[2017] UKUT 158 (TCC)

Reference number: FS/2016/015

STRIKE OUT – application by the Authority to strike out the applicant's reference – no reasonable prospect of the applicant's case succeeding – Tribunal Procedure (Upper Tribunal) Rules 2008, rule 8(3)(c) – failure to cooperate with the Tribunal – rule 8(3)(b) – abuse of process – fact of the applicant's criminal conviction and an order for possession of the principal place of business – disclosure request by the applicant

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

ANTHONY BADALOO trading as CHURCH HILL FINANCE	**Applicant**
- and -	
THE FINANCIAL CONDUCT AUTHORITY	**Respondent**

TRIBUNAL: JUDGE ROGER BERNER

Sitting in public at The Royal Courts of Justice, Rolls Building, Fetter Lane, London EC4 on 6 April 2017

The Applicant, Mr Badaloo, in person

Adrian Berrill-Cox, Financial Conduct Authority, for the Respondent

DECISION

1. Two applications came before me for determination. The first was an application by the Authority to strike out Mr Badaloo's reference. The second was an application by Mr Badaloo for disclosure by the Authority.

The strike-out application

2. Following the issue by the Authority's Regulatory Decisions Committee ("RDC") of a Decision Notice dated 12 October 2016 deciding to cancel Mr Badaloo's permission, under Part 4A of the Financial Services and Markets Act 2000 ("FSMA"), to conduct designated investment business and regulated home finance business, Mr Badaloo made a reference to this Tribunal on 11 November 2016. His reasons were stated to be:

> "No jurisdiction.
>
> I have been deprived of my property contrary to the Protection from Eviction and Harassment Act 1977.
>
> I have not been provided with any allegation, nor who made such an allegation.
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> I have not been provided with any evidence, to support the purported allegations.
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> There appears to be unfounded actions against me, which amounts to a vendetta, as supported by the facts and the law."

3. The Authority served its statement of case and list of documents on 13 December 2016, by email. It noted in that email that due to IT issues affecting the Authority's printers hard copies of those documents had not been printed but would be sent as soon as possible.

4. The statement of case noted Mr Badaloo's position as a financial adviser operating as a sole trader as Church Hill Finance, and that Mr Badaloo had been authorised by the Authority on 29 October 2004 to conduct designated investment business, that on 31 October 2004 he was permitted to conduct regulated home finance business, and that he also had interim permission to carry on regulated consumer credit activities. He had been approved by the Authority to perform controlled functions CF10 (compliance and oversight), CF11 (money laundering reporting) and CF30 (customer function) in relation to Church Hill Finance, and is the person responsible for insurance mediation at the firm.

5. The statement of case sets out the facts on which the Authority seeks to support the Authority's decision to cancel Mr Badaloo's Part 4A permission. It is not necessary, for the purpose of this application, to recite the entire background. I will give a brief summary only, emphasising that I make no findings of fact.

Background

6. The circumstances that are said to have given rise to this situation are somewhat unusual. The starting point was on 29 January 2015 when Mr Badaloo informed the Authority that, due to a dispute with Kleinwort Benson (Channel Islands) Limited ("Kleinwort Benson"), he had temporarily moved his principal place of business, but would be back in the original business premises by March 2015.

7. On 20 March 2015, the Authority received a letter from Kleinwort Benson informing the Authority that it had obtained an Order for possession of the premises which had been registered as Mr Badaloo's principal place of business. A copy of that Order had subsequently been sent to the Authority. Kleinwort Benson advised the Authority that Mr Badaloo had declined to empty the contents of the property, and that the contents, including Mr Badaloo's client records and related information, had been removed to storage. Mr Badaloo had refused repeated requests to collect those contents.

8. The Authority thereafter, in April and May 2015, made a number of requests to Mr Badaloo for information and confirmation, including as to his current principal place of business, notification to clients, financial resources, compliance with record management rules and professional indemnity insurance.

9. The Authority was advised by Kleinwort Benson on 8 May 2015 that Mr Badaloo had been arrested and charged with trespass and criminal damage in relation to the former business premises, and Kleinwort Benson also forwarded to the Authority a copy of an email from Mr Badaloo to various addressees in which Mr Badaloo asserted that Kleinwort Benson had illegally and fraudulently taken possession of those premises. The Authority wrote to Mr Badaloo on 18 May 2015 seeking (amongst other things) information in this respect, noting that Mr Badaloo had failed to notify the Authority.

