

Disciplinary Panel Hearing

Case of

**Surelock Homes Limited
Birmingham, B25**

Held on

Wednesday 2 September 2015

At

RICS, Surveyor Court, Westwood Way, Coventry, CV4 8JE

Panel

John Anderson (Lay Chair)
Christopher Boothman (Lay Member)
Ian Hastie (Member)

RICS Representative

Vicki Buckley

Surelock Homes Ltd Representative

Helena White (Counsel)

Legal Assessor

Stephen Murfitt

The formal charge is:

1. The adequacy of the accounting systems and controls in use by the Firm Surelock Homes Ltd. was not sufficiently robust to preserve the security of clients' money entrusted to its care in the course of its business as evidenced by a regulatory review visit on 06 January 2015 at which an RICS Regulatory Accountant found that clients' money held by the Firm could not be clearly linked to the clients to whom it belonged and was not protected at all times from the risk of misappropriation due to the Firm's failure to:
 - 1) Perform regular reconciliations of its client accounts
 - 2) Post all transactions to the accounting software system
 - 3) Account for clients' money correctly and on a timely basis

as detailed in full in the report of the visit dated 12 January 2015, contrary to Rule 8 of the Rules of Conduct for Firms 2007.

Introduction

2. The firm Surelock Homes Ltd (Surelock) registered for regulation by RICS in 2008. On 19 February 2015 the firm changed its name to Four Edges Real Estate Ltd, but is referred to as Surelock in this decision. The firm is based in Birmingham and the Contact Officer is Mr Khalid Rashid MRICS. Surelock lists its main areas of practice as auctioneering of property, residential property and estate management.
3. In November 2014 RICS received a complaint about Surelock from MR of R Ltd. The complaint concerned the preservation of the security of client's money held by the firm. RICS commenced an investigation and as part of that investigation arranged for a Regulatory Review Visit (RRV) to the firm.
4. On 6 January 2015 Mr Ian Bellis M.A.A.T., RICS Accountant, visited the firm to undertake the RRV. At the conclusion of the visit Mr Bellis prepared a report which is at pages 41 – 56 of the hearing bundle. Mr Bellis advised RICS that he was not satisfied that the adequacy of

the accounting systems and controls in operation at the firm was sufficiently robust to preserve the security of clients' monies.

5. Mr Bellis identified one critical point namely that the firm was not performing reconciliations of its client accounts and had not done so for a considerable period of time. Mr Bellis identified a serious point namely that the firm's financial reports were incomplete.
6. Mr Rashid has co-operated with RICS by providing information and completing the management response to the RRV.
7. Mr Rashid attended the hearing and has admitted the charge against the firm and that the firm is liable to disciplinary action. The firm was represented by Helena White of Counsel.

Preliminary matters

8. There were no preliminary matters.

Evidence

9. The Panel has perused the RICS Solicitor's bundle of documents, running to 76 pages, and the bundle of documents produced by Mr Rashid.

Findings of fact

10. The Panel has noted reference to other regulatory matters in the papers which are not before the Panel. The Panel is an experienced Panel and has put these matters out of its mind.
11. Mr Bellis, in his report, found that reconciliations had not been performed for a number of years on the general client account held by the firm. He regarded this to be a critical point. Mr Bellis reported that a full review of the accounts was not being carried out by the firm to ensure client ledgers were: labelled correctly, that there were no overdrawn client ledgers,

transactions cleared through the bank on a timely basis and there were no suspense/miscellaneous accounts present.

12. Surelock admit the particular of the charge. Surelock accepts the evidence of Mr Bellis, and its management response is that reconciliations will be reviewed by a director and carried out on a monthly basis.
13. Mr Bellis identified a serious point namely that the firm did not record all of its receipts paid into the client account through the Gemini accounting software system. Mr Bellis reported he had been informed by Mr Rashid that in circumstances where tenants pay funds directly into the firm's client account without a reference, then those transactions are not recorded within the firm's records. Mr Bellis reported that client monies amounting to £17,000 could not be clearly identified as to ownership.
14. Surelock admit the particular of the charge. Surelock accepts the evidence of Mr Bellis and in its management response has stated a new ledger will be set up to allow discrepancies to be posted and investigated and that records will be updated on a monthly basis. Mr Rashid has stated that an investigation will continue to identify the outstanding unidentified client monies.
15. Surelock accepts that on the basis of the above it did not account for clients' money correctly and on a timely basis. Surelock admit the particular of the charge.

Disciplinary action

16. Surelock admit that it is liable to disciplinary action. The Panel having made findings as above therefore finds the firm liable to disciplinary action in respect of the charge against the firm in accordance with Bye-Law B5.3.2. The Panel finds the proven facts to be serious having regard to the importance of protecting both clients' monies and the public interest.

