

APPLICATION FOR PERMISSION — intending mortgage and insurance intermediary — lack of qualification and little evidence of experience — attempt to mislead Authority — whether Threshold Conditions 4 and 5 satisfied — no — Decision Notice refusing permission upheld — reference dismissed

THE FINANCIAL SERVICES AND MARKETS TRIBUNAL

SABZ ALI KHAN

Applicant

- and -

THE FINANCIAL SERVICES AUTHORITY

Respondent

**Tribunal: Colin Bishopp (Chairman)
Nicholas Douch
Christopher Chapman**

Sitting in public in London on 21 May 2009

**The Applicant did not appear and was not represented
Adrian Berrill-Cox, counsel, of and for the Respondent**

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DECISION

1. The applicant, Sabz Ali Khan, has referred to the Tribunal a Decision Notice issued to him on 7 February 2008 by the Financial Services Authority (“the Authority”). The effect of the Notice was to refuse Mr Khan’s application for “Part IV permission”, that is permission granted in accordance with Part IV of the Financial Services and Markets Act 2000 (“the Act”), to carry on various regulated activities.

2. Mr Khan was not present when the reference was called on for hearing. He had indicated, in a telephone conversation with the Tribunal’s staff on the preceding day, that he did not propose to attend, and in his skeleton argument he repeated the requests he had previously made that the hearing be postponed because he was ill. Those requests were refused by the present chairman. The first was made about a week before the date on which the hearing was scheduled to begin, and was supported by a letter from Mr Khan’s general practitioner recording that he was receiving treatment for a medical condition and that he had been advised to rest. The letter, which was by then almost two months old, did not indicate that Mr Khan should refrain from attending the hearing. Mr Khan was told that if he were to produce a further letter from his general practitioner containing that indication, his request would be reconsidered. He produced a further letter, but there was no hint in it that he had been advised not to attend the hearing, and the renewed request was refused. The third request, in Mr Khan’s skeleton argument, was not supported by further evidence.

3. Adrian Berrill-Cox, counsel for the Authority, suggested that we might strike out the reference for want of prosecution, in accordance with rule 26(3)(b) of the Financial Services and Markets Tribunals Rules 2001, or dismiss it in accordance with rule 27(1)(b)(ii) on the ground that Mr Khan had failed to comply with directions. He did not, however, press either suggestion and in our view he was right not to do so; it is true that Mr Khan has not pursued his reference with vigour, and that his compliance with directions has often been late or patchy, but we did not think his conduct came close to warranting the sanction of summarily striking out or dismissing his reference. We were not prepared to postpone the hearing, remaining unpersuaded that there was any genuine medical reason preventing Mr Khan’s attendance, but were instead satisfied that Mr Khan had no reasonable excuse for failing to attend and that it was appropriate we proceed in his absence, in accordance with rule 19(4)(a), and we did so.

4. We did not hear any oral evidence, but had the statements of Peter Rooke, one of the Authority’s officers, which dealt with the relevant qualification requirements, and of Warren Radloff, at the time an officer of the Authority, who dealt with Mr Khan’s application. We also had a bundle of relevant documents, including the extensive correspondence between Mr Kahn and the Authority, and notes of telephone conversations between him and Mr Radloff. We have also considered Mr Khan’s skeleton argument, as well as one provided by Mr Berrill-Cox. Mr Khan’s skeleton indicated that he did not accept some of what Mr Radloff said, but he did not identify the parts of his statement with which he took issue and, in the absence of a statement from Mr Khan, we have drawn what we

take to be his case from his reference notice, his response, his skeleton, and the correspondence. We deduce, from the absence of any comment to the contrary, that Mr Khan does not take issue with Mr Rooke's evidence, which is purely formal.

5 5. Mr Khan's application for permission to carry on regulated activities was
made on 12 December 2006. The activities identified were quite extensive; among
them were the arrangement of mortgages (including equity release and home
10 reversion plans) and non-investment insurance contracts, and deposit taking; Mr
Khan indicated that he wished to start a community bank catering for those who
could not obtain banking facilities elsewhere. That part of the application was
withdrawn when it was pointed out to Mr Khan that the statutory minimum capital
requirement of a deposit-taking business was €5 million, and a number of other
15 proposed activities were also withdrawn in the course of the correspondence
which followed the submission of the application. Eventually, the only remaining
regulated activities for which permission was sought were those of mortgage
intermediary and arranger of non-investment insurance contracts.

6. The Authority came to the conclusion that Mr Khan could not satisfy the
relevant threshold conditions and on 26 October 2007 it issued a Warning Notice,
proposing to refuse his application, or so much of it as remained. Mr Khan made
20 written representations and on 16 January 2008 he appeared before the
Authority's Regulatory Decisions Committee (RDC) to make oral representations.
On 7 February 2008 the RDC issued the Decision Notice which Mr Khan has
referred to the Tribunal, refusing what remained of his application. The reasons
for which the Notice was given were, in substance, the same as those which led to
25 the issue of the Warning Notice.

