



**Case number FS/2011/0023**

*FINANCIAL SERVICES — cancellation of permission— whether Authority’s case established — yes — reference dismissed*

**UPPER TRIBUNAL  
TAX AND CHANCERY CHAMBER**

**ATHANASS STEFANOPOULOS**

**Applicant**

**- and -**

**THE FINANCIAL SERVICES AUTHORITY**

**The Authority**

**TRIBUNAL: JUDGE GREG SINFIELD  
IAN ABRAMS  
KEITH PALMER**

**Sitting in public in London on 11 April 2012**

**Shobana Iyer, counsel, instructed by Reemans Solicitors for the Applicant**

**Dan Enraght-Moony, Financial Services Authority, for the Authority**

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## DECISION

### Introduction and decision referred

1. Mr Athanass Stefanopoulos was, at all material times, a sole trader. He has  
5 been authorised by the Financial Services Authority ("the Authority") since  
31 October 2004 to conduct home finance business and since 14 January 2005 to  
carry on insurance mediation business which are regulated activities under Part IV of  
the Financial Services and Markets Act 2000 ("the Act"). In a decision notice dated  
10 31 August 2011, the Authority, acting through its Regulatory Decisions Committee  
("the RDC") decided to cancel Mr Stefanopoulos's Part IV permission for the reasons  
set out below. This is a reference by Mr Stefanopoulos in respect of that decision.

### Role of Tribunal

2. Section 133 of the Act provides that, on a reference, the Tribunal must  
15 determine what (if any) is the appropriate action for the decision maker (in this case,  
the Authority) to take in relation to the matter referred to it. This is not an appeal  
against the Authority's decision to cancel Mr Stefanopoulos's Part IV permission but  
a complete rehearing of the issues which gave rise to the decision. The issue for this  
Tribunal to decide, on this reference, is whether Mr Stefanopoulos's Part IV permission  
should be cancelled.

### 20 Reasons for the Authority's decision

3. In its decision, the Authority concluded that Mr Stefanopoulos failed to satisfy  
Threshold Conditions 4 (Adequate resources) and 5 (Suitability) set out in Schedule 6  
to the Act. The Authority also concluded that Mr Stefanopoulos had failed to comply  
with Principle 11 of the Principles for Businesses in that he had not been open and co-  
25 operative in his dealings with the Authority. The reasons given for the Authority's  
conclusions were that Mr Stefanopoulos has

- (1) since August 2005, repeatedly failed to pay fees and levies owed to the  
Authority promptly;
- 30 (2) failed to comply with the terms of a settlement agreement with the  
Authority dated 17 February 2009 whereby Mr Stefanopoulos undertook to pay  
his next two sets of periodic fees and levies by the due date, failing which he  
would apply for the cancellation of his Part IV permission;
- (3) failed to co-operate with the Authority's requests that he cancel his Part IV  
permission as he had agreed to do in the settlement agreement; and
- 35 (4) had continuing health problems since July 2005.

### Applicable statutory provisions and guidance

4. Section 41(1) of the Act provides that 'The Threshold Conditions', in relation to  
a regulated activity, means the conditions as set out in Schedule 6.

5. Section 45 of the Act authorises the Authority to cancel a person's Part IV permission if it appears to the Authority that, inter alia, the person is failing or likely to fail to satisfy the Threshold Conditions.

6. The relevant Threshold Conditions for the purposes of this reference are  
5 Threshold Conditions 4 and 5. Threshold Condition 4 is set out in paragraph 4 of Schedule 6 to the Act and provides:

“(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.

10 (2) In reaching that opinion, the Authority may –

(a) ...

(b) have regard to –

15 (i) the provision he makes and, if he is a member of a group, which the other members of the group make in respect of liabilities (including contingent and future liabilities); and

(ii) the means by which he manages and, if he is a member of a group, which other members of the group manage the incidence of risk in connection with his business.”

7. Threshold Condition 5 is set out in paragraph 5 of Schedule 6 to the Act and  
20 provides that:

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

...

