnes was a student member of RICS. Under RICS Bye-law 5.2.2 (d), an RICS Member may be liable to disciplinary action whether or not he was a Member at the time of the occurrence giving rise to the liability.
3. Using a false instrument with intent is an offence that carries a maximum term of imprisonment on indictment of 10 years. Obtaining property by deception is also an offence that carries a maximum term of imprisonment on indictment of 10 years. This were therefore, criminal offences which could result in a custodial sentence within the terms of RICS Bye-Law 5.5.2 (d).
4. The Panel therefore concluded that Mr Barnes has been convicted of criminal offences which could result in a custodial sentence and that he may therefore be liable to disciplinary action under Bye-law 5.2.2 (d).
5. The Panel has determined that Mr Barnes is liable to disciplinary action on the grounds that using a false instrument with intent to deceive and obtaining property by deception are serious criminal offence which both carry a maximum penalty of 10 years' imprisonment. The Panel notes that Mr Barnes is still currently subject to a suspended term of imprisonment. The conviction had the potential to damage public confidence in RICS' reputation and the reputation of the profession. RICS demands the highest standards of behaviour from its members in their professional and personal lives and Mr Barnes has fallen far short of those standards.

Penalties

1. In determining what sanction, if any, to impose, the Panel has taken account of all the evidence before it together with the written representations of both RICS and Mr Barnes which solely consist of:
 - a. a telephone attendance note dated 20 April 2014 in which it is recorded that Mr Barnes told Ms Berry of RICS that *“he didn’t understand why we were writing to him again as we sent him the same letter last year”*;
 - b. an email dated 1 July 2015 in which he denies culpability and states that *“I am not a member of the RICS”*.

2. The Panel has also taken into account the Judge’s sentencing comments. She stated that Mr Barnes had taken the leading role in the fraud and identified Mr Barnes as being:

“the prime mover...to ensure that you obtained over and above other individuals who were legitimately entitled to accommodation.

3. She noted that Mr Barnes still denied that:

“in the face of the evidence that that is what you were doing, greasing the palm of an official”.

She considered his offending as a serious matter and that:

“public opinion and public opprobrium would find it disgusting that someone who offends in such a way is not sent to prison immediately”.

4. Having taken relevant mitigating factors into account, a suspended term of imprisonment was passed.
5. The Panel has carefully considered the guidance set out in the Sanctions Policy. It recognises that the purpose of sanctions is not to be punitive, although that may be their effect. The purpose of sanctions is to declare and uphold proper standards of professional conduct, to uphold the reputation of the profession and to protect the public.
6. The Panel first considered whether any disciplinary sanction was required. The Panel concluded that this matter is too serious for there to be no sanction. The reputation of the profession requires that its members behave in their personal lives in a manner that is consistent with membership of a reputable profession. Mr Barnes has been convicted of serious criminal offences of dishonesty and has thereby failed to uphold the reputation of the profession.
7. The Panel next considered whether a Caution would be the appropriate and proportionate sanction in this case. The Panel considered the guidance set out in the Sanctions Policy, which indicates that a Caution will be the appropriate sanction where there has been a minor breach of professional standards, which is unlikely to be repeated. The Panel considered

that a serious criminal offence cannot be characterised as ‘a minor breach’ and that a caution would not be adequate to mark the gravity of Mr Barnes’ offences.

- 8 The Panel then considered whether a reprimand would be appropriate. The Panel took into account the Sanctions Guidance, which indicates that a reprimand may be appropriate where there has been a risk of public harm. Whilst a dishonest member of the profession may well pose a risk of harm to members of the public, the panel considers, given the seriousness of the matters found proved, that such a sanction would not adequately protect the public interest. Furthermore, the panel concluded that there was a material risk of Mr Barnes repeating dishonest behaviour given his ongoing lack of insight into his actions and demonstrated by his ongoing denials of wrongdoing.
- 9 Neither a fine, imposing conditions on Mr Barnes’ practice, or an undertaking, address the issues in this case and the Panel therefore did not consider these sanctions appropriate.
- 10 The Panel then considered the sanction of expulsion. Paragraph 22.1 of the *Sanctions Policy – Guidance to RICS Disciplinary, Registration and Appeal Panel Rules* (the ‘*Sanctions Policy*’), which sets out examples of instances, which, in the absence of extenuating circumstances, are likely to result in a Panel making a decision to expel a Member. These examples include conviction for a serious criminal offence, which is defined as an offence for which the penalty could be a custodial sentence. The Panel considers that there are no such extenuating circumstances in this case. Mr Barnes has not put forward any explanation or mitigating factors to this Panel other than his email of 1 July 2015 referred to above in which he continues to deny responsibility for his actions that have been found proved in a criminal court. Dishonest behaviour of the nature found proved is fundamentally incompatible with remaining a member of the profession. In all the circumstances therefore, expulsion is the only appropriate and proportionate sanction, which sanction, the Panel therefore imposes.

Determination on Publication and Costs

Publication

The Panel directs publication in accordance with Supplement 3 to the Sanctions policy. The Panel considers that publication is necessary to uphold and declare proper standards in the profession.

Costs

The Panel orders that Mr Barnes pay costs in the amount of £600.

Appeal Period

Mr Barnes 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.

