

REGULATED ACTIVITIES - Permission - Refusal of application - Threshold Conditions 4 and 5 - Judgments entered against Applicant in 2003 and 2004 - Applicant failed to disclose judgment debts when submitting HSF2 form - Whether Tribunal satisfied as to Applicant's suitability - No - Whether Tribunal satisfied as to Applicant's financial resources - No - Reference dismissed - FSMA s41(2)

FINANCIAL SERVICES AND MARKETS TRIBUNAL

Case No FIN/2004/0032

Between

SHAFQUAT RAJAH

(A SOLE TRADER TRADING AS

HERITAGE PERSONAL FINANCE CONSULTANTS)

Applicant

-and-

THE FINANCIAL SERVICES AUTHORITY

Respondent

Tribunal: Andrew Bartlett QC (Chairman), Peter Burdon, Catherine Farquharson

Sitting in public in London on 5 May 2005

Date of decision: 17 May 2005

The applicant in person

For the Respondent Sarah Clarke, counsel, of and instructed by the Financial Services Authority

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DECISION

Introduction

1. The applicant Shafquat Rajah is a sole trader trading as Heritage Personal Finance Consultants. By an application originally submitted on 31 March 2004 and re-submitted on 12 August 2004, Mr Rajah sought permission to perform various regulated activities arising out of mortgage and insurance business.
2. It was the Authority's duty, in giving permission, to ensure that the applicant would satisfy, and continue to satisfy, the threshold conditions: Financial Services and Markets Act 2000 ("FSMA") s 41(2). The Authority considered that it could not ensure that Mr Rajah would satisfy threshold conditions 4 and 5, which are found in FSMA Schedule 6, and are concerned with the applicant's resources and suitability. On 26 October 2004 the Authority issued a Decision Notice refusing his application.
3. Mr Rajah has referred the matter to the Tribunal. The Tribunal's task is to decide whether Mr Rajah satisfies threshold conditions 4 and 5. The burden of satisfying the Tribunal on this point rests on the applicant.

The Threshold Conditions

4. The relevant threshold conditions are:

Threshold Condition 4, which provides:

Adequate resources

(1) The resources of the person concerned must, in the opinion of the Authority, be adequate in relation to the regulated activities that he seeks to carry on, or carries on

Threshold Condition 5, which provides:

Suitability

The person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including-

(a) his connection with any person;

(b) the nature of any regulated activity that he carries on or seeks to carry on;
and

(c) the need to ensure that his affairs are conducted soundly and prudently.”

5. The practical requirements of these conditions are fleshed out in the FSA Handbook at COND 2.4.2-6 and COND 2.5.2-7.
6. Our attention was also drawn to PRINCIPLE 11, which states: *A firm must deal with its regulators in an open and cooperative way, and must disclose to the Authority appropriately anything relating to the firm of which the Authority would reasonably expect notice”.*

The application process

7. The application process required Mr Rajah to complete forms HSF1 and HSF2. Mr Rajah completed and submitted them electronically on 31 March 2004. Due to technical errors in the application process, the Authority requested Mr Rajah to resubmit the HSF2 Form. This was eventually done on the 12 August 2004.
8. The Authority relied on this delay as part of its case. We were not impressed by this allegation. There was evidence of technical difficulties in the forms and in the operation of the website. In addition, Mr Rajah had personal problems which took his attention. The Authority did not contend that he was under any duty to re-submit the

HSF2 Form within any particular time period. The Authority was on stronger ground in complaining of the content of the HSF2 when re-submitted.

Suitability

9. The Guidance notes to the Forms stated:

"Do not assume that we know certain information merely because it is in the public domain, or has been previously disclosed to us, or to another regulatory body. In all circumstances, disclosures should be full, frank and unambiguous. If there is any doubt about the relevance of the information it should be included"

10. Paragraph 30a of the HSF2 Form contained the following question:

"Is the individual, or has the individual ever been, the subject of any civil proceedings, arbitration or litigation, including proceedings that may lead to a County Court Judgement (CCJ) or other judgement debts, in the United Kingdom or elsewhere?"

11. Mr Rajah answered "No".

12. Paragraph 32 of the HSF2 Form asked:

"Does the individual have any judgement debts (including CCJ's) made under a court order still outstanding, whether in full or in part?"