10. Subsequently, on 9 June 2015, Mr Badaloo informed the Authority that he had been advised not to sign a release form in respect of the contents held in storage. The Authority advised Mr Badaloo that it understood from Kleinwort Benson that in those circumstances the contents would not be returned to him, and requested Mr Badaloo to confirm what his next proposed steps were. Further requests for confirmations and information were subsequently sent.

11. On 24 June 2015, after Mr Badaloo had informed the Authority that he had been advised that the release form appeared to be a forgery, Kleinwort Benson advised the Authority that it had completed the sale of Mr Badaloo's former business premises, and that the storage company had destroyed the contents. That was subsequently confirmed by a certificate of destruction.

12. A further information request was made by the Authority to Mr Badaloo on 1 December 2015 asking that he provide the following information by 10 December 2015:

(a) in light of the destruction of the contents of the former business premises following the obtaining of possession of those premises by Kleinwort Benson, an explanation of the arrangements Mr Badaloo had in place to remain compliant with the record keeping requirements;

(b) an update on the criminal proceedings with respect to the trespass and criminal damage charges; and

(c) copies of all County Court judgments made against Mr Badaloo and a list of his creditors with details of his debts.

13. The response of Mr Badaloo, sent to the Authority on 2 December 2015, was that he had never received from any court a claim for possession issued by the court, and that with respect to the County Court judgments he had never been in possession of any "authentic data issued by the court".

14. That response was regarded by the Authority as incomplete, and it repeated its request. Mr Badaloo's further response, on 10 December 2015, stated that his client records were at all times stored securely at the former premises and that he had not received any possession proceedings that had been issued by the court. He provided a list of monies which he stated were owed to him from outstanding fees, commissions and invoices. He further stated that he owned two properties generating rental income, but that these properties "have been stolen" by Kleinwort Benson.

15. On 21 January 2016, the Authority received confirmation from the Crown Court at Harrow that Mr Badaloo had, on 30 October 2015, been found guilty, in respect of the former business premises, of the following criminal offences:

(a) knowingly as a trespasser living in a residential building contrary to s 144(1) and (5) of the Legal Aid, Sentencing and Punishment Act 2012; and

(b) theft, contrary to s 1(1) and (7) of the Theft Act 1968, of metal shuttering that had been placed on the windows of that property.

16. As a result of those convictions, Mr Badaloo was sentenced to a 12-month community order with a requirement to complete 100 hours of unpaid work.

The Authority's case

17. The Authority's case, put shortly, is that Mr Badaloo has failed to satisfy the suitability Threshold Condition (FSMA, Sch 6, para 2E) and the appropriate resources Threshold Condition (FSMA, Sch 6, para 2D) and that Mr Badaloo is not a fit and proper person to carry out regulated activities.

18. As to the suitability Threshold Condition, the Authority's case is that Mr Badaloo is not a fit and proper person having regard to all the circumstances including:

(1) Mr Badaloo's failure to evidence that he has access to his customer records. That means, according to the Authority, that the Authority is not

satisfied that Mr Badaloo's affairs are conducted in an appropriate manner, having regard in particular to the interests of his customers.

(2) As a result of Mr Badaloo's failure to comply with the Authority's information requests fully, appropriately or at all, the Authority is not satisfied that Mr Badaloo is ready, willing and organised to comply with the requirements under the regulatory system including the requirement that orderly records must be kept of the business.

(3) As a result of Mr Badaloo's criminal convictions, the Authority is not satisfied that Mr Badaloo is capable of acting with probity.

(4) Mr Badaloo's unreasonable failure to respond to the information requests that the Authority has sent him between April 2015 and December 2015 demonstrates a failure to be open and cooperative with the Authority in breach of Principle 11 of the Principles for Businesses.

19. With regard to the adequate resources Threshold Condition, the Authority's case is that Mr Badaloo's failure to provide the information and documents to the Authority in relation to his business records and his creditor position means that the Authority is unable to assess whether Mr Badaloo's financial and non-financial resources are adequate in relation to the regulated activities that he carries on and therefore whether Mr Badaloo is satisfying the appropriate resources Threshold Condition.

