

REGULATED ACTIVITIES — own-initiative variation of permission — supervisory notice varying a Part IV permission by removing all regulated activities with immediate effect — failure by applicant to disclose convictions for dishonesty when making application — failure to disclose further conviction for dishonesty occurring after permission granted — applicant communicating with Authority in abusive, insulting and threatening terms — applicant's refusal to comply with notice despite failing in application to Tribunal to have it suspended — refusal to submit final RMAR — failure to notify clients of withdrawal of permissions — whether fit and proper person — no — supervisory notice correct action for Authority to take — reference dismissed

THE FINANCIAL SERVICES AND MARKETS TRIBUNAL

QAMAR HUSSAIN
trading as **RADIANT TECHNOLOGICAL SERVICES**

Applicant

and

THE FINANCIAL SERVICES AUTHORITY

Respondent

Tribunal: Colin Bishopp (Chairman)
Sandi O'Neill
Andrew Lund

Sitting in public in Nottingham on 23 November 2007

The Applicant in person

Dan Enraght-Moony for the Respondent

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DECISION

1. On 5 November 2004 the applicant, Qamar Hussain, applied to the Authority for permission within the terms of Part IV of the Financial Services and Markets Act 2000 to conduct mortgage and general insurance activities. He submitted one application, a Firm Application Form or FAF, for the authorisation of his firm and a second, an Approved Persons and Individual Controllers Form or APICF, seeking his own approval. Both applications were granted, on 1 December 2004, and Mr Hussain began to undertake the authorised activities as a sole trader from about that date, using the name Radiant Technological Services.

2. On 22 May 2007 the Authority sent to Mr Hussain a First Supervisory Notice, withdrawing the permissions which had been granted in 2004 with immediate effect. It was a requirement of the Notice that Mr Hussain should write to his clients informing them that he was no longer permitted to carry on regulated activities. Mr Hussain did not make representations to the Authority, but instead immediately referred the Notice to the tribunal, applying at the same time for directions that the effect of the Notice be suspended and that the tribunal's register contain no particulars of the reference. The application came before the President of the tribunal on 29 June 2007 and was refused.

3. The Authority also served a Warning Notice on Mr Hussain, with the First Supervisory Notice. The Notice warned him that, since he would no longer be permitted to carry on any regulated activity, his permission was to be cancelled. Again, Mr Hussain did not take the opportunity of making representations and on 10 July 2007 the Authority issued a Decision Notice putting the Warning Notice into effect. On 11 July 2007 Mr Hussain referred that Notice, too, to the tribunal. The two references were subsequently joined, and the joined reference came before us on 23 November 2007, when Mr Hussain represented himself and the Authority was represented by Mr Dan Enraght-Moony of its own staff.

4. The Authority's reasons for issuing the First Supervisory Notice, as they were set out in the Notice itself, were, first, that Mr Hussain had failed to disclose, in each of the applications for permission he had submitted, that on 18 September 1985 he had been convicted at Leek Magistrates' Court of offences of theft and criminal damage, that on 25 October 1985 he had been convicted at North Staffordshire Magistrates' Court of theft, and that on 4 February 1987 he had been convicted, also at North Staffordshire Magistrates' Court, of possessing an offensive weapon in a public place and, second, that he had failed to inform the Authority of two convictions recorded against him after his authorisation was granted, that is on 5 December 2005 at Nottingham Magistrates' Court of theft, two counts of assault and failure to provide a non-intimate sample for the purpose of testing for the presence of drugs, and on 10 April 2006, also at Nottingham Magistrates' Court, of failing to comply with the terms of the community order imposed on him following his conviction on 5 December 2005.

