

*Fit and proper person – Sections 61 and 186 Financial Services and Markets Act 2000 – Mortgage broker – Alleged failure to detect fraud-
Reference allowed*

FINANCIAL SERVICES AND MARKETS TRIBUNAL

RAVI MANCHANDA

Applicant

- and -

FINANCIAL SERVICES AUTHORITY

The Authority

**Tribunal: JUDGE DAVID MACKIE CBE, QC
MRS C E FARQUHARSON
MR C H SENIOR**

Sitting in public in London on 15-17 May 2006

Mr H Malek QC and Mr J Odgers, instructed by Fladgate Fielder, for the Applicant

Mr J Eadie, instructed by the Authority, for the Respondents

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DECISION

Introduction

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1. These two applications are about one issue. Has the Applicant shown that he is a fit and proper person to control a mortgage broker and to perform the functions of a director of it? In late 2004 the Applicant Mr Manchanda proposed to buy a controlling interest in a regulated firm, Diamond Lifestyle Ltd, a mortgage broker. On 9 November 2004 Mr Manchanda applied for two approvals which the Respondent (“FSA”), acting through its Regulatory Decisions Committee and its Regulatory Transactions Committee, refused on 10 31 March and 1 April 2005. Mr Manchanda challenged these Decision Notices by References dated 27 April 2005 and after direction hearings and 15 one adjournment the case was heard between 15 and 17 May 2006. The case turns on Mr Manchanda’s role at RBG Resources Plc (“RBG”) a metal and minerals trading company which suffered losses of over US \$400 million as a result of extensive frauds.

20 Legal and regulatory background

2. The function of a director of a company such as Diamond Lifestyle is controlled under the Financial Services and Markets Act 2000 and requires approval from the FSA under Section 60. Section 61 provides that the authority may grant an application “*only if it is satisfied that the person in* 25 *respect of whom the application is made is a fit and proper person to perform the function to which the application relates*”. The consent of the FSA is also required for a proposed change in the control of an authorised person such as Diamond Lifestyle and, by Section 186 of the Act approval will only be given 30 if:-

(a) the acquirer is a fit and proper person to have the control over the authorised person that he has or would have if he acquired the control in question; and 35

(b) the interests of consumers would not be threatened by the acquirer’s control or by his acquiring that control.

3. In deciding whether these requirements are met the FSA considers its regulatory objectives and needs to ensure that the relevant person’s affairs are conducted soundly and prudently. These regulatory objectives include market confidence, the protection of consumers and the reduction of financial crime. In this case the FSA has placed emphasis on its financial crime objective of 40 “*reducing the extent to which it is possible for a business to be carried on for a purpose connected with financial crime*”. The FSA issues Guidance on the 45

fit and proper test which, although very helpful, is not legally binding. The most important considerations in that Guidance are the person's honesty and integrity and his competence and capability.

- 5 4. The Tribunal has received detailed and helpful submissions from the parties
about the legal approach to this case and to issues like the burden of proof.
These are largely uncontroversial and can be put as follows. The FSA can
only grant an application if it is satisfied that the person is fit and proper. It is
for the Applicant to establish that he is fit and proper not for the FSA to show
10 that he is not. The task of the Tribunal is not to review the reasonableness of
the FSA's decisions but for itself to determine what action the FSA should
take over the applications. We have to ask ourselves, looking at the
applications again in light of the evidence now available, whether or not we
are satisfied that Mr Manchanda is a fit and proper person to perform the
15 functions referred to above.