20. The Authority does not consider that Mr Badaloo has satisfied it that he meets the requisite standards of honesty, integrity and reputation in the Fit and Proper Test for approved Persons ("FIT"). In reaching this conclusion, the Authority has taken into account the following factors:

(a) Mr Badaloo's recent criminal convictions of trespass and theft. In particular the Authority has taken into account that theft is an offence of dishonesty; and

(b) Mr Badaloo's failure to respond appropriately, fully or at all to the numerous information requests that the Authority has sent between April 2015 and December 2015 does not demonstrate that he is ready and willing to comply with the standards and requirements of the regulatory system.

Mr Badaloo's Reply

21. Mr Badaloo produced a response dated 23 January 2016 (the date of which was an error, and taken to be 2017). In it he stated that he had not received any disclosure from the Authority of its "purported allegation". He said that:

(a) he had never been served with any Order for vacant possession issued by the County Court at Barnet, nor any other court, contrary to s 1 of the Protection from Eviction and Harassment Act 1977;

(b) he had never been served with any warrant for possession for goods, contrary to the Tort (Interference with Goods) Act 1977;

(c) he had never been served with any order of conviction for trespass or theft issued by the Court, contrary to s 135 of the County Court Act 1984;

(d) he had never been convicted of the crimes of trespass and/or theft at his "Home Office", as he and his partner were the owners, proprietors and beneficiaries of the equitable interest at the property, as recorded at the Land Registry, with "a fraud restriction on the title as at [1 April 2015]";

(e) he had requested "Authentic Statutory Items" from the outset, "which is the only possible way in fact and law, to verify the purported allegations";

(f) his relationship with Kleinwort Benson was "only a mortgage issue" and that Kleinwort Benson was incapable of claiming vacant possession. Any claim in that regard would be subject to "Equitable Occupational Rights of the Lawful Occupants", being Mr Badaloo and his family members;

(g) Kleinwort Benson's "purported" statement was in violation of the Perjury Act 1911; and

(h) the unsigned statement of case, where the author is unidentified, "does not bear any contractual value and, more importantly, does not give [Mr Badaloo] any redress in case of negligence". Mr Badaloo also alleged a breach of s 44 of the Companies Act 2006.

Tribunal directions

22. Mr Badaloo's Reply and his request for disclosure were considered by Judge Herrington in this Tribunal, and the judge made directions which were released on 31 January 2017. Judge Herrington directed that Mr Badaloo was to be permitted to amend his Reply in order that it "may comply with the requirements of paragraph 5(2) and (3) of Schedule 3 to The Tribunal Procedure (Upper Tribunal) Rules 2008". The judge dismissed the disclosure application, with reasons, and then said, at [11] – [13]:

> "11. The Tribunal is taking the matters addressed in the Applicant's email of 23 January 2016 as his Reply to the Statement of Case, although it only appears to focus on the matters which were the subject of his disclosure application. In the light of my dismissal of that application, it is necessary that the Applicant must engage with the requirements of the Rules and ensure that his Reply complies with the relevant provisions of the Rules, as referred to at Direction 2 set out above at the beginning of this document. The Applicant needs to address the substance of the allegations made by the Authority; making points about procedural issues relating to the order for possession and his conviction does not deal with all the matters raised.
>
> 12. The Applicant is warned that if he does not dispute any of the allegations set out in the Authority's Statement of Case they will be taken not to be in dispute and the Applicant will not be entitled at a later stage to dispute them in the proceedings. The purpose of the

> Reply is to narrow down the issues that the Tribunal will have to deal with at the hearing, in the interests of the efficient conduct of litigation.
>
> 13. I am therefore prepared to be generous to the Applicant, bearing in mind his apparent lack of understanding of the Rules and the way in which proceedings in this Tribunal operate and give him a further chance to engage appropriately with the process and follow the requirements of the Rules. He would be well advised to seek assistance if he is able to do so. I have therefore given him an opportunity to reconsider his Reply. In order to comply with the Rules he will need to state clearly what his grounds are for contending that the Authority's decision to cancel his permission to carry on regulated business is wrong, identify all the matters contained in the Authority's statement of case which are disputed by him and the reasons why he disputes them. He will also have to send with his amended Reply a list of any further documents on which he wishes to rely in support of his case. He should therefore prepare his amended Reply having considered the documentation provided to him by the Authority from its list of documents."