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

8. Paragraph 17(1)(a) of Schedule 1 to the Act permits the Authority to charge fees. Paragraph 17(4) states that any fee owed to the Authority may be recovered as a debt due to the Authority. The rules and guidance relating to administrative fees for late submission of returns are in the Supervision Manual (“SUP”). The rules and  
30 guidance relating to fees were formerly in SUP but were amended and moved to FEES with effect from 1 January 2006. It is not necessary to set out the details of the rules and guidance relating to fees in this case: it is enough to note that they provide that the fees and levies must be paid to the Authority in full without deduction (save for irrelevant exceptions) by the time specified under the rules (usually 30 days from  
35 the date of the invoice).

9. Principle 11 of the Authority’s Principles for Businesses as set out in the Authority’s Handbook of Rules and Guidance (“the Handbook”) states that “A firm must deal with its regulators in an open and co-operative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.”

10. Guidance on the Threshold Conditions is contained in the Handbook in the part entitled Threshold Conditions (“COND”).

11. COND 1.3.1G in the Handbook acknowledges the general obligation under section 41 of the Act that the Authority must ensure the firm will satisfy, and continue to satisfy, the Threshold Conditions in relation to each regulated activity for which it has, or will have, permission. In doing so, the Authority will consider this in the context of the size, nature, scale and complexity of the business which the firm carries on or will carry on. In relation to Threshold Conditions 4 and 5, COND 1.3.2G(1) provides that the Authority will consider whether a firm is ready, willing and organised to comply, on a continuing basis, with the requirements and standards under the regulatory system which applied to the firm.

12. COND 2.4.2G(1) states that Threshold Condition 4 requires the Authority to ensure that a firm has adequate resources in relation to the specific regulated activity or regulated activities which it seeks to carry on or carries on. COND 2.4.2G(2) provides that, in this context, the Authority will interpret the term “adequate” as meaning sufficient in terms of quantity, quality and availability, and “resources” as including all financial resources, non-financial resources and means of managing its resources; for example, capital, provision against liabilities, holding of or access to cash and other liquid assets, human resources and effective means by which to manage risks. COND 2.4.2G(3) states that the Authority will consider whether the firm is ready, willing and organised to comply with the systems and controls and the “prudential standards” part of the Handbook when assessing whether it has adequate resources. COND 2.4.4G(3) provides that the Authority will only take into account relevant matters which are material. It notes that a series of matters may be significant when taken together, even if each of them in isolation might not be significant. COND 2.4.4G(4) states that, in making its assessment, the Authority will consider the individual circumstances of each firm on a case-by-case basis

13. Turning now to Threshold Condition 5 (suitability), COND 2.5.2G requires the firm to satisfy the Authority that it is “fit and proper” to have Part IV permission having regard to all the circumstances including the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.

14. COND 2.5.6G provides that the Authority, in determining whether a firm will satisfy and continue to satisfy Threshold Condition 5 in respect of conducting its business with integrity and in compliance with proper standards, may have regard to whether the firm has been open and co-operative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system. The firm must have taken reasonable care to establish and maintain effective systems and controls for compliance with applicable

requirements under the regulatory system that apply to the firm and to the regulated activities for which it has, or will have, permission.

15. The Authority's policy on exercising its Enforcement powers is set out in the Enforcement Guide ("EG"). EG 8.1(1) provides that the Authority may use its power  
5 under section 45 of the Act to cancel a person's Part IV permission if it appears to the Authority that, inter alia, the person is failing or likely to fail to satisfy the Threshold Conditions. EG8.14 states that examples of the types of circumstances in which the Authority may cancel a firm's Part IV permission include non-payment of fees or repeated failure to pay fees except under threat of Enforcement action and repeated  
10 failures to comply with rules or requirements.

### **Evidence and findings of fact**

16. The Authority submitted a bundle of correspondence and notes of telephone conversations between the Authority and Mr Stefanopoulos or his secretary or accountant. Mr Stefanopoulos gave evidence on oath. Mr Stefanopoulos did not  
15 dispute that he had not paid amounts due to the Authority on time. On the evidence before the Tribunal, we find the facts to be as set out below.

### **The 2005 charges**

17. On 4 July 2005, the Authority sent an invoice for £1,267.17 fees and levies for the year to 31 March 2006 to Mr Stefanopoulos. The due date for payment was 3  
20 August 2005. On 9 and 31 August, the Authority requested payment of the overdue amount by telephone and letter. In response to the telephone call, Mr Stefanopoulos stated that he would send a cheque.

