



Reference number FS/2010/0018

COSTS / EXPENSES – Unreasonable conduct – Applicant referred decision to cancel its Part IV permission – Authority offered to discontinue action set out in referred Decision Notice – Offer rejected by Applicant – Tribunal decided to uphold Decision Notice – Whether Applicant’s conduct unreasonable – Yes – Upper Tribunal Rules para 10(3)(d)

**UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)
FINANCIAL SERVICES**

JAMES PERMAN & COMPANY

Applicant

- and -

THE FINANCIAL SERVICES AUTHORITY

Authority

**TRIBUNAL: SIR STEPHEN OLIVER QC (Judge)
W RUTHVEN GEMMELL
ANDREW LUND**

Sitting in Chambers on 15 November 2011

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DECISION ON COSTS/EXPENSES

1. The Decision referred to the Tribunal by the Applicant was for the Applicant's Part IV permission to carry on regulated activity to be cancelled.
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2. The FSA wrote a "without prejudice save as to costs" letter to the Applicant on 11 November 2010. This proposed that (i) the Applicant should withdraw its reference, (ii) the Applicant should pay its outstanding fees to the FSA; those would be followed by the FSA issuing a formal Notice of
10 Discontinuance of the action set out in the Decision Notice and accepting and (iii) accepting the Voluntary Cancellation Application that had been made by the Applicant on 30 August 2010. The letter of 11 November was followed by a counter proposal by the Applicant dated 17 November. This was not accepted by the FSA and in a letter of 19 November the FSA stated that the
15 offer of 11 November remained open subject to acceptance and formalisation in writing.
3. A directions hearing took place in January 2011 following which a further "without prejudice save as to costs" letter was written by the FSA repeating
20 the settlement offer first proposed on 11 November 2010. The Applicant rejected the FSA's offer.
4. The hearing of the reference was held on 14 July 2011. The Tribunal dismissed the Applicant's reference and directed that its Part IV permission be
25 cancelled.

5. Had the Applicant accepted the offer the FSA would have discontinued their action and accepted the Voluntary Cancellation Application. The Applicant did not have to proceed with the reference.

5 6. We think that the Applicant acted unreasonably in continuing to pursue the reference proceedings. From 19 November 2011 its actions in conducting the proceedings were “unreasonable”. The Applicant should therefore bear the FSA’s costs / expenses of £8,665.60 as itemised in their schedule dated 12 September 2011.

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7. In reaching this decision we have taken account of the points referred to our attention by the Applicant in its letters of 4 and 25 October 2011. These do not displace the straightforward conclusion that its rejection of what in our view was a reasonable offer on the part of the FSA amounted to unreasonable conduct on the Applicant’s part and caused the FSA to incur the costs/expenses.

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8. Further, in reaching this decision, we have examined the FSA’s Schedules of Costs and have concluded that the amount itself is reasonable.

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9. The FSA’s application for £8,665.60 of costs/expenses is granted.

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**SIR STEPHEN OLIVER QC
JUDGE OF THE UPPER TRIBUNAL
RELEASE DATE:**