23. Mr Badaloo's response to the Tribunal's direction was to send to the Tribunal what was described as a "Sworn Affidavit of Truth" made by Mr Badaloo in which he stated his belief that Judge Herrington had been misled, and that the Authority had not supplied any lawful evidence. He set out a list of documents which he asserted the Authority had failed to obtain, as follows:

> "(a) The allegations and supporting evidence, which to date myself and fellow victims have never been provided with, despite being requested in practically every response from me, to these purported allegations and purported valid court proceedings, over two years now.
>
> (b) Land Registry documents AP1 and attachments in support of the document, along with the TR1 or TR2 signed by myself and partner [named], and supporting documents.
>
> (c) Copy of the land registry file, as at [1 April 2015], to establish the rights of the parties on the date of the purported trespass.
>
> (d) A copy of the valid receipt for the payment of fees in the fraudulent removal of the names of myself and partner [named] from the charge at the land registry.
>
> (e) A sealed Order of Conviction, in accordance with Ministry Of Justice requirement and the [sic], issued by the court, and a Case Stated, so I shall be able to consider the Facts and the Law on the lawfulness regarding our position, in compliance with the County Court Act 1984 s. 135, the [P]rotection from Eviction Act 1977 s. 1 and the Criminal Law Act 1977 s 45.
>
> (f) Neither myself nor [his partner], have ever been served with such an instrument, nor the case stated in the case of Regina V Anthony Badaloo no. 01SC0184215 nor any other case.
>
> (g) A valid sealed warrant for Vacant possession of [property] executed by an Appointed County Court Bailiff, with a Notice of Issue, and a copy of the receipt for the fee paid for the application.

(h) A copy of a SEALED request for a warrant of vacant possession of [property].

(i) A copy of a sealed Order for Vacant Possession, issued by the court, upon which an order for Vacant Possession could have been sought.

(j) A copy of a SEALED County Court Judgement (CCJ), issued by the court, upon which an order for Vacant Possession could have been sought.

(k) A copy of a SEALED Claim for Vacant Possession, Issued By The Court, with the attachments, in the form of evidence of claim, namely copy of the FCA Regulated Mortgage Contract, proof of claim and the accounting.

(l) A sealed request for warrant of Vacant Possession of [property].

(m) A copy of the Warrant or Writ of Control for goods, along with the inventory, upon which my business and personal items, along with that of my family members have been stolen, in compliance with the Tort (Interference with Goods) Act 1977.

(n) A verified copy of the receipt for the fee paid to initiate the proceeding proceedings [sic] in the County Court claim number 3BT01335.

(o) A transcript of the hearing [before the RDC] of September 28th 2016.

(p) A copy of the medical determination on the file, to call a hearing on September 28th 2016, when I was off sick with injuries.

(q) I require the items a – p above, and a reasonable time of 28 clear working days, to read, obtain forensic verification, seek advice and formulate a response."

24. In addition, Mr Badaloo accused the Authority's staff of concealment and of harassment, and claimed fees of £5,000 per day from "the date of my first interrogation".

25. Among the attachments to the Sworn Affidavit of Truth was a further such affidavit made on 28 September 2016, the date of the RDC meeting. It is a lengthy document. It contains a number of assertions, including that Mr Badaloo's properties had been stolen, that there had been a conspiracy, including the Authority and the police, to cover up a "large scale property snatching racket", that the Authority had produced no "authentic" evidence, that Mr Badaloo had complied with his regulatory obligations, that he had never been served with an order for vacant possession, that he had not been evicted but "deprived" of his matrimonial home, that he had been "kidnapped" by the police to assist the sale of the matrimonial home, that the business items were stolen by a solicitor acting for Kleinwort Benson, that documents had been forged, that Mr Badaloo had never been served with any "sealed" order of conviction or sentencing, that all documents must be sealed, and that the Authority is holding Mr Badaloo to ransom over debts as to which Mr Badaloo relies on his credit files to confirm "no missed payments, no arrears, no defaults, no court judgements and no repossessions".