18. On 19 September 2005, the Authority sent an invoice to Mr Stefanopoulos for £250, an administrative fee for late submission of the retail mediation activities return ("RMAR") for the period ended 1 July 2005. The due date for payment was  
25 19 October 2005. On 26 September, the Authority sent Mr Stefanopoulos a reminder letter for £1,517.17 (ie £1,267.17 plus £250). No payment was made so the Authority telephoned and wrote to Mr Stefanopoulos over the next few weeks saying that he would be referred to Enforcement if payment was not received.

19. On 15 December 2005, the Authority's Enforcement and Financial Crime Division ("Enforcement") wrote to Mr Stefanopoulos stating that he was considered to be in breach of Principle 11 and Threshold Condition 5 and they were minded to recommend cancellation of his Part IV permission. The following day, Mr Stefanopoulos telephoned Enforcement and stated that he was in the process of  
35 arranging payment of fees. He stated that the reason for his failure to pay the overdue balance was that he was recovering from a heart attack. One week later, on 23 December, Mr Stefanopoulos wrote to Enforcement stating that he would make full payment of the overdue balance by mid-January 2006. The letter stated that he had been unable to work for at least six months due to a heart attack.

20. On 10 January 2006, Enforcement wrote to Mr Stefanopoulos stating that if the full amount of £1,517.17 was paid by 16 January then the Authority would take no

further action to cancel Mr Stefanopoulos's permission. On 25 January, Mr Stefanopoulos telephoned Enforcement stating that he had been unable to pay the overdue balance by 16 January because he had been taken back into hospital and had only been discharged on 23 January. Mr Stefanopoulos stated that he would pay the full amount owing by 3 February. In fact, the Authority received a cheque for the overdue balance of £1,517.17 on 31 January 2006. The payment of the fees was five months and 28 days late and the payment of the RMAR charge was three months and 12 days late.

### **The 2006 charges**

21. On 30 August 2006, the Authority sent an invoice to Mr Stefanopoulos for £250, an administrative fee for late submission of the RMAR for the period to 30 June 2006. Payment was due by 29 September. On 6 November, the Authority sent Mr Stefanopoulos an invoice for £946.04 fees and levies for the year to 31 March 2007. The payment was due by 6 December 2006.

22. On 19 and 28 March 2007, the Authority sent Mr Stefanopoulos reminder letters for the overdue amount of £1,196.04.

23. On 20 April 2007, Enforcement wrote to Mr Stefanopoulos stating that, as he had failed to pay fees owed to the Authority, the Authority considered him to be in breach of Principle 11 and Threshold Condition 5 and Enforcement was minded to cancel his Part IV permission. On 23 April, Mr Stefanopoulos's secretary telephoned Enforcement requesting an extension of 10 days to pay the outstanding fees before cancellation action was taken by the Authority on the ground that Mr Stefanopoulos was experiencing health problems and was currently in hospital. Enforcement agreed to the extension of time. On 4 May, someone in Mr Stefanopoulos's office called and said that Mr Stefanopoulos was in hospital and would be there until 8 May but payment would be made on that day.

24. No payment was received and, on 8 August 2007, the RDC issued a Warning Notice to Mr Stefanopoulos that stated that the Authority propose to cancel his Part IV permission as he had failed to pay fees and it considered that he failed to satisfy the Threshold Conditions.

25. On 13 August 2007, Mr Stefanopoulos telephoned Enforcement about the Warning Notice. He said that he had suffered a heart attack and that he incorrectly believed that he had paid the fees. He undertook to arrange immediate payment. No payment was received. On 6 September, Mr Stefanopoulos wrote to Enforcement saying he had been suffering health problems and had been in hospital and authorising Enforcement to discuss the matter with his accountant. Between 6 and 19 September, there were various telephone conversations between Enforcement and Mr Stefanopoulos's accountant. On 20 September, the Authority received a payment of £1,196.04. The RMAR late submission amount was 11 months and 22 days late. The fees and levies for 2006 were nine months and 14 days late.

## **The 2007 charges**

26. The Authority did not invoice Mr Stefanopoulos for any fees for 2007/2008. Initially, this was due to the ongoing Enforcement action relating to outstanding fees for 2006/2007 but then was due to an administrative error by the Authority.