Factual background

5. Most of the relevant facts are agreed or not greatly in dispute. The
20 controversy lies in the inferences to be drawn from the facts. Mr Manchanda
was born in Singapore and after military service went to University in Dundee
and qualified as a Chartered Accountant in Scotland in 1985. He worked
successfully for KPMG reaching the level of Senior Manager. In 1991 he
25 joined a ladies clothes importer the By Design Group and by 1996 was that
company's Chief Executive Officer in the United States. In that year he was
introduced through a contact at HSBC, his company's bankers, to another of
their customers ADI an apparently very successful metal trading business
owned by the Rastogi family. Mr Manchanda was ready to change job and to
move back to England. The Rastogis wished to replicate their successful ADI
30 business in the UK and needed someone of Mr Manchanda's calibre in
London. Mr Manchanda was impressed with what he saw of ADI and with
the impeccable standing of its accountants, lawyers and bankers. He decided
to take up this opportunity and initially spent three months as a consultant to
ADI. He established relations with well known insurance brokers in the UK,
35 credit insurance being vital to a business like ADI's where many of the clients
were small and medium enterprises ("SME") around the world. He
approached banks. These were impressed by the name of ADI and keen to be
involved in the UK venture. He was appointed an Executive Director with the
new company RBG on 18 July 1996. He appointed PWC as the auditors. He
40 became RBG's Financial Director supporting Mr Virendra Rastogi who was
the CEO and chief trader. An experienced trader of unquestioned integrity,
Mr Christian LeJeune was also appointed as were a team of other
professionals. The third Director Mr Majumdar was appointed in December
1997 and a Mr Mirtra joined the board in June 1998.
- 45 6. It appears that some of RBG's metal trading was on a cash against documents
basis but some customers were allowed credit. The extent of that credit was

governed by RBG's procedures which Mr Manchanda set up and adopted from those of ADI. ADI's procedures had met its own requirements and also those of its bankers and auditors. The RBG system was in turn approved by the credit insurers of RBG. When RBG dealt with an existing customer of ADI they obtained and relied on copies of the customer files from ADI itself. This was to prove a weakness. In 1998 RBG was growing fast and Mr Manchanda sought trade finance facilities on its behalf. One proposed facility was for securitisation through Westdeutsche Landesbank Girozentrale ("WestLB"). This involved assigning a very large number of customer trade debts as security for traded debt instruments distributed to investors by WestLB. That security was protected by credit insurance. An Agreement was eventually reached between RBG and WestLB in January 1999 for a facility of up to \$35 million. Before any agreement could be implemented WestLB needed to carry out extensive "due diligence" carefully investigating RBG's business and the quality of its receivables. The Agreement also required the facility to be operated in a careful fashion. WestLB were involved in training RBG staff in how the process should be run. Mr Manchanda played an essential role in negotiating the facility and indeed others which RBG entered into. Mr Manchanda became Chief Operations Officer towards the end of 1998 with the task of monitoring the systems he had set up.

7. RBG appeared to thrive and grow. The auditors reported satisfactorily. Credit insurers were satisfied. West LB appeared content having completed due diligence and also having PWC conduct annual reviews distinct from the audit process. By early 1999 however Mr Manchanda had become discontented with his role. Mr Majumdar was recruited without reference to Mr Manchanda and ran two major financial projects without him being involved. Mr Manchanda also considered that his views about an appropriate corporate structure were being ignored. He sought to resign as an Executive Director in March 1999 but was persuaded to remain for a period and finally left with effect from 2 August. Mr Manchanda remained as a non Executive Director of RBG. Mr Anand Jain who had joined the board of RBG in June became Company Secretary in August 1999.

8. Mr Manchanda devoted his attention to his consultancy 1 Group but retained close links with the Rastogi family who invested £600,000 of the £1 million share capital in this insurance venture. 1 Group worked closely with RBG and ADI on insurance matters. Mr Rastogi and Mr Manchanda remained in very frequent email contact about the business of 1 Group. Despite this close relationship Mr Manchanda became unhappy about his role as a non Executive Director of RBG. He complained about not being involved in decisions at first informally and then by fax dated 19 July 2000. On 27 October 2000 he gave Mr Rastogi three months notice of his resignation as a Director of RBG and this took effect in January 2001.

9. It seems that in December 2001 PWC became suspicious about certain RBG customers based in Hong Kong. PWC were not happy about the explanation

that they received from the Directors of RBG and resigned as auditors in January 2002. Around this time Mr Manchanda visited ADI in the US with insurance brokers. He learned that ADI was being investigated by the FBI. He says that Mr Rastogi spoke to him of these difficulties but suggested they were being overcome. On 2 May 2002 Provisional Liquidators were appointed for RBG and freezing orders were granted against Mr Virendra Rastogi, Mr Majumdar, Mr Jain and a Mr Patel and their homes were searched by the SFO the following day. The civil proceedings led to a successful application for summary judgment against Mr Rastogi and Mr Jain. Following the criminal investigation the SFO charged Mr Rastogi, Mr Jain, Mr Majumdar and Mr Patel with conspiracy to defraud and a trial has been fixed for March 2007.