26. As regards the business items which Mr Badaloo did not recover from the storage facility, Mr Badaloo refers in his affidavit to insurance claims and states "It was fully explained to [named member of staff] of the FCA, in January 2015 (sic), that we had computer back-ups and some files, will re-constitute files wherever required, and take steps to minimise our business interruption, which we have done."

Discussion

27. Mr Berrill-Cox submitted that these proceedings fell to be struck out on the basis, first, that Mr Badaloo's case had no reasonable prospect of succeeding, and secondly that Mr Badaloo had failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly.

28. The power to strike out proceedings of this nature is set out in Rule 8 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the UT Rules"). So far as material, that rule provides:

> "…
>
> (3) The Upper Tribunal may strike out the whole or a part of the proceedings if—
>
> (a) the appellant or applicant has failed to comply with a direction which stated that failure by the appellant or applicant to comply with the direction could lead to the striking out of the proceedings or part of them;
>
> (b) the appellant or applicant has failed to co-operate with the Upper Tribunal to such an extent that the Upper Tribunal cannot deal with the proceedings fairly and justly; or
>
> (c) in proceedings which are not an appeal from the decision of another tribunal or judicial review proceedings, the Upper Tribunal considers there is no reasonable prospect of the appellant's or the applicant's case, or part of it, succeeding.
>
> (4) The Upper Tribunal may not strike out the whole or a part of the proceedings under paragraph … (3)(b) or (c) without first giving the appellant or applicant an opportunity to make representations in relation to the proposed striking out."

29. Proceedings on a reference from a decision of the Authority are not appeal proceedings. Consequently, such proceedings are capable of being struck out as having no reasonable prospect of success.

30. As a third ground for a strike out, Mr Berrill-Cox argued that Mr Badaloo's reference was an abuse of process. Taking that ground first, it is argued that Mr Badaloo's reference is a collateral civil challenge in which he is attempting to relitigate the repossession order and effectively to appeal his criminal convictions.

31. It is well-settled, by the highest authority, that it is prima facie an abuse of process to initiate a collateral civil challenge to a criminal conviction, and that such a challenge will be struck out. Equally, there is an inherent power in the court to

prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nonetheless be manifestly unfair to a party (see *Hunter v Chief Constable of the West Midlands Police and others* [1981] UKHL 13). In assessing whether there is an abuse, the test, as set out by Lord Bingham in *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1, at p 31, is whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances.

32. In this Tribunal the abuse of process principle has been applied in *Sharma v The Financial Services Authority* (FS/2010/0008; 7 December 2010), where the decision to make a prohibition order in respect of Mr Sharma had been based on his conviction for two financial services-related offences. The Tribunal decided that the reference should be struck out as having no reasonable prospect of success. It went on to decide that the collateral civil challenge which Mr Sharma was seeking to make in respect of his criminal convictions was an abuse of process.

33. I have no doubt that, in appropriate circumstances, a reference may be struck out for abuse of process. It will, however, be necessary for each case to be considered on its own merits. There may be cases, of which *Sharma* is an example, where the sole, or the sole material, challenge to the Authority's decision is the abusive collateral challenge. In such a case the reference may be struck out. But where a reference seeks to introduce a number of material grounds on which the underlying decision is challenged, it may be appropriate to preclude an applicant from relying on an abusive ground, whilst leaving the remainder of the reference intact.

34. My own view, in a case of this nature, is that an abuse of process ground is more properly to be treated as a sub-set of the power of the Tribunal to strike out all or part of the proceedings where there is no reasonable prospect of success. To the extent that a challenge would be excluded as an abuse of process, that challenge will no longer be available to the applicant. If that is the only material challenge, the consequence will be that the reference will have no reasonable prospect of success, and may be struck out. If there are other, non-abusive, grounds which cannot themselves be regarded as providing no reasonable prospect of success, then the reference may continue, shorn only of the abusive ground.

35. I agree with Mr Berrill-Cox that in this case it would be an abuse of process for Mr Badaloo to be permitted to argue that his conviction for trespass and theft had either not occurred (and in that respect it is clear from the certificate of conviction obtained by the Authority from the Harrow Crown Court that Mr Badaloo was convicted on 2 October 2015 and sentenced on 30 October 2015), or that he had been wrongly convicted and sentenced. In the same way, it would be an abuse of process, even if it would have any relevance, for Mr Badaloo to argue that his property had not been validly re-possessed.