## 5 **The 2008 charges**

27. On 17 March 2008, the Authority sent an invoice to Mr Stefanopoulos for £250, an administrative fee for late submission of the RMAR for the period ended 31 December 2007. Payment was due by 16 April 2008.

10 28. On 24 April 2008, the Authority received a telephone call from Mr Stefanopoulos's secretary saying that Mr Stefanopoulos was in hospital with a heart condition and that the outstanding £250 would be paid when he left hospital.

29. On 14 July 2008, the Authority sent an invoice for fees and levies of £1,102.21 for the year to 31 March 2009 to Mr Stefanopoulos. Payment was due by 13 August 2008.

15 30. On 20 August and 4 September 2008, the Authority sent reminder letters to Mr Stefanopoulos in respect of the overdue amount of £1,352.21. On 30 September, Enforcement wrote to Mr Stefanopoulos stating that, as he had failed to pay fees owed to the Authority despite being chased for them, the Authority considered him to be in breach of Principle 11 and Threshold Condition 5. The letter stated that unless  
20 payment of the overdue balance was received within seven days, the Authority would take action to cancel his Part IV permission.

31. On 1 October 2008, Mr Stefanopoulos sent an e-mail to the Authority stating that he had been hospitalised for some weeks but that he would pay the overdue balance by 20 October. On 20 October, the Authority received a telephone call from  
25 Mr Stefanopoulos's secretary stating that Mr Stefanopoulos was in hospital and would not be able to pay the overdue fees to the Authority until the end of the month.

32. On 3 December 2008, Enforcement wrote to Mr Stefanopoulos stating that he had been referred to Enforcement for the third time for failure to pay fees owed to the Authority and that he was in breach of Principle 11 and Threshold Condition 5. The  
30 letter stated that Enforcement would recommend that Mr Stefanopoulos's Part IV permission be cancelled.

33. On 4 December 2008, Enforcement received a telephone call from Mr Stefanopoulos's accountant who stated that Mr Stefanopoulos was seriously ill and that the Authority had previously been notified of his continuing health issues. His  
35 bad health had had a detrimental impact on Mr Stefanopoulos's ability to earn and he wished to request the cancellation action be deferred until the first week of 2009. In reply, Enforcement told Mr Stefanopoulos's accountant that the usual policy in such circumstances was that cancellation action would be taken irrespective of whether the amount owing was paid. Nonetheless, Enforcement invited the accountant to put the  
40 request in writing, substantiated by evidence of medical problems, in order that it

should be considered. On 10 December, Mr Stefanopoulos sent a letter to Enforcement that explained his ill-health and attached documents evidencing his medical treatment. Mr Stefanopoulos sought an extension to 31 January 2009 in order to pay the overdue balance. On 12 December, Mr Stefanopoulos's doctor provided a letter confirming that Mr Stefanopoulos had suffered from coronary heart disease for several years. On 23 December, Enforcement wrote to Mr Stefanopoulos acknowledging the letters and stating that it would continue to seek cancellation of his Part IV permission. On 24 December, Mr Stefanopoulos wrote to Enforcement stating that the Authority had taken a supercilious attitude and making various criticisms of the Authority's approach.

34. On 8 January 2009, Enforcement sent a letter to Mr Stefanopoulos stating that it was prepared to allow him until 31 January to pay the outstanding fees but that if Mr Stefanopoulos failed to pay the fees by that date, cancellation action would be pursued. No payment was received by 31 January.

35. On 9 February 2009, Enforcement wrote to Mr Stefanopoulos stating that they would now proceed to seek cancellation of his Part IV permission. On 10 February, Mr Stefanopoulos telephoned Enforcement to acknowledge receipt of the letter and say that he had made payment some days earlier. On 11 February, Enforcement telephoned Mr Stefanopoulos and confirmed the payment had been received by the Authority on 9 February, which was after the extended deadline. Enforcement asked Mr Stefanopoulos to enter into a settlement agreement under which he agreed to pay the next two sets of periodic fees in full and on time and if he failed to pay the fees by their due dates, he would immediately apply to cancel his permission if the Authority so requested. Mr Stefanopoulos agreed to enter into the settlement agreement and Enforcement e-mailed the draft agreement to him on 13 February. Mr Stefanopoulos returned the signed settlement agreement to Enforcement by fax the same day. In his covering fax of 13 February, Mr Stefanopoulos complained that the short timeframe for returning the document (Enforcement had asked it to be returned by Tuesday 17 February) did not leave him enough time to obtain legal advice in relation to it. On 18 February, Enforcement sent a letter to Mr Stefanopoulos enclosing a copy of the settlement agreement and stating that it was now in force.