5. About two months before the First Supervisory Notice was sent to him, when Mr Hussain learnt that the Authority was contemplating issuing it, he began a course of correspondence with the Authority. At first his letters and emails were in temperate, indeed conciliatory terms, but once it became clear that the Authority was in earnest, the tone of Mr Hussain's communications deteriorated:

he made a number of threats, was abusive to members of the Authority's staff, and made accusations of racism. He discovered that the Authority had learnt of his convictions from an informant, whose identity he tried to persuade the Authority to divulge. The Authority refused to do so, and Mr Hussain's application for a direction compelling it to disclose the informant's identity was rejected by the tribunal on 29 June 2007, with his other applications which we have mentioned.

6. During the course of his correspondence with the Authority Mr Hussain did not deny the fact of his convictions. He argued that the 1985 convictions had occurred many years previously when he was a young man, aged only 20, that they were no more than an indication of youthful indiscretion, that he had already been penalised for them and that he should not be penalised again. There is merit in all of those points but it is not the fact of the convictions, but Mr Hussain's failure to disclose them, which is at the heart of the Authority's first disputed decision. It relies on the statement in both FAF and APICF that convictions for dishonesty must be disclosed, including those spent since, by virtue of art 3 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) the 1974 Act does not allow an applicant to withhold spent convictions when seeking authorisation by the Authority, and upon the warning in the forms that failure to disclose relevant information could have serious consequences for an applicant. Both of the forms ask whether the firm or the individual applicant has any conviction for dishonesty, and in each case Mr Hussain answered "no". He also stated that he had read and understood the declaration at the end of each form that the information contained in it was accurate and complete to the best of his knowledge.

7. At the hearing, Mr Hussain told us that he had not realised that he had been convicted on the first occasion on which he had appeared at the magistrates' court. He had a clear recollection of the event which led to his appearance there when, he said, he had been acting as the driver for a group of friends, some of whom had had too much to drink, who had, unknown to him, stolen a canful of petrol, evidently siphoning it from a car and damaging the filler cap in the process, and leaving the can in Mr Hussain's car where the police later found it. He told us he had been advised by a duty solicitor whom he had instructed to plead guilty on his behalf, since he wanted to have the matter concluded without delay, and that his father had paid the fine and compensation for him. We are unable to accept that Mr Hussain did not realise that he had been convicted of the offences. He is, as was obvious at the hearing, an intelligent and articulate man who (as he also told us) has undertaken a college course. It is not credible that he did not understand that his plea of guilty to the charges would inevitably result in his conviction. We are satisfied that he chose not to disclose it in his applications.

8. Although Mr Hussain had not done so in the course of his correspondence with the Authority, at the hearing he told us he could not remember the second recorded appearance before the magistrates, on 25 October 1985, and thought that the certificate of conviction obtained by the Authority from the magistrates' court might relate to another person of the same name. We reject that contention. Not only the name but also the recorded date of birth of the convicted person matches Mr Hussain's. Had there truly been any doubt about the identity of the person concerned Mr Hussain could easily have made the point in his correspondence,

but he did not. We had a transcript of the earlier, interim, hearing when that conviction was discussed and when Mr Hussain made no suggestion that he was not the person convicted. We are satisfied that Mr Hussain chose to conceal this conviction from the Authority, and that he attempted to deflect us from that conclusion by the pretence that he was not the person concerned.

9. Although the third conviction, of carrying an offensive weapon, was mentioned in the First Supervisory Notice, the Authority did not rely on it at the hearing (as it was not an offence of dishonesty) and it is not necessary for us to say any more about it.

10. Mr Hussain told us that the conviction in September 2005 occurred at a time when he was under considerable stress, because of a number of unfortunate events within his family and because he was also working very hard in order to establish his business. Those events appear to have begun with a very unpleasant and frightening experience in 2001 when, as a letter from the local police which he produced showed, Mr Hussain was the victim of a serious criminal offence. That episode, from which he had still not recovered, and the subsequent events resulted in his having what he described as a breakdown which led, he said, to his committing the offences and to his being admitted to a psychiatric hospital, although we also learnt that he had been admitted for only three days, as a voluntary patient. The conviction was the result of a shoplifting incident, when he had been stopped and resisted arrest. He was required, in consequence of his conviction for the offences, to be supervised for 12 months and to carry out unpaid work for 150 hours. We understood that Mr Hussain's further appearance before the magistrates followed his failure to attend for the required supervision.