10. It has been clear since early 2002 that ADI and RBG were involved in huge frauds over a significant period. These frauds are helpfully described in the judgment of Mr Justice Hart in the summary judgment application. One paragraph reads as follows:-

‘The essence of the claim is that this situation is the result of a fraudulent scheme which was designed to extract, and succeeded in extracting, several hundred million US dollars from financiers. According to the claimants, the scheme involved the invention of a very large number of bogus metal and other mineral trading transactions. It was implemented by the creation of a world wide network of trading counter parties who were controlled by VR and AJ(Virendra Rastogi and Anand Jain), by the fabrication of the trading transactions and by the dissipation of the funds extracted. These bogus transactions were presented to financiers as genuine trades with independent trading companies for the purposes of extracting funds. This was done first through the sale to the financiers under receivables agreements of the liabilities purportedly owing to RBG as a result of these trades and, secondly, the raising of trade finance in respect of purported purchases. It is said that by the time the music stopped in May 2002 at least two-thirds of RBG’s ostensible trade was the result of these activities.’

11. The fraud was carried out through personnel based overseas who issued documents purporting to originate from a network of overseas companies in Hong Kong, Singapore, Dubai, India and the United States. In fact those companies secretly took instructions from Mr Rastogi and Mr Jain who publicly maintained these were independent from each other and from RBG. Documents seem to have been fabricated abroad. The liquidators have found evidence to support this in a warehouse in Hong Kong. Daily reports were sent to Mr Rastogi but not at RBG but to his home fax number. Mr Manchanda, like other employees of RBG in London, says that he was unaware of any fraud or forgery. The foreign counter parties had previously been customers of ADI where documents appeared to be in order and checks were satisfactory partly because of fraudulent or forged confirmations from

these companies and from those appearing to be their advisers. These false transactions received 95% finance which was then siphoned off by conspirators.

- 5 12. No proceedings, criminal or civil, have been brought against Mr Manchanda. He has not been interviewed by any authority. He has not been the subject of complaint to his professional body . When the matter was before the Regulatory Decisions Committee and Regulatory Transactions Committee the FSA sought information about the criminal investigation. In a letter dated 17th March 2005 the SFO stated that the investigation was *'drawing to a close'* and that Mr Manchanda was to be interviewed, probably in June 2005. Yet according to a letter from the SFO dated 3 May 2006 Mr Manchanda is still a "suspect" and they add *"the approach we take to Mr Manchanda will be governed by a number of factors, including the weight of evidence (as opposed to intelligence) against him as well as to the public interest in pursuing him"*.
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- 20 13. In the United States 15 employees and other officers of ADI have pleaded guilty to crimes as a result of participating in what a press release from the US Attorney's Office for the Southern District of New York describes as *"a far-reaching scheme to defraud a number of major US and foreign banks by fraudulently inducing them to issue hundreds of millions of dollars in loans"*. This document also refers to the *"extraordinary efforts by the Defendants to create a façade that sham, controlled customers were in fact real, independent metals companies with actual employees and offices and with no ownership or control relationship with the Defendants"*. It seems that some of these Defendants established offices and phone lines for the sham companies and arranged for fake letterhead and bank accounts.
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30 **Evidence**

14. The FSA relied on some unchallenged witness statements and also on the testimony of Mr Mike Parker and Mr Andrew Gardner.
- 35 15. Mr Parker was employed as an associate in the Regulatory Transactions Division dealing with applications for approved person status. He described the process by which he investigated Mr Manchanda's application. He accepted that the FSA was concerned primarily with evidence not with speculation. He confirmed that Mr Manchanda had offered to be interviewed but that the FSA had not required this. Mr Parker gave a straightforward and accurate account of his investigation which in our judgment was competent and appropriate given the necessarily limited nature of the exercise.
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- 45 16. Mr Andrew Gardner was from July 1998 until July 2005 an Executive Director in the Securitisation and Principal Finance Group of West LB. He was responsible for the negotiation of the programme entered into by RBG and West LB in January 1999. Mr Gardner helpfully explained the