7. Section 40 of the Act provides that an individual, body corporate;
partnership or unincorporated association may make an application for permission
to carry on one or more regulated activities to the Authority. Section 41 provides
that:

30 “(1) ‘The threshold conditions’, in relation to a regulated activity, means
the conditions set out in Schedule 6;

(2) In giving or varying permission, or imposing or varying any
requirement under this Part the Authority must ensure that the person
concerned will satisfy, and continue to satisfy, the threshold conditions in
35 relation to all of the regulated activities for which he has or will have
permission.”

8. Two of the threshold conditions of Schedule 6 are relevant in this case.
Threshold condition 4(1), entitled “adequate resources”, is that:

40 “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.”

9. Threshold condition 5 is that:

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

45 (a) his connection with any person;

- (b) the nature of any regulated activity he carries on or seeks to carry on; and
- (c) the need to ensure his affairs are conducted soundly and prudently.”

5 10. The Authority based its refusal of the application, and bases its resistance to
this reference, on two principal factors: that Mr Khan does not have, or has not
demonstrated that he has, the necessary qualifications to carry on the proposed
activities and does not intend to employ anyone who has those qualifications; and
10 that his lack of candour and honesty in the making of his application shows that
he is not a fit and proper person. Mr Khan’s case, as we understand it, is that he,
or others who are to form part of what he terms his “team”, have the necessary
experience and qualifications, and that the Authority’s approach is biased,
infringes his human rights and is racially prejudiced.

15 11. We should say at once that there is not the slightest reason to think that there
is any substance to Mr Khan’s unfocussed allegations of bias, on grounds of racial
prejudice or otherwise. Allegations of this kind, lacking any particularity or
supporting evidence, do nothing to advance an applicant’s case and we hope that,
on reflection, Mr Khan will withdraw them. The clear impression we formed from
20 the correspondence was that the Authority’s staff, particularly Mr Radloff, went
out of their way to help him pursue his application, devoting a good deal of time
to the matter. The allegation that the Authority’s decision breaches Mr Khan’s
human rights, too, lacks any particularity but it also seems to us to add nothing to
his principal argument, that authorisation should have been granted. If, contrary to
his contention, Mr Khan is not properly entitled to authorisation, he has no human
25 right capable of being breached.

12. The Authority has published a Handbook setting out, for the benefit of its
own staff and others, the manner in which it goes about exercising its functions.
The Handbook’s contents do not have statutory force, but it is a carefully
considered, comprehensive and respected document and the guidance in it is
30 accepted as appropriate and proportionate, that is, striking a proper balance
between the protection of the public and avoiding the imposition of an unjustified
regulatory burden. The section which deals with the application of the threshold
conditions is known as COND.

13. The parts of that section relevant to threshold condition 4 stipulate that the
35 Authority will consider whether an applicant firm satisfies, and will continue to
satisfy, the threshold conditions in the context of the size, nature, scale and
complexity of the business which the firm will carry on if the application is
granted (COND 1.3.2(1)G); that it will consider whether the firm is ready, willing
and organised to comply, on a continuing basis, with the requirements and
40 standards of the regulatory system which will apply to it if it is granted Part IV
permission (COND 1.3.2(2)G); and that it must ensure that the firm has adequate
resources in relation to the regulated activity it seeks to carry on: “adequate”
means sufficient in terms of quantity, quality and availability, and “resources”
includes all financial and non-financial resources, and its means of managing its
45 resources (COND 2.4.2G).

14. Those parts relevant, for present purposes, to the application of threshold condition 5 stipulate that a firm must satisfy the Authority that it is “fit and proper” to have Part IV permission, having regard to all of the circumstances including its connection with other persons, the range and nature of its proposed regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently (COND 2.5.2(1)G). The criteria to be applied include the suitability of each person who is to conduct regulated functions (that is, those for which authorisation under the Act is required) and the competence of its management. In addition, the Authority is required to determine whether the firm conducts its business with integrity and in compliance with proper standards. For this purpose, it may have regard to relevant matters including whether the firm has been open and co-operative in its dealings with the Authority (COND 2.5.6G). It may also have regard to relevant matters including whether the firm has the appropriate range of skills and experience to understand, operate and manage the firm’s regulated activities (COND 2.5.7G).