13. Mr Rajah answered "No".

14. Paragraph 41 of the HSF2 Form contained the following statements:

"By submitting this application form you confirm that this form is printed and the declaration signed by the individual and the firm.....Knowingly or recklessly giving the FSA information, which is false or misleading in a material particular is a criminal offence. It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or to another regulatory body. If there is any doubt about the relevance of information, it should be included ..."

"By signing this declaration: I confirm that the information in this form is accurate and complete to the best of my knowledge and belief and that I have read the notes to this form."

Please tick here to confirm that you have read and understood the declaration."

Mr Rajah typed the word "Yes" so to confirm.

15. The statements made in answers to the above questions were untrue, and the declaration was untrue.

16. As at 12 August 2004 Mr Rajah was the subject of County Court proceedings which had led to judgments against him.

17. On 27 November 2003 judgment was entered against Mr Rajah in undefended proceedings in the Northampton County Court for the sum of £11,264. These proceedings were brought by Metro Rod in respect of work carried out at premises in Streatham, London. The judgment remained outstanding as at 12 August 2004.

18. On 18 February 2004 judgment was entered against Mr Rajah in undefended proceedings in the Croydon County Court relating to a mortgaged property at Foxley Lane, Purley. The mortgagee's judgment was for possession and for payment of £196,672. On 26 May 2004 Mr Rajah attended Croydon County Court and obtained a suspension of the possession order on terms as to payment of £2000 by 3 June 2004 and the remainder of the arrears by 30 June 2004. The payment terms were not complied with within the specified time.

19. The Authority carried out searches and became aware of the judgments. On 16 August 2004 the Authority wrote to Mr Rajah asking for his explanation for the non-disclosure and for information concerning the judgments. He did not reply. A Warning Notice was issued in September 2004, to which he did not respond. The Decision Notice refusing his application was issued in October 2004.

20. After Mr Rajah had referred the matter to the Tribunal, and the Authority had set out its concerns in its Statement of Case, Mr Rajah still gave no clear or satisfactory explanation. In his response of 19 January 2005, he stated merely: "*The Court will within the next few weeks be setting the Judgements aside.*" He did not say how it had come about that he had submitted a form containing untrue statements in support of his application for permission.

21. On 28 February 2005 the Tribunal ordered that he set out his case concerning certain of the Authority's allegations, including the allegation that he had failed to disclose the judgments entered against him. At his request the deadline for compliance was set at 14 March 2005. He did not comply. He supplied some incomplete information by letter of 15 March 2005.

22. Mr Rajah's first written explanation of the non-disclosure was in his letter to the Authority dated 30 March 2005.

23. Regarding the Metro Rod judgment, he stated in the letter that he had completed an application to have the judgment set aside, and anticipated that he would have had it removed from his records prior to his application for permission being processed, but in the event had not made the application until more recently. (In fact he only made the application on or after 15 March 2005.)

24. We regard this explanation as wholly unsatisfactory. The wording of the questions was plain. Even if the judgment had been set aside before he submitted his application form, he would still have needed to tell the Authority about it in order to complete the form truthfully.

25. In his oral evidence to us Mr Rajah said that he did not regard the Metro Rod judgment as relevant, because he was not in reality liable to Metro Rod for the debt. He had made some payments towards their bill on behalf of a client, and Metro Rod had wrongly proceeded on the basis that he had assumed liability for the whole of their bill. In cross-examination Mr Rajah said that he understood his obligations in filling in the form but had made a deliberate decision not to disclose the judgment to the Authority.

26. We can only regard this as a serious breach of good faith by Mr Rajah. He could and should have answered the questions correctly, informing the Authority of the Metro Rod judgment and explaining why he considered it was not relevant. Instead, he interposed his own opinion and decided to withhold the information from the Authority. He chose to make false statements that there were no judgments against him and that the information given by him was accurate to the best of his knowledge and belief. He disregarded both the clear guidance in the notes accompanying the form and the explicit warning that by submitting false or misleading information he could be committing a criminal offence.

27. The Metro Rod judgment was set aside on 11 April 2005, and the proceedings are now continuing against him as defended proceedings. That does not make his August 2004 answers true.