36. I do not, however, accept Mr Berrill-Cox's submission that, if the criminal conviction is not susceptible to challenge, it must necessarily follow that Mr Badaloo's reference must fail. I do not accept the premise for that submission that any conviction which involves a dishonesty element must lead to the conclusion that

an applicant fails the fit and proper test. It is always necessary, without there being any question of the conviction itself being revisited, to have regard to the circumstances. FIT 2.1.3, which is one of the criteria that the Authority will consider when assessing a person's honesty, integrity and reputation, provides only that the Authority "will have regard to" whether the person has been convicted of any criminal offence, with particular consideration being given to offences of dishonesty. The conviction is therefore a factor, albeit an important one, and not necessarily decisive. Regard must be had to all the circumstances.

37. I do not consider that any of the authorities cited by Mr Berrill-Cox runs counter to the view I have expressed. In *Sharma*, the Tribunal made clear, at [46], that the fact of the convictions in that case meant that the Authority did not have to reprove each allegation made in its statement of case. It referred to the case of *Petkar v The Financial Services Authority* (FIN 06/0007) in support. With respect, I agree. But that is not to say that the mere fact of those convictions led to the conclusion that Mr Sharma was not fit and proper; as the Tribunal made clear at [47], it was the acts and circumstances that gave rise to the convictions that were sufficient for such a finding to be justified. Furthermore, the view taken by the Tribunal in *Sonaike t/a FT Insurance Services v The Financial Services Authority* (FIN 2005/0021 and 0023), at [18], that the fact of Mr Sonaike's convictions in that case raised serious implications as to his integrity is not in my view a statement of principle, but a finding by reference to the particular facts and circumstances of that case.

38. The fact of the convictions, and the conclusion that it is not possible for Mr Badaloo's reference to go behind them, or for his reference to seek to re-open the validity of the re-possession of his properties, are only elements of a wider case of the Authority that Mr Badaloo's reference has no reasonable prospect of success. On a more general level, the Authority submits that there is no reasonable prospect of Mr Badaloo's case succeeding as he has not answered the Authority's case. The Authority says that Mr Badaloo has not put forward any defence to the Authority's allegations that he is failing to satisfy the suitability Threshold Condition. It further submits that he has not provided sufficient evidence that he has appropriate resources to carry on regulated activities, nor has he provided reasons why he disputes the Authority's decision to cancel his permission.

39. Following the delivery of the Authority's statement of case, the Tribunal's procedural rules make provision (in paragraph 5 of Schedule 3 to the UT Rules) requiring an applicant to send or deliver a written reply within 28 days of receipt of the statement of case. Paragraph 5(2) states that the reply must (a) state the grounds on which the applicant relies in the reference; (b) identify all matters contained in the statement of case which are disputed by the applicant; and (c) state the applicant's reasons for disputing them. By paragraph 5(3) the applicant must send with the reply a list of all the documents on which the applicant relies in support of his case.

40. There is no doubt that Mr Badaloo's notice of 23 January 2017 failed to comply with these provisions. As Judge Herrington said, that notice did not address the substance of the allegations made by the Authority, and the points that were made about procedural issues relating to the order for possession and Mr Badaloo's

conviction did not deal with the matters raised. Taken alone, it is clear that Mr Badaloo's references to not being served with an Order for vacant possession, or warrant for possession of goods, or something described by him as an order for conviction could not address the regulatory issues raised by the Authority, and that such a case would have no reasonable prospect of success.

41. Despite the helpful advice given by Judge Herrington in his directions, Mr Badaloo's sworn affidavit of truth dated 17 February 2017 merely repeated the same case based on the validity of the order by which possession was taken of the premises, including questions relating to the payment of fees in respect of those proceedings, and the sealing of the relevant order, similar issues relating to the "Warrant or Writ of Control for goods", and the absence of a "sealed Order Of Conviction". That cannot therefore be found to be the basis of a case for which there is any reasonable prospect of success. Nor does the sworn affidavit of truth of 28 September 2016 provide any such basis. Despite its reference to Mr Badaloo having computer back-ups and some files, and the business being able to re-constitute files, nothing has been produced to support a case that, contrary to the Authority's case, the Authority should be satisfied that Mr Badaloo is ready, willing and able to comply with the requirements of the regulatory system, including the requirement for maintenance of orderly records.

