SUPERVISORY NOTICE – Permission – Removal – Authority's own initiative – Application for authorisation – Failure to disclose prior bankruptcy – Whether Applicant failed to display integrity and willingness to cooperate with the Authority – Whether Applicant failed to comply with terms of Supervisory Notice – Whether Supervisory Notice should be suspended – No – Reference dismissed

FINANCIAL SERVICES AND MARKETS TRIBUNAL

ASGAR ALI RAVJANI
(T/A ASTRAD FINANCE) **Applicant**

- and –

FINANCIAL SERVICES AUTHORITY **The Authority**

Tribunal: SIR STEPHEN OLIVER QC
CHRISTOPHER BURBIDGE
SANDI O'NEILL

Sitting in public in London on 12 August 2008

The Applicant in person

Dan Enraght-Moony for the Authority

DECISION

1. This decision is concerned with the reference of a First Supervisory Notice dated 4 January 2008 ("the Supervisory Notice"). In the Supervisory Notice the Authority decided to vary the permission of Mr A A Ravjani ("the Applicant") by removing from the scope of the permission all regulated activities with immediate effect.

2. The grounds for the Supervisory Notice were because Mr Ravjani had failed, when applying to the Authority for authorisation, to disclose that he had been declared bankrupt in 1995.

3. Mr Ravjani's reference notice of 1 February 2008 included an application for a direction suspending the effect of the Supervisory Notice. At a Directions Hearing on 5 June the Tribunal decided that the issues, as regards the Supervisory Notice, were these:

> "(i) Was the Authority correct to remove Mr Ravjani's permission with immediate effect?
>
> (ii) Was the Authority correct to remove Mr Ravjani's permission in any event?

A Decision Notice of 15 April 2008 cancelled Mr Ravjani's permission on the basis that the Supervisory Notice had removed his permission with effect from 4 January 2008. That Decision Notice has not been referred to the Tribunal. The parties accept that if the second issue is decided against Mr Ravjani, then this permission is to be treated as removed for all purposes with effect from 4 January 2008. We start with the second issue.

The factual background

4. Mr Ravjani's business interests include that of sole trader mortgage and general insurance intermediary. He was authorised by the Authority on 4 May 2007 under Part IV of the Financial Services and Markets Act 2000 ("FSMA") to carry on certain regulated activities which included advising on investments, arranging deals in investments, advising on regulated mortgage contracts and arranging regulated mortgage contracts.

5. On 21 November 1995 Mr Ravjani had been adjudged bankrupt. He was discharged from bankruptcy on 21 November 1998.

6. On 17 July 2006 Mr Ravjani applied to the Authority for authorisation to conduct mortgage and general insurance activities by submitting an Application for Authorisation form ("the Application Form"), which included a Sole Trader Appendix.

At the front of the Application Form under the heading "Important information you should read before completing this form", the Applicant was informed in bold that:

> "It is important that you provide accurate and complete information and disclose all relevant information. If you do not, you may be committing a criminal offence, it may increase the time taken to assess your application and may call in question your suitability to be authorised."

Question 3.8a of the Disclosure section of the Sole Trader Appendix asks:

> "Are you or have you ever been, the subject of any bankruptcy proceedings, or proceedings for the sequestration of your estate?"

to which Mr Ravjani answered "No".

7. In the Declaration section, signed by Mr Ravjani, are these words:

> "I confirm that the information in this application is accurate and complete to the best of my knowledge and belief."

When submitting the Application Form Mr Ravjani, as already observed, failed to disclose to the Authority his 1995 bankruptcy (nor did he disclose it to the Authority at any other time).

8. In addition to removing all of Mr Ravjani's regulated activities with immediate effect, the Supervisory Notice required Mr Ravjani, by 18 January 2008, to:

> (1) advise in writing all clients for his regulated activities that he is no longer permitted by the Authority to carry on regulated activities and
>
> (2) provide the Authority with a copy of the written advice sent to all clients for his regulated activities pursuant to (1) above, together with a list of all clients to whom the advice has been sent.

No evidence has been presented to the Authority that Mr Ravjani has in fact written to his clients as required by at least one reminder.

Removal of Mr Ravjani's permission to carry on regulated activities

9. The case for Mr Ravjani, who represented himself, was that his act of ticking the "No" box against the question –

> "Are you or have you ever been, the subject of any bankruptcy proceedings …"

had been a genuine mistake on his part. He had recalled the bankruptcy when compiling the Application but he had regarded it as no longer relevant. He had thought that bankruptcy ceased to be relevant after a period, e.g. three years, had passed from the time of discharge. On other occasions, such as application for a consumer credit licence, bankruptcy was, he said, spent after five years. To remove permission in such circumstances was, he argued, unduly harsh, particularly when the circumstances of the case were compared with those in, for example *William Faulkner v FSA*, where the unsuccessful applicant had failed to disclose a string of criminal convictions as well as his bankruptcy.