11. Mr Hussain sought to excuse his failure to inform the Authority of these convictions by telling us that he had always intended to do so, but had many other matters on his mind, and that he had not found the time to inform it before the Authority advised him that it had found out about them by other means. We are not satisfied that the explanation offered is truthful. Some 18 months had gone by when Mr Hussain discovered that the Authority had been told of the September 2005 conviction. It is impossible to accept that such a delay was attributable to pressure of work and similar factors. Rather, we consider that Mr Hussain failed to disclose these convictions for the same reason that he did not disclose the others, that he thought the Authority would not find out about them if he said nothing. We are, therefore, satisfied that this was another episode of knowing concealment.

12. At the hearing Mr Hussain accepted unreservedly that the tone of his correspondence with the Authority and the threats and insults contained in it were wholly unacceptable, and he apologised. For that he deserves some credit. However, this is not a case in which an aggrieved person, in the heat of the moment, has made one or two misguided remarks of which he has immediately thought better. The insults were personal, of a kind calculated to be offensive, sometimes obscene, and repeated, some only a short time before the hearing of his reference. The threats were directed not only at the Authority but also at named individuals, and they too were repeated—indeed, it could fairly be said that for several months Mr Hussain bombarded the Authority and its staff with threats and

insults. It was a sustained campaign on his part, and it cannot be excused by an apology, however sincere. Moreover, Mr Hussain refused to withdraw one of his accusations, that the Authority and at least some of its staff were motivated by racism, yet there is no evidence (and Mr Hussain did not attempt to point us to any) of such motivation.

13. We recognise—it was, indeed, obvious—that Mr Hussain strongly suspects that the informant we have mentioned approached the Authority for some spiteful reason. That may be true; we do not know the identity of the informant, and have no means of knowing his or her reasons. But (as was pointed out to Mr Hussain by the President of the tribunal, at the interim hearing) the informant’s identity and motives are irrelevant. The Authority must make its decisions, and this tribunal must direct it to act, on the basis of the facts as they are, regardless of the source of the information.

14. The Authority’s position is that Mr Hussain’s correspondence reveals an attitude contemptuous of it, that no regulator should be treated with contempt by those whom it is appointed to regulate, and that Mr Hussain’s sustained campaign of insults and threats is evidence, as is his failure to disclose his convictions, that he is not fit and proper to remain an authorised person.

15. The Authority also relies on Mr Hussain’s refusal to complete his Retail Mediation Activities Return, or RMAR, for the period to 31 March 2007, and pay the prescribed fee, and on his failure to comply with the terms of the First Supervisory Notice. The RMAR, by which regulated firms provide information about such matters as their financial resources and insurance cover, was due by not later than 16 May 2007. The effect of the First Supervisory Notice was that Mr Hussain must cease carrying on regulated activities but he did not do so, even after his application for suspension of the effect of the notice failed. He was required also to write to his clients informing them of his loss of his permissions, but again has not done so.

16. Mr Hussain’s explanation for his (admitted) failure to submit the RMAR was that it was necessary to instruct his accountants to complete the form, and that he could ill afford their fees and the fee payable to an authority with which he was in dispute and which was attempting to deprive him of his livelihood. He told us that although he had stated on many of his letters and emails to the Authority that he was still trading, he had in fact been carrying on only unregulated business. He did not deny that he had not written to his clients, and offered no explanation or justification of that failure. He indicated, in one of his submissions to the tribunal, that he was willing to do so but only if the Authority met the cost.