42. Mr Badaloo's case on this application followed similar lines. He submitted that he had dealt with all of the Authority's points with "hard evidence". He repeated his argument that the Authority had not provided any evidence of the "allegations". He argued that the debt which had given rise to the loss (to use a neutral term) of his property had been fraudulently inflated. He disputed the validity of the conviction, saying that the Authority had no jurisdiction without an "allegation". When I put to Mr Badaloo the copy of the record of his conviction in the bundle of documents before the Tribunal, he again reiterated his case that there was no Order of Conviction, whether sealed or unsealed.

43. I drew Mr Badaloo's attention to the statement of case, and for the need for a reply to address the substance of the Authority's case as there set out. Mr Badaloo's starting point is that everything has been addressed. Taken to relevant sections of the statement of case, Mr Badaloo submitted that he had informed the Authority that he had back-ups of various records, and that he had continued to make six-monthly returns to the Authority, the last such return, with data, being in October 2016. He referred to his compliance function being carried out by an umbrella company by the name of SimplyBiz. As regards the conviction, and the circumstances around it, Mr Badaloo said that he had made complaints to the Authority about the circumstances he had found himself in, expecting the Authority to come to his assistance. Instead, the Authority had taken this action against him. On the question of financial resources, Mr Badaloo asserted that he had sufficient such resources, and that he had demonstrated this by reference to a cash flow produced with his accountant.

44. I have regard to the fact that a striking out of a reference is a draconian step, and that this Tribunal will do everything it can to avoid a possible injustice to an applicant who may be unrepresented and thus either not appreciate everything that might be required, or the procedural framework. Judge Herrington, in making the directions

that he did, was also keenly aware of the need to ensure that Mr Badaloo understood what would be needed in order to present a proper reply to the Authority's statement of case. That is not to say that any procedural inadequacy will prevent a reply from being regarded as proper in this sense. What matters is the substance, and not the particular form in which the reply may be presented.

45. In this case, however, Mr Badaloo's case continues to lack not only form but any material substance. As it stands, it cannot be regarded as having any reasonable prospect of succeeding against the Authority's case as presented. Despite Mr Badaloo having told me that he had legal advice, there is no evidence of any objective or rational legal analysis being brought to bear in any of the documents filed by Mr Badaloo. Such attempt as there has been at finding legal support for the propositions advanced is of a barrack room quality, replete with irrelevance and non-sequitur, and is without any legal merit. It does not come close to advancing an arguable case for Mr Badaloo.

46. Mr Badaloo also seeks to support his case with further documents provided at and shortly before the hearing. I have read those documents, which comprised statements from a consultant of an organisation called A S Citizen Advice Agency, from a law student and from Mr Badaloo's partner, all of which make the same flawed attempts at providing legal justification for the position adopted by Mr Badaloo, but which do not address any of the issues of substance in the Authority's statement of case. I have also read a further sworn affidavit of truth from someone described as a common law investigator which purports to contain "findings" with respect to the court orders made, and which is of no value in this case. Equally valueless in the context of these proceedings is the Affidavit of the Truth sworn by "[The Judge Captain]: Carl-Peter Hoffman the spiritual moral being".

47. Were there any reasonable prospect that Mr Badaloo might come forward with a case of substance in order to support his reference and properly dispute the matters raised by the Authority's statement of case, I would have taken further steps to facilitate such a case. But, having considered all the material before the Tribunal and the submissions made by Mr Badaloo to me, and having myself made efforts at the hearing to encourage Mr Badaloo to engage with the substantive issues, I have come to the clear conclusion that such a course is not open to the Tribunal. There is, in my judgment, no possibility that Mr Badaloo will be able to make such a case however much indulgence is afforded to him. When asked by me whether, if given a further opportunity to do so, he would be able to make a reply which addressed the substance of the Authority's case, Mr Badaloo's response was to say that he would be able to use the material he had already produced and copy it into such a reply, and offered to do so if given 15 minutes. That could not approach the nature of a case on which it might be said that there would be a reasonable prospect of success.