### **The 2009 charges**

36. On 9 July 2009, the Authority sent an invoice for fees and levies of £1,094.93 for the year to 31 March 2010 to Mr Stefanopoulos. Payment was due by 8 August 2009. On 24 July, the Authority sent an invoice to Mr Stefanopoulos for £250 administrative fee for late submission of the RMAR for the period ended 31 December 2008. Payment was due by 23 August 2009.

37. On 17 August 2009, the Authority sent a reminder letter to Mr Stefanopoulos for the sum of £1,344.93 (ie £1,094.93 plus £250).

38. On 7 October 2009, the Authority received payment of £1,094.93. The payment of the fees was one month and 29 days late.

39. On 22 December 2009, 5 January 2010 and 19 January 2010, the Authority sent reminder letters to Mr Stefanopoulos requesting payment of the £250 fee for late submission of the RMAR. This fee was eventually paid on 10 August 2011 and is discussed further below.

## 5 The 2010 charges

40. On 12 July 2010, the Authority sent an invoice for fees and levies of £1,164.39 for the year to 31 March 2011 to Mr Stefanopoulos. Payment was due by 11 August 2010.

41. On 16 and 28 August, 12 September and 19 October 2010, the Authority sent Mr Stefanopoulos reminder letters and emails in respect of the amount of £1,414.39 (i.e. the outstanding 2010 charges and fee for late submission of the RMAR for the period ended 31 December 2008). On 19 October, Mr Stefanopoulos replied stating that he hoped to pay the overdue balance by the end of October 2010.

42. On 4 November 2010, the Authority emailed Mr Stefanopoulos informing him that no payment had been received. Mr Stefanopoulos replied on the same day asking for one more week in which to pay the overdue fees.

43. It appears that there was then a considerable period with no contact between the Authority and Mr Stefanopoulos (and no payments). On 4 March 2011, Enforcement wrote to Mr Stefanopoulos stating that he had been referred to them for the fourth time for failure to pay fees promptly which he owed the Authority and he was considered to be in breach of Principle 11 and Threshold Condition 5. Enforcement asked Mr Stefanopoulos to comply with his obligations under the settlement agreement by submitting an application to cancel his Part IV permission within seven days or they would recommend that his Part IV permission be cancelled. Mr Stefanopoulos telephoned Enforcement on 11 March to say that he had received the letter of 4 March but not read it. Mr Stefanopoulos said that he would challenge any decision to cancel his Part IV permission.

44. During the next few weeks, the parties exchanged correspondence in which Mr Stefanopoulos initially said that he would submit an application to cancel his Part IV permission and then declined to do so. On 28 April 2011, the Authority issued a Warning Notice to Mr Stefanopoulos stating that the Authority proposed to cancel his Part IV permission. As part of that process, a hearing was arranged before the RDC for 23 August. On 10 August, the Authority received a payment of £1,414.39 (i.e. the outstanding 2010 charges and fee for late submission of the RMAR for the period ended 31 December 2008). The RMAR fee was 1 year, 11 months and 18 days late. The 2010 charges were 11 months and 30 days late.

45. As stated above, on 31 August 2011, the RDC gave its decision cancelling Mr Stefanopoulos's permission to carry on regulated activities under Part IV of the Act. It is that decision that Mr Stefanopoulos refers to the Tribunal.

## **The 2011 charges**

46. As Mr Stefanopoulos had referred the RDC's decision to the Tribunal, he remained authorised under Part IV of the Act and subject to the rules and guidance of the Authority pending the decision of the Tribunal. Accordingly, on 24 October 2011, the Authority sent an invoice for fees and levies of £1,134.34 for the year 2011/2012 to Mr Stefanopoulos. Payment was due by 23 November 2011. Payment was received by the Authority on 6 January 2012. It was one month and 14 days late.

