

Disciplinary Panel Hearing

Case of

**Wilkins Hammond (the firm)
Chesterfield, Derbyshire, S40**

On

Tuesday 21 February 2017

At

RICS, Surveyor Court, Coventry

Panel

John Anderson (Lay Chair)
Gillian Seager (Lay Member)
Chris Pittman (Surveyor Member)

Legal Assessor

Chris Hamlet

RICS Representative

Vicki Buckley

Firm's Representative

Neil Brown, BRM Solicitors

The formal charge is:

1. Wilkins Hammond ("the Firm") failed to preserve the security of clients' money entrusted to its care in the course of its business because the adequacy of the Firm's accounting systems and controls were not sufficiently robust to preserve the security of clients' money.

The particulars of the charge are:

1. The inadequacy of the Firm's accounting systems allowed an employee over a period of time to steal clients' money calculated in August 2014 to amount to £18,875
2. The Firm:
 - i. Failed to cause the proper recording and reconciliation of client account
 - ii. Failed to record and check receipts
 - iii. Failed to effect proper controls by allowing one person to deal with checking receipts, transactions recording and preparation of reconciliations
 - iv. Failed to provide adequate Principal supervision

Contrary to Rule 8 of the Rules of Conduct for Firms 2007

Introduction

Mr Brown appeared before the Disciplinary Panel on behalf of the Firm in connection with the above allegations.

Response

The Firm admits the factual allegations but denied it is liable to disciplinary action.

Summary

The Firm is located in Chesterfield, Derbyshire and undertakes residential and commercial surveying.

In early 2014 the Firm identified that the employed property manager had misappropriated funds which should have been paid into the client account. By mid-2014, the Firm had identified the shortfall and transferred this amount into the client account on 28 and 29 August 2014.

The Firm notified RICS of the misappropriation on 26 August 2015.

On 22 September 2015, Mr Tom Day, an RICS investigator conducted a visit on the Firm. Mr Day subsequently produced a report confirming that this involved "...an unsophisticated fraud which nevertheless remained unidentified from July 2012 to January 2014 and would have been picked up

if reconciliations had been prepared and adequately reviewed and the receipts recording and checking system had been effective.”

Burden and standard of proof

RICS is required to prove the allegations to the civil standard; that it is more likely than not that any event material to those allegations occurred. In this case the Firm admitted the factual allegations.

Evidence

The Panel has perused the RICS solicitor’s bundle of documents as well as material produced by Mr Brown on behalf of the Firm, including a previous, unrelated, decision by another RICS Disciplinary Panel.

Findings of fact

In view of the full admissions made by the Firm, the Panel formally found the factual charges proved as alleged.

Submissions by RICS presenting solicitor

Ms Buckley on behalf of RICS submitted that the Firm was liable to disciplinary action by virtue of the admitted failures to preserve the security of client money.

Submissions on behalf of the Firm

Mr Brown, whilst admitting the alleged failures, submitted that the Firm was not liable to disciplinary action. He highlighted the unblemished disciplinary record of the Firm and its Principals. He submitted that the whole issue was caused by the actions of an ex-employee, who was the daughter of one of the Principals and was at the time suffering from ill health which, he submitted, contributed to the Firm’s failure to impose adequate supervision over the reconciliation of client accounts of which she was permitted sole control.

Mr Brown submitted that these were isolated incidents and the loss of client money was addressed as soon as it was identified. He submitted that as a result, there was no actual disadvantage to clients. He highlighted that it was the Firm who self reported the misappropriation to RICS.

Discussion and conclusion

The Panel concluded that the Firm was liable to disciplinary action due to the admitted failures to preserve the security of client's money under Rule 8 of the Rules of Conduct for Firms.

Submissions on Sanction

Ms Buckley made no further submissions on sanction.

Mr Brown submitted that no sanction was necessary in order to protect members of the public in view of the steps taken by the Firm to remedy the wrongdoing. He reminded the Panel that the Firm and its Principals had an unblemished record, reported the matter to RICS and have fully cooperated with the investigation. He highlighted further that steps have been taken to improve the arrangements and procedures regarding the security of client money. Mr Brown referred the Panel to the prior, unrelated, decision of CKD Galbraith and invited the Panel to take a similar course. He submitted that a fine would be unduly punitive in this case.

As regards publication, Mr Brown invited the Panel to waive the presumption of publication in respect of the press in the locality of the Firm. Once again, he drew attention to the self reporting by the Firm, the admissions to the charges, the steps taken to address the loss and the desire to preserve the reputation and livelihood of the employees of the Firm. He suggested further that the family running the Firm had 'suffered enough' and wider publication of this decision may have a particularly adverse effect on the health of the ex-employee concerned with the original misappropriation.

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 (delivered in open forum), and to the indicative sanctions guidance of RICS. It considered carefully the mitigating and aggravating factors of this case. The Panel considered that the previous RICS decision of CKD Galbraith provided to them, whilst of historical note, did not bind or fetter their independent approach to reaching a decision in this case.

The Panel had 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 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.

The Panel considered that the following mitigating factors were present:

- The loss of client money was repaid within a reasonable period of time after its discovery
- The misappropriation was reported to RICS
- The Firm has improved its arrangements and procedures regarding the security of client money.

The Panel considered that the following aggravating factors were present:

- The misappropriation arose due to weak security arrangements, controls and procedures – in particular insufficient oversight and supervision by the Principals
- The systemic failures were present for a protracted period of time and involved numerous transactions
- The misappropriation was not reported to RICS until 12 months had elapsed after the monies were repaid.

The Panel considered the matters too serious for no sanction to be imposed.

The Panel considered whether a Caution was appropriate. The Panel concluded that whilst unlikely to be repeated, the breach could not be considered minor in nature given the risk of harm to clients of the Firm.

Next, the Panel considered whether to impose a Reprimand. They considered there was a real risk of public harm, in the form of risk to the security of client money, over the period that the misappropriations took place and went unnoticed by the Firm. The Panel were concerned the misappropriation in this case had occurred during a period of minimal supervision and oversight by the Principals of this Firm which appeared to be the product of misplaced trust in a family member. Further, the Panel considered that at the time the systemic failures were discovered, there was a reluctance on the part of the Principals to secure compliance with the Firm's basic reconciliation procedures. This reflected a lack of insight into the importance of maintaining and ensuring the security of client money in accordance with their responsibilities as Principals.

Accordingly the Panel orders that the Firm be subject to a Reprimand. The Panel concluded that this was an appropriate and proportionate response to the wrongdoing by the Firm and to the resultant risks identified to the public.

Publication and Costs

The Panel considered the guidance as to publication of its decisions. It 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. Mr Brown opposed local publication for the reasons set out above. The Panel concluded that whilst it was appropriate to publish the decision on RICS' website and in Modus, there could be a disproportionate impact on the Firm, the employees and the individual ex-employee concerned were this to be published in the local press.

The Panel orders that this decision be published on RICS' website and in Modus.

The RICS presenting solicitor asked for costs, and had provided a schedule to the Firm in advance of the hearing. On behalf of the Firm, Mr Brown made no submissions as to costs.

The Panel 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.

The Panel concluded that it was fair to make a costs order in this case. Otherwise the cost of the proceedings falls on the profession as a whole.

The Panel orders that the Firm pay to RICS costs of £4,872.50.

Appeal Period

The Firm may appeal against this decision within 28 days of notification of this decision, in accordance with Rules 59- 70.

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