48. I have also, in this context, considered Mr Badaloo's disclosure requests, and whether it could be said that the inadequacy of Mr Badaloo's case could in any sense be due to a failure on the part of the Authority to make proper disclosure to him. I am entirely satisfied that this is not the case. The requests made by Mr Badaloo are variously for disclosure of "the purported allegation prior to January 29th 2015" (the

date on which Mr Badaloo informed the Authority that he had temporarily relocated his principal place of business) and sealed or signed copies of documents which either do not exist (because they, or formalities associated with them, are inventions of Mr Badaloo in an attempt to question the validity of court orders or proceedings) or have already been disclosed. As regards one item, the transcript of the RDC meeting on 28 September 2016, I should record that a CD of the recording of that meeting had earlier been provided to Mr Badaloo, and that a draft of the transcript was sent to him by email on the day after the hearing. Having considered all those matters, it is clear that Mr Badaloo's disclosure application cannot succeed. Furthermore, that application, and the matters raised by it, do not deflect me from my conclusion that Mr Badaloo is not and will not be able to make out any case of substance to answer the case put by the Authority.

49. I considered carefully the case which Mr Badaloo sought to make regarding the Authority's allegation that he had failed to evidence that he had access to his computer records, by reference to the back-ups said to exist and certain reconstituted documents. That case was made in the Sworn Affidavit of Truth dated 28 September 2016, which was attached to the similar affidavit of 17 February 2017, and in oral submissions to me. However, there has been nothing more than assertion in that respect, despite Mr Badaloo having had the opportunity to provide evidence to the RDC, and every opportunity in these proceedings to provide a substantive case in that regard. Mr Badaloo's own case is that he informed the Authority of his position in this respect as long ago as January 2015, although, given that this would pre-date the taking of possession of the business premises and the loss of records, it seems more likely that this should be a reference to January 2016. I understand too that at the oral representations meeting of the RDC on 28 September 2016 Mr Badaloo stated that he had computerised records and that he would be able to re-constitute files. But despite having had opportunities to do so, Mr Badaloo has provided no evidence, or anything to suggest that evidence would be available, in support of his assertion. That could not therefore answer the Authority's case in that regard.

50. I therefore consider that there is no reasonable prospect of Mr Badaloo's case succeeding. I have a discretion, according to Rule 8(3)(c) of the UT Rules, to strike out the whole or part of these proceedings. In determining whether this reference should be struck out I have had regard to all the circumstances. That includes the fact that the legal burden of proof in a reference of this nature is, as Mr Berrill-Cox accepted, on the Authority. But, as I explained to Mr Badaloo at the hearing, that does not absolve an applicant from putting forward their own case in response to the case made by the Authority. Once such a case has been made, supported by evidence, the evidential burden may shift, and it is therefore essential in those circumstances for a tenable contrary case to be raised by the applicant. I also have regard to the consequence for Mr Badaloo of his not being permitted to proceed with his reference. The decision of the Authority will become final, and Mr Badaloo's Part 4A permission will be cancelled.

51. Taking all those factors into account, I am satisfied that this is a case where the reference should be struck out. There is no merit in prolonging proceedings where there is no reasonable prospect of Mr Badaloo's case as currently expressed

succeeding, and where I am satisfied that there is no prospect that further indulgence will enable Mr Badaloo to put forward such a case. I have regard in that respect to the fact that proportionality is an important element in dealing with a case fairly and justly in accordance with the Tribunal's overriding objective (Rule 2, UT Rules). In my judgment, to prolong this reference despite Mr Badaloo having shown no prospect of his being able to engage with the substance of the regulatory case made by the Authority, would not be proportionate and would not, in all the circumstances, be fair and just.

52. As that disposes of the matter, I need not consider the separate application by the Authority that the proceedings be struck out on the ground that Mr Badaloo has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly. In my judgment, in the circumstances of this case, the only real question was whether Mr Badaloo's case had any reasonable prospect of success, and I say nothing with regard to this additional ground.

Decision

53. Mr Badaloo's reference is struck out.

ROGER BERNER
UPPER TRIBUNAL JUDGE

RELEASE DATE: 24 April 2017