## **Submissions on behalf of Mr Stefanopoulos**

47. Mr Stefanopoulos gave evidence on oath. He accepted that delays in paying the fees had occurred since 2005 but stated that all the fees due had been paid to date. He said that between 1990 and 2005, he had paid his fees promptly to the Authority. The delays in paying the fees from 2005 were due to his ill-health, reduced business activities and to his ideological objections to the Authority.

48. Mr Stefanopoulos is 67 years old. In 2005, Mr Stefanopoulos suffered a heart attack and was in hospital for eight weeks. In 2007, he had another heart attack and was in hospital for three weeks. He continued to experience health problems throughout 2008. His evidence was that he was now 100% healthy and his visits to Harefield Hospital, which had reduced to every six months in 2010, are now only annual. After the hearing, Mr Stefanopoulos submitted a letter, dated 16 April 2012, from his GP which states that his medical conditions are stable at present, a review by cardiologists at Harefield did not identify any acute problems and he is fit to work.

49. Mr Stefanopoulos said that, owing to the economic recession, his business activities had reduced but were now recovering. He said that the general financial crisis, economic climate and mortgage market between 2008 and 2011 had caused a reduction in his business. Mr Stefanopoulos said in his witness statement that, when his business began to suffer, he began to prioritise his debts and financial commitments and he had de-prioritised the Authority's fees. In response to a question from the Tribunal, Mr Stefanopoulos said he accepted that the Authority's fees should be a high priority but that he could not pay at the time. He thought it was harsh to be punished for late payment of fees when it was due to the lack of action by the Authority. Mr Stefanopoulos's point, made in his statement, was that the fees were recoverable through the civil court process but the Authority chose not to take such action.

50. Mr Stefanopoulos stated that the failures of the Authority in the discharge of its regulatory duties had fuelled the financial crisis which directly affected his business. Mr Stefanopoulos's ideological objection to the Authority arose because its acts and omissions substantially contributed to the collapse of the UK banking system.

51. Mr Stefanopoulos said that his business had improved in the last year or so and he was now able to pay the fees and charges. He said that he would pay the fees on time in the future and that, if he did not pay on time, he would accept that his permission should be automatically cancelled. Mr Stefanopoulos said that the profit

of the whole of his business (regulated and non-regulated) was £4,000 in 2011. This was confirmed by accounts, prepared by his accountants, which were submitted after the hearing and showed a profit of £4,352 for 2011. The accounts also showed that the turnover of the regulated business was less than 10% of the turnover of the non-regulated business. Mr Stefanopoulos acknowledged that most of the profit arose from the non-regulated business. He stated, however, that if he was not authorised by the Authority then many lenders would not agree to deal with him in relation to unregulated business.

52. Mr Stefanopoulos said that he had never been found to have breached any rules relating to consumer protection. He had been inspected by the Authority twice and the only errors identified were administrative ones. In response to a question, Mr Stefanopoulos told the Tribunal that he had arrangements in place to look after clients if he became ill. When he had been ill before, his secretary referred clients to another mortgage broker with whom he had an informal arrangement. It was a gentlemen's agreement and now that he was restored to health, the clients were coming back to him.

53. In relation to the failure to comply with the terms of the Settlement Agreement with the Authority, Mr Stefanopoulos said that he did not keep to the agreement because he could see that his health and business were improving and he needed to continue to work. He said that, at the time, he thought that he was right not to comply with the terms of the Settlement Agreement. He only wanted to work for the next two years until he reached 70 when he would retire.

54. On behalf of Mr Stefanopoulos, it was submitted that all the fees were paid up to date and the decision whether or not to cancel his Part IV permission turned on the late payment of fees between 2005 and 2011 and the failure to comply with the Settlement Agreement. It was not the case that there had been any threat to the consumer. Mr Stefanopoulos had not been aware of the seriousness of signing the Settlement Agreement. Mr Stefanopoulos will put mechanisms, such as a direct debit or guarantee, in place to ensure that fees are paid on time going forward. Cancellation of his Part IV permission would mean having to cease practising a profession that Mr Stefanopoulos had been carrying on since 1990 and he is only intending to carry on for another two years until he retires.