10. The Authority rely on FSMA section 41(2) which provides that, in giving or varying permission, the Authority must ensure that the person concerned will satisfy and continue to satisfy the threshold conditions in relation to all the regulated activities for which he has permission, with particular reference to Threshold Condition 5 (suitability). The Authority was not, in the circumstances set out above, satisfied as to Mr Ravjani's suitability. The Authority therefore exercised "own initiative" power and varied the permission by wholly removing it. The basis for exercising its own initiative power in that way was because the Authority considered that the failure to disclose information to it despite a relevant question specifically requesting disclosure in the Application Form, and the bankruptcy itself, raised serious concerns as to Mr Ravjani's integrity and willingness to be candid with the Authority (Principles 1 and 11). The Authority placed reliance on the decision of the Tribunal in *Eversure v FSA.*

11. In our view the decision to remove Mr Ravjani's permission to carry on the regulated activities with immediate effect was inescapable. Mr Ravjani made an incorrect statement in the Application. It was the result of a deliberate decision on his part. The obligation to assess an Applicant's suitability to carry out controlled functions lies with the Authority. It cannot make the assessment without full disclosure on the part of the Applicant. The system does not leave any room for self-assessment on the part of the Applicant. Mr Ravjani has sought to assess his own suitability by ignoring the clear terms of the question – "Are you or have you ever been the subject of any bankruptcy proceedings …?". In answering "No" he has misled the regulator; and in the circumstances it was in our view appropriate and proportionate to remove his permission.

Mr Ravjani's application to suspend the effect of the Supervisory Notice

12. In the light of our conclusion on the issue dealt with above, this matter becomes academic.

13. The case for the Authority who were opposed to any suspension was that Mr Ravjani's failure to disclose the relevant information had raised serious concerns as to his integrity and willingness to be candid with the Authority. His failure to comply with the terms of the Supervisory Notice requiring him to notify clients and to provide

relevant copies of documentation to the Authority further indicated that Mr Ravjani was either unwilling or unable to comply with the requirements of the regulatory system (see Principles 1 and 11). His failure also, they argued, demonstrated his disregard for customers' interests; the existing clients of Mr Ravjani ought, said the Authority, to have been informed of the position in order to be able to determine for themselves what steps they might take to obtain alternative advice.

14. Mr Ravjani pointed out that he had not carried out any regulated activities and that he had had no clients in the sense that the term had been used in the Supervisory Notice. There had therefore been no one whose interest could have been prejudiced. The Tribunal should therefore suspend the effect of the Supervisory Notice; to do so would be permissible under Tribunal Rule 10(6). In this connection Mr Ravjani explained how the regulated activities, had they been carried out, would have been closely related to the building activities of his company. Where customers wanted building to be done he would put together a financing package in the course of his "Astrad Finance" business as mortgage and general insurance intermediary. The building clients would be introduced by Astrad Finance to providers of finance.

15. We infer from that explanation of Mr Ravjani's activities that he did not see the Astrad Finance business as having clients to whom the written advice referred in the Supervisory Notice should be given.

16. Mr Ravjani further pointed out that the absence of regulated activities on his part should have been apparent to the Authority from the quarterly (nil) returns that he had been making.

17. The evidence shows that Mr Ravjani did nothing in response to the requirement in the Supervisory Notice of 4 January 2008, despite the e-mail reminder from the Authority. On 12 May he wrote to the Authority to say that he, as Astrad Finance, had not "carried out any regulated activities, therefore there are no clients to inform".

18. Although the point is now academic our view is that the Supervisory Notice should have been left in place and not suspended. The requirements to notify clients and provide documents to the Authority were also appropriate. Mr Ravjani made no effort to comply with those requirements. The explanations summarised above and the justifications that he gave were not ventilated until the present hearing. We think therefore that the effect of the Supervisory Notice should not have been suspended.

19. As indicated in paragraph 2 above, we direct the Authority (in the absence of any reference of the Decision Notice of 15 April 2008) that Mr Ravjani's permission to carry on the regulated activities be treated as removed with effect from 4 January 2008.

20. For the reasons given above the Reference and Mr Ravjani's application to suspend the immediate effect of the Supervisory Notice are dismissed.

SIR STEPHEN OLIVER QC
CHAIRMAN

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