17. Although Mr Hussain’s RMAR was late by only six days when the First Supervisory Notice was served, and the other failings on which the Authority relies post-date it, these (and the continuation of Mr Hussain’s offensive correspondence) are matters which the tribunal should take into account when reaching a decision: see section 133(3) of the Financial Services and Markets Act 2000. The failure to submit the RMAR, at first sight, seems to be a relatively minor fault; but we accept Mr Enraght-Moony’s point that, in a regulatory system which relies heavily on open and honest disclosure by those regulated, a prolonged and, as we find it to be, defiant refusal to submit the RMAR is a serious

matter. An applicant seriously attempting to demonstrate that the Authority was in error in concluding that he was not a fit and proper person would take care to submit it, despite the cost. We also do not accept Mr Hussain's claim that he has been carrying on only unregulated activities and not advising clients. His statements in the correspondence are written in terms designed to indicate to the Authority that, in defiance of the First Supervisory Notice, he was still calling himself an IFA and carrying on business regardless and his firm's website, which we viewed at Mr Hussain's request, clearly shows that regulated services are offered. Mr Hussain's failure to write to his clients is of the same, defiant, character; we do not consider his offer to do so at the Authority's cost is one it could possibly have accepted.

18. We are in no doubt that the Authority was right to conclude that Mr Hussain is not a person who is fit and proper to carry on regulated activities. We are satisfied, as we have indicated, that he knowingly failed to disclose his convictions. His wilful failure to comply with the First Supervisory Notice, even after the rejection of his application for suspension of its effect, is impossible to excuse. The tone of his correspondence with the Authority reveals a fundamental failure to understand the Authority's role as a regulator, and of his obligation, as an approved person, to comply with the terms of the Act, the relevant regulations and the Handbook. Complete candour and scrupulous compliance with the requirements which apply to him are, properly, demanded of any approved person, and anyone who falls below that standard cannot be regarded as fit and proper.

19. It may be, as Mr Hussain insisted, that he is still suffering the after-effects of the incident in 2001 and of the other family events he mentioned, but we cannot disregard the fact that he chose to apply, in 2004, for permission to carry on regulated activities. Any person who seeks the privilege of such authorisation must necessarily place himself within the regulatory regime. One of the main purposes of the regime is the protection of the public. If that purpose is to be achieved, those providing regulated services must demonstrate a high standard of openness, honesty and integrity. That standard is an absolute one; it cannot be varied to take account of an applicant's personal circumstances. Mr Hussain has failed to demonstrate that he meets the standard. Moreover, the tone of his correspondence with the Authority, despite his apology, gives us little confidence that, even now, he fully comprehends the importance the 2000 Act attaches to the Authority's regulatory position.

20. It is also impossible to argue, as Mr Hussain did, that the Authority should investigate every application thoroughly before granting or rejecting it. It may be that the Authority would have rejected Mr Hussain's applications had it checked at the time whether he had any convictions, and that, if it had been rejected, he would not have incurred the cost of starting up his business. But the argument misses the point. First, even if it had the resources to do as Mr Hussain suggested within a reasonable time-scale, the Authority, as well as the public whose task it is to protect, is entitled to rely on the obligation placed on applicants to make full and frank disclosure, as explicitly required by the forms Mr Hussain completed—FAF and APICF. Applicants cannot wait to be found out and hope they are not. Second, Mr Hussain's argument does not address his failure to disclose his

convictions in 2005 and 2006. If he truly thought the Authority made enquiries into applicants and, impliedly, approved persons, it is difficult to understand why he did not disclose convictions of which, on this hypothesis, the Authority would soon learn.

5 21. Mr Hussain's challenge to the First Supervisory Notice, therefore fails, and we direct the Authority that it should remain in effect. The second reference, relating to the cancellation of his permission, must necessarily fail: see section 45(3) of the 2000 Act, which requires the Authority to cancel the permission if the authorised person to whom it relates is no longer permitted to carry on regulated activities, and the Authority is satisfied (as in this case it inevitably must be) that
10 the retention of the permission is not necessary.

22. The references are, therefore, dismissed. This decision is unanimous.

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COLIN BISHOPP
Chairman

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