### **Submissions on behalf of the Authority**

55. The Authority submitted that Mr Stefanopoulos was failing to satisfy Threshold Condition 4 (Adequate resources) and Threshold Condition 5 (Suitability) and, accordingly, the condition for the exercise of its power under section 45 of the Act to withdraw Mr Stefanopoulos's Part IV permission was clearly met. The Authority submitted that, in particular, Mr Stefanopoulos was not a fit and proper person (contrary to and Threshold Condition 5) because he had failed to conduct his business with integrity and in compliance with proper standards and had failed to be open and co-operative with the Authority as required by Principle 11 as shown by his repeated failures to pay fees promptly and his failure to comply with Settlement Agreement.

56. The Authority submitted that it had made considerable allowances over the years for Mr Stefanopoulos's health problems. The Authority did not accept that health issues adequately explained Mr Stefanopoulos's repeated failures to pay fees promptly or to respond to correspondence chasing payment. The Authority submitted  
5 that the evidence showed that Mr Stefanopoulos had been ignoring invoices and demands for payment from the Authority. Further, Mr Stefanopoulos's ill health in 2005 and 2007-8 could be no excuse for his failure to comply with the Settlement Agreement in 2010 and 2011.

57. The Authority also submitted that, in addition, Mr Stefanopoulos does not  
10 satisfy Threshold Condition 4 (Adequate resources) as, due to his continuing health problems, he does not have adequate human resources in relation to the regulated activities that he seeks to carry on, or carries on. The Authority submitted that Mr Stefanopoulos's health problems together with his conduct since 2005 demonstrated that he does not have adequate human resources in relation to the regulated activities  
15 that he carries on.

### **Conclusions**

58. Since 2005, Mr Stefanopoulos has been repeatedly and consistently late in paying fees, levies and other amounts due to the Authority. The charges of the £250 administrative fee show that on several occasions Mr Stefanopoulos was also late  
20 submitting his RMARs although the Authority does not rely on those defaults in this case.

59. While it is undoubtedly true that Mr Stefanopoulos has had serious and continuing health problems from July 2005 until comparatively recently, we agree with the Authority that this cannot excuse his failure to pay amounts due throughout  
25 the period 2005 - 2011. Nor does the financial crisis, which started in 2008 and caused a reduction in his business until 2011, explain why Mr Stefanopoulos failed to pay the 2005 and 2006 charges on time. We consider that the repeated failure to pay shows a lack of adequate human and (although the Authority did not advance this argument) financial resources. Even in a year (2011) when Mr Stefanopoulos sought  
30 to assure us that business had improved, he was six weeks late in paying the fees and levies.

60. The consistent pattern of behaviour strongly suggests that the failure to pay fees on time was deliberate and Mr Stefanopoulos admitted as much when he said in evidence that he had de-prioritised the fees payable to the Authority. This shows that  
35 Mr Stefanopoulos did not recognise the importance of compliance and paid no regard to Principle 11. It cannot be open to regulated persons to decide what requirement they will comply with and when. The Authority cannot perform its function and achieve its regulatory objectives if those it is charged with regulating are not open and co-operative. More fundamentally, deliberate and repeated disregard of obligations to  
40 pay on time is clear evidence that Mr Stefanopoulos failed to conduct his business with integrity and in compliance with proper standards.

61. It is also clear from his evidence that Mr Stefanopoulos made a deliberate decision not to comply with the terms of the Settlement Agreement because he thought that his health and business were improving and he needed to continue to work. It does not seem to have occurred to him that if he wanted to continue then he should have paid the fees when they fell due. The fact that that Mr Stefanopoulos thought that he did not have to pay fees on time and could simply ignore the terms of the Settlement Agreement is a clear example of a lack of integrity. Such an attitude to dealings with the Authority (or, indeed, anyone) is reprehensible and a clear breach of Principle 11 and a failure to satisfy Threshold Condition 5.

10 **Decision**

62. For the reasons given above, we do not consider that Mr Stefanopoulos meets the standards of fitness and propriety required by Threshold Condition 5. We are also not satisfied that he has adequate human or financial resources in relation to the regulated activities that he carries on as required by Threshold Condition 4. We consider that the right course for the Authority is to cancel Mr Stefanopoulos's Part IV permission. We direct the Authority to issue a Final Notice. The reference is, accordingly, dismissed. Our decision is unanimous.

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**GREG SINFIELD  
UPPER TRIBUNAL JUDGE**

**RELEASE DATE: 28 May 2012**

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