Decision as to sanction

17. 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.

18. The Panel has paid careful heed to the advice of the Legal Assessor (delivered in open forum), and to the indicative sanctions guidance of RICS. It has considered carefully the mitigating and aggravating factors of this case.
19. The Panel has decided that the firm is 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 it 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.
20. The Panel has considered the mitigation submissions of Counsel on behalf of Surelock and the written submissions that accompanied the listing questionnaire. The Panel has also considered the position statement prepared by Ms White and dated 1 September 2015. Mr Rashid has responded to the allegations against the firm by seeking to improve his knowledge of the accounting procedures of the firm. He has sought assistance from the firm's accountant and RICS. Mr Rashid has sought the assistance of a senior RICS qualified member as a mentor. The Panel accepts there is no allegation of dishonesty made against the firm and there is no allegation of any financial loss to any client of the firm.
21. Ms White has informed the Panel that a decision has been taken for the firm not to undertake property management services in the future but will concentrate on its property development business. As a consequence the firm will no longer hold clients' money and will therefore pose no further risk to the public. The property management services has been transferred to Surelock Homes Property Services Limited (SHPS) which also now holds a separate bank account for the unidentified monies formerly held by Surelock.
22. Mr Rashid in an effort to understand the necessary accounting procedures had attended an RICS Clients' Money workshop on 4 June 2015 and has said that he found the course extremely helpful.

23. The Panel in its findings has found a serious departure from the standards expected of Surelock. A failure to operate proper accounting systems resulting in unidentified clients' monies is a matter of some seriousness if proper standards of behaviour are to be maintained. When members of the public entrust monies to a firm registered with RICS they are entitled to expect that it is kept securely. The reputation of the profession requires that when errors or omissions are discovered they are investigated and corrected in a timely manner.
24. The Panel has considered whether it is appropriate to impose no penalty. The Panel has borne 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 RICS as its Regulator, and to protect the public. The Panel has considered the failings on the part of Surelock to be serious and the imposition of no sanction would not be a proportionate response to those failings. The Panel is satisfied that a sanction is both necessary and proportionate to protect the public interest.
25. The Panel considers that in addressing the matter of sanction practical steps need to be taken to protect the public interest and in these circumstances the Panel does not consider that a Caution or Undertaking would meet the need to address the public interest.
26. The Panel has decided to impose a Reprimand which it considers to be a proportionate response. The Panel has a concern as to the length of time that it has taken to reconcile the unidentified monies and that the identification process is an ongoing process. The Panel has decided to impose a Fine of £2,000 and urges upon Mr Rashid the need to complete the identification process as a matter of considerable urgency.
27. The Panel has further decided to impose conditions on Surelock's registration with RICS. These conditions are both necessary and proportionate to ensure that Surelock complies with its professional obligations. The following conditions will apply to Surelock's continued registration:
- i. Surelock Homes Ltd shall submit to a site-based Regulatory Review Visit by or on behalf of RICS within six months of 02 September 2015. The costs of the Regulatory Review Visit shall be borne by Surelock Homes Ltd.

- ii. Surelock Homes Ltd shall not handle clients' money unless the firm first obtains the prior written permission of RICS.

28. The Head of Regulation may refer any concerns identified by the Regulatory Review Visit, or any breach of these conditions, for further consideration by a Disciplinary Panel.

29. The Panel has considered whether these obligations would be appropriately met by the imposition of undertakings, but has determined that, given the seriousness of the failings, and the importance of ensuring compliance, these obligations are more appropriately addressed by the imposition of conditions on Surelock's continuing registration.

30. The Panel has considered whether the expulsion of Surelock from RICS would be appropriate, but has determined such a sanction would be disproportionate. Surelock has given repeated assurances to the Panel as to compliance with future professional obligations. The Panel is giving Surelock the opportunity to demonstrate such compliance.

31. The Panel in considering the public interest makes a recommendation to RICS that it considers a RRV in respect of SHPS to be undertaken at the same time as the RRV is undertaken in respect of Surelock.

Publication and Costs

32. The Panel has considered the guidance as to publication of its decisions. It has 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 RICS' website, published in Modus, and in a newspaper local to the practice. Ms White opposed this on the ground that Surelock face civil proceedings threatened by the complainant, and seeks a six month deferment of the publication of this decision. 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.

33. The Panel orders that this decision be published on RICS' website, in Modus and in a newspaper local to the firm.

34. The RICS Presenting Solicitor asked for costs, and has provided a schedule to Surelock in advance of the hearing.
35. The Panel has considered carefully the costs sought. The figure for the hearing is the average cost of a hearing day, and the Panel has no reason to doubt it.
36. The Panel orders that the firm pay to RICS costs of £4,642.50.

Appeal Period

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