15. As Mr Rooke’s evidence showed, the types of mortgage business for which Mr Khan was seeking authorisation may be carried on only by those who can establish that they have the necessary qualifications, secured by the passing of recognised examinations. It is not necessary for present purposes to go into the detail, but sufficient to record that Mr Khan at first made sketchy and unsubstantiated claims of lengthy experience, maintaining that it was sufficient, but after protracted correspondence on the topic indicated that he would take the examinations, and then, without saying whether he had in fact done so (if he did one can only assume that he did not pass them), reverted to claiming that he and his team had the necessary qualifications.

16. First, we think the Authority was right (for reasons to which we shall come) to be sceptical about Mr Khan’s claims of extensive experience. Second, none of the qualifications Mr Khan stated that he and his team possessed (for which he produced no documentary support) were relevant to the undertaking of mortgage business. For himself, he claimed qualification as a chartered management accountant, and that he had “qualified as a barrister and obtained direct access to the Bar in England and Wales”. That internally inconsistent statement was checked by the Authority with the Bar Council, which stated that Mr Khan had never been a barrister in England and Wales. It did, however, emerge that he had been, but no longer was, a member of the International Bar Association and the Association of Personal Injury Lawyers. Neither of those memberships, self-evidently, confers any qualification to give mortgage advice or act as a mortgage or insurance intermediary, the regulated activities for which Mr Khan was seeking permission.

17. Quite who was to constitute Mr Khan’s “team” also changed as his application proceeded. The Small Firms Application he submitted in December 2006 showed that the proposed firm was to have only one approved person, Mr Khan himself. When it became apparent that the Authority was unlikely to grant that application, because of Mr Khan’s lack of relevant qualifications, he wrote with a list of people who were to form his “team”, most of them members of his family. Though the majority have, or are said to have, a legal or accountancy qualification, Mr Khan has not, either then or since, produced any evidence that

any has any qualification or experience in acting as a mortgage or insurance intermediary or in any other regulated activity.

18. Shortly after, that is in June 2007, Mr Khan claimed that two others, authorised persons then employed by another firm and whose CVs he provided, would join his firm as full-time employees should permission be granted, and that there was a possibility that his proposed firm and that other firm might merge in the future. Enquiry by the Authority revealed that Mr Khan had approached the other firm with a view to his becoming an introducer and had obtained the CVs in the course of that approach. Both of the two authorised persons, one of whom had not even met Mr Khan, wrote to the Authority stating that they had no intention of working for him, and that he had used their CVs without authority.

19. At this point Mr Khan withdrew his application for permission to act as a mortgage adviser (seeking now authorisation only as an intermediary) and stated that he did not intend to employ either of the two persons he had identified. He also stated that he intended to work alone, and would have no employees. In his skeleton argument, however, he again referred to his “team”, meaning the persons, mainly members of his family, whom he had first mentioned. It is, of course, possible that the “team” might assist Mr Khan without being his employees, but the proposed relationship remains obscure. What can be said with confidence is that there is no reason to think that Mr Khan’s proposed firm will have even one person, whether or not an employee, who is properly qualified to carry on the intended regulated activities or to supervise others in doing so.

20. During the course of the correspondence Mr Khan provided details of four other firms with which, he said, he had undertaken mortgage and insurance business. It emerged from the Authority’s enquiries that in two cases Mr Khan had not acted as an intermediary but only as an introducer, and that in the other two no business had, in fact, ever been conducted. It is against that background that we consider the Authority was right to doubt Mr Khan’s claims of extensive experience of dealing with mortgages.

21. It is incumbent on Mr Khan, if he is to succeed in this reference, to satisfy us that the Authority was wrong to refuse his application, or part of it. We bear in mind that we have not heard from Mr Khan, but it is nevertheless clear to us not only that Mr Khan has failed to discharge the burden on him, but that the Authority was right to refuse his application. There can be little doubt that Mr Khan does not have the experience and qualifications necessary if he is to carry on the proposed regulated activities; such evidence of his experience as he has produced is at best unreliable, and it is apparent that neither he nor any of those who, despite the uncertainties we have identified, might work with him, have any relevant examination qualifications. Threshold condition 4 cannot be said to be met.

22. Mr Khan’s pretence to the Authority that the two authorised persons to whom we have referred were to join his firm if permission were granted speaks for itself. An authorised person must demonstrate high standards of probity; an attempt to mislead a regulatory body in order to secure permission is wholly inconsistent with that requirement. It is impossible to be confident that Mr Khan would, if permission were granted, conduct his business in a completely honest

manner, or that he would respect the regulatory requirements imposed on him in the future. In short, Mr Khan cannot be described as “a fit and proper person” and threshold condition 5, too, is not met.

23. The reference accordingly fails. We direct the Authority to maintain the
5 Decision Notice. Our decision is unanimous.

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COLIN BISHOPP
CHAIRMAN
RELEASE DATE: