

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING BY WAY OF WRITTEN REPRESENTATIONS

Case of

NRB Chartered Surveyors and
Mr Nigel Bone FRICS [0046480]
London, W1U

At

Blake Morgan Offices, 6 New St Square

On

Tuesday 12 September 2017

Panel

John Anderson (Lay Chairman)
Christopher Bootham (Lay Member)
Christopher Pittman (Member)

Legal Assessor

Christopher Hamlet

CHARGES HEARD

The Panel considered the following charges:

The formal charge against Mr Bone is:

1. Between 13 November 2012 and 28 January 2016 you acted in a manner that was inconsistent with your professional obligations in that:
 - a. You have carried out activities requiring authorisation by the Financial Conduct Authority or a Designated Professional Body without such authorisation; and/or
 - b. Provided information to RICS on three separate occasions that the firm NRB is regulated by RICS to carry out general insurance mediation work when you ought to have known that was not correct

Contrary to Rule 3 of the Rules of Conduct for Members 2007

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

The formal charge against the Firm is:

2. Between 13 November 2012 and 28 January 2016, NRB acted in a manner that was inconsistent with its professional obligations in that:
 - a. it has carried out activities requiring authorisation by the Financial Conduct Authority or a Designated Professional Body without such authorisation; and/or
 - b. Provided information to RICS on three separate occasions that it is regulated by RICS to carry out general insurance mediation work when it ought to have known that was not correct

Contrary to Rule 3 of the Rules of Conduct for Firms 2007

You are therefore liable to disciplinary action under Bye-Law 5.3.2(c)

PRELIMINARY MATTERS

An Agreed Statement of Facts was signed by the parties on 1 September 2017.

An application by RICS was made in parallel that this matter be determined on the papers, that is, without the parties attending in person. That application was granted.

EVIDENCE

The Panel has received and taken account of the material produced by both parties, including in particular the RICS Case Summary dated 17 July 2017 and associated bundle, the Agreed Statement of Facts dated 1 September 2017, the written submissions of RICS dated 7 September 2017, the witness statement of Mr Bone dated 8 September 2017 and the Respondents' written submissions dated 11 September 2017.

DETERMINATION

Findings of Fact

The Panel noted Mr Bone's formal admissions to the charges set out above, both in his personal capacity and as sole principal of the Firm, at paragraphs 11 and 12 respectively of the Agreed Statement of Facts.

Mr Bone reiterated those admissions at paragraphs 2 to 5 of his Witness Statement.

The Panel duly determined that the charges against Mr Bone and the Firm were admitted and proved.

Liability to Disciplinary Action

The Panel observed that Mr Bone has accepted full responsibility for the conduct concerned in the charges, both in his capacity as an individual and sole principal of the Firm. It further noted that the listing questionnaire completed by Mr Bone dated 31 August 2017 accepted that he and/or the Firm are liable as a result to disciplinary action. Whilst taking account of this, the Panel proceeded on the understanding that this question is ultimately a matter for their independent judgment.

The Panel has taken account of the material before it, including centrally the RICS submissions, Mr Bone's Witness Statement and the written submissions made on behalf of the Respondents dated 11 September 2017.

Whilst proper credit was given to the factual admissions, full assumption of responsibility and apology of Mr Bone for this conduct, the Panel considered that the repeated failure between 13 November 2012 and 28 January 2016 to provide accurate information to clients and RICS about the lack of DPB authorisation in breach of Bye-Laws 5.2.2(c) and 5.3.2(c) represents a significant departure from proper standards of conduct and gives rise to liability to Disciplinary action.

Decision as to sanction

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. Sanctions must be proportionate to the matters found proved.

The Panel paid careful heed to the advice of the Legal Assessor, and to the indicative sanctions guidance of RICS. It considered carefully the mitigating and aggravating factors of this case.

Mr Bone:

The Panel decided that Mr Bone 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.

The Panel considered that the following mitigating factors were present:

- Errors of omission not commission
- Cooperation with RICS
- An apology has been given

The Panel considered that the following aggravating factors were present:

- Mr Bone ought to have been alive to the DPB requirements by virtue of previous disciplinary against the Firm and a Consent Order of 14 April 2011 that required him to undertake training in DPB Rules
- The conduct took place over a protracted period of time

- Lack of full insight in that Mr Bone has failed to recognise his primary responsibility for the accuracy of the Annual Returns

The Panel considered the matters too serious for no sanction to be imposed. It first considered a Caution, but was concerned that this would fail to reflect the serious nature of the wrongdoing.

A Reprimand was considered appropriate in order to reflect the potential risk posed to the public by Mr Bone operating without the appropriate regulatory oversight.

The Panel further considered it necessary and appropriate to make Mr Bone's continued membership of RICS conditional on the basis that he:

- Takes personal responsibility for ensuring the Firm complies with its DPB obligations as set out in the Conditions below

Failure to comply with this condition will lead to further disciplinary action.

Accordingly the Panel orders that sanction.

The Firm:

The Panel decided that the Firm 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.

The Panel considered that the following mitigating factors were present:

- Errors of omission not commission
- Cooperation with RICS
- An apology has been given

The Panel considered that the following aggravating factors were present:

- The Firm ought to have been alive to the DPB requirements by virtue of previous disciplinary and a Consent Order of 14 April 2011 that required Mr Bone, as sole principal, to undertake training in DPB Rules
- The conduct took place over a protracted period of time
- There was direct financial gain to the Firm in the form of commissions, albeit limited

The Panel considered the matters too serious for no sanction to be imposed. It first considered a Caution, but was concerned that this would fail to reflect the serious nature of the wrongdoing.

A Reprimand was considered appropriate in order to reflect the potential risk posed to the public by the Firm operating without the appropriate regulatory oversight.

The Panel further considered it necessary and appropriate to make The Firm's continued membership of RICS conditional on the basis that it:

- Returns to clients all commission paid to the Firm for unregulated insurance activities conducted for which authorisation under the DPB scheme ought to have been obtained
- Informs all affected clients of the reason for the return of that commission –by reference to this determination
- Provides RICS with material confirmation of compliance with the above conditions

Failure to comply with this condition by 30 April 2018 will lead to automatic expulsion.

Accordingly the Panel orders that sanction.

Costs

In accordance with Rule 34 of the Disciplinary, Regulatory and Appeal Panel Rules 2017, Version 7, the Panel awards RICS £600 by way of fixed costs for a Disciplinary Panel without an oral hearing.

Publication

The Panel see no reason to depart from the presumption of publication in this case and directs publication in accordance with Supplement 3 to the Sanctions policy.

Appeal Period

Mr Bone and/or the Firm have 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 58 of the Disciplinary, Registration and Appeal Panel Rules.

In accordance with Rule 59 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.