28. In his letter of 30 March 2005, he stated in regard to the mortgage judgment: *“I was not aware and therefore could not inform the Authority regarding the judgment that Kensington Mortgage Company had obtained against me. I only became aware of their case from the response I received from the Authority.”*
29. This explanation was untrue. He was well aware of the judgment when he made his application to the Authority. He had personally attended court on 26 May 2004 and obtained a suspension of the possession order on terms. He could have informed the Authority of the judgment when he filled out form HSF2 in August 2004 had he chosen to do so.
30. In oral evidence he conceded that he had received notice of the commencement of the mortgage proceedings and that he had attended court to obtain suspension of the order. He said he did not realise that it was *“the same type of judgment”* as the Metro Rod case. We regard this excuse as wholly unsatisfactory. The question in the application form was in wide terms and not limited to any particular type of judgment. Any variation in the kind of judgment could not excuse him from disclosing the mortgage judgment to the Authority and could not justify his making untrue statements in the application form.
31. The activities for which Mr Rajah seeks authorisation include arranging regulated mortgage contracts and advising customers on non-investment insurance contracts. For many members of the public, entry into a mortgage contract is the largest and most important financial transaction in which they ever engage. Insurance contracts require good faith on the part of the proposer in disclosing material information. The Authority rightly contended that a sole trader applying to the Authority for authorisation must be able to demonstrate that he will conduct his business with integrity and in compliance with proper standards in order to satisfy the Authority that he is fit and proper, and so as to maintain public confidence in those working in the regulated environment.

32. We have concluded that Mr Rajah knew that his answers in HSF2 were untrue and knew that his declaration was untrue. His subsequent belated explanations were also unsatisfactory or untrue. Either he did not regard it as important to give truthful answers to questions in transactions with legal consequences, or he was consciously dishonest. In either event, he does not satisfy us that he is a fit and proper person to receive authorisation.
33. The Authority places a great deal of importance on an open and co-operative relationship with regulated firms. In our view the Authority is right to do so. Where an applicant hides material information in the course of his application, and, when found out, does not promptly provide a full and candid explanation and apology, the Authority may justifiably lack confidence that the applicant will comply with Principle 11. Given the history of Mr Rajah's dealings with the authority from August 2004 onwards, we are not satisfied as to his suitability.
34. Our concerns were reinforced by his assertions that he was not responsible for the mortgage debt on the Foxley Lane property, even though it was taken in his name. He appeared unable or unwilling to distinguish between his legal liability to the mortgage company and his arrangements with his former business partner, as if the latter somehow exempted him from having to meet his legal liability.

Resources

35. The resources contemplated in threshold condition 4 are both human and financial in nature.
36. Paragraph 56 of the HSF1 Form contained the following question:

"Will the firm be compliant with the capital resources requirements from the date of authorisation? (The capital resource requirements are as follows: Insurance and Mortgage Intermediaries – maintain net assets, the greater of: £5,000 or 2.5% of annual income if not holding client money...")

In response to the question in paragraph 56 of the Form, Mr Rajah typed the words "Yes".

37. It is for Mr Rajah to show that he has adequate financial resources. The evidence we received painted a confused and unhappy picture. He had been involved in a residential care home business. His former business partner was supposed to take over the mortgage on the Foxley Lane property, keeping up the payments and taking the property in her own name, but she had failed to do so, giving rise to the proceedings in the Croydon County Court. Mr Rajah retained legal liability under the mortgage, and was suing her for sums in excess of £792,000. Experience to date did not suggest that her debts to him would be easy to collect. The client on whose behalf he had paid part of Metro Rod's bill had failed to honour an agreement to reimburse him. Mr Rajah had other properties, but they were encumbered. He owed large sums of money to members of his family.

38. In principle a sole trader, who does not handle client's money, is entitled to use personal assets to meet the resources requirements set out in the Handbook, unless those assets are needed to meet other liabilities arising from personal activities or some non-regulated business activity: PRU 9.3.54. We were told that the Authority does not take into account monies owed to an applicant. It is not clear to us why monies owed to an applicant (such as the amounts owed to Mr Rajah by his former business partner) are not to be counted as personal assets. However, even if we take account of those debts, the evidence left us wholly uncertain of Mr Rajah's overall financial position, and we are therefore not satisfied that he meets the net assets requirement.

39. In light of the evidence we are not satisfied as to Mr Rajah's financial resources.

40. The matter of human resources overlaps with the matters that we have considered under the heading of suitability. Mr Rajah's lack of prudence in his personal affairs, in particular the way that he allowed the mortgage possession proceedings to arise,

and the way he dealt with the Metro Rod matter, did not give us confidence that he would deal appropriately with the affairs of customers.

41. In the circumstances the reference is dismissed. Our decision is unanimous.

(Signed) Andrew Bartlett QC, Chairman