complexities of this form of finance and the negotiations which he conducted. As Mr Gardner saw it Mr Manchanda was the Director at RBG primarily responsible for arranging and negotiating the West LB deal. Mr Gardner had a high opinion of Mr Manchanda's intelligence, competence and integrity. He
5 accepted that the inquiries made by West LB before embarking on this financing and when conducting it were substantial and that due diligence was intensive. He thought it likely that other banks making similar finance available to RBG would carry out similar due diligence efforts. He was
10 unaware of RBG raising any constraints or limitations upon West LB's evaluation process. Mr Gardner's second statement submitted very shortly before the hearing consists mainly of opinions about Mr Manchanda's role. He wonders why Mr Manchanda did not identify any suspicious activity at RBG and expresses his surprise that no additional credit checks were carried out when the volume of RBG's business increased so greatly. He also
15 suggests that Mr Manchanda's witness statement understates his responsibility for implementation of the West LB financing for RBG. Mr Gardner's direct evidence of fact was helpful, straightforward and entirely credible. Some of the expressions of opinion in his second witness statement were based upon a limited knowledge of the surrounding facts.

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17. Ms Philippa Tebby is a Chartered Accountant seconded to the FSA who provided an unchallenged statement to the Tribunal. She conducted an analysis the accuracy of which is unquestioned. This shows that during the period from 2 February 1999 to the end of July 1999 when Mr Manchanda
25 resigned as an Executive Director ,142 invoices were accepted in to the West LB finance programme of which 80 were probably fraudulent.

18. The FSA also relied upon two witness statements prepared for use in, amongst
30 other things, pending criminal proceedings in London. The first statement is that of Mr Anil Anand who was Chief Financial Officer of ADI. Mr Anand has pleaded guilty in the United States to committing fraud and other offences between 1995 and 2002. He makes his statement on the basis that he may receive a substantial discount in sentence in return for full co-operation. Under USA Sentencing Guidelines the maximum sentence for the offences to
35 which he has pleaded guilty is 65 years. Mr Anand has also pleaded guilty to lying to the US Government in the early stages of the investigation when offering a co-operation agreement. Mr Anand was based in the United States and his account is therefore of limited relevance to RBG in London. He says of Mr Manchanda "*in my view almost certainly (he) knew about the fraud*".
40 This view appears to be based only on the fact that Mr Manchanda worked closely with Mr Rastogi in setting up the London operation. Mr Narendra Rastogi , who ran ADI in the United States, (as opposed to his younger brother Mr Virendra Rastogi, the RBG CEO) has provided a similar statement on the same basis. He describes Mr Manchanda's role in general terms as someone
45 who could be trusted. Mr Manchanda does not however feature as one of the "*trusted deputies*" placed in locations around the world. There is strikingly

little detail about the role which these two potential witnesses give to Mr Manchanda.

- 5 19. Mr Manchanda applied for an order that the Tribunal decline to admit these statements on the grounds, mainly, that the witnesses were unavailable to give evidence and were obviously unworthy of belief. Although there are serious doubts about the reliability of these statements we refused that application and considered the material for what it was worth. We placed very little weight on either statement in view particularly of the vagueness of what they say about Mr Manchanda. Of course some other court or Tribunal considering these frauds may take a different view of the quality of this material.
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- 15 20. Mr Manchanda submitted three witness statements and also gave live evidence. He insisted that he had known nothing of the fraud. He had been introduced to ADI through reputable bankers and had worked only briefly for that company. The references he took up were very favourable and once he got to London he appointed reputable auditors, PWC, and insurance brokers and recruited skilled and experienced personnel. He was always content to give bankers and others access to RBG's books. He accepted that he played the leading role in negotiating the West LB arrangement. He explained how he moved from Finance Director to Chief Operating Officer. He said that there were no particular features of RBG's dealings with customers which he had reason to question. Many customers were inherited from ADI and procedures for getting new customers were document based. Further he was not the point of contact for customers. Others including notably Mr Lejeune, RBG's senior trader, had far more customer contact than he did yet remained unaware of the fraud throughout. Mr Manchanda also insisted that he had not shown incompetence in carrying out his duties. There were no warning signs of the fraud. Fellow employees, underwriters, bankers and auditors had noticed nothing either. As came over strongly in his cross examination Mr Manchanda was proud of RBG's systems which he believed to be of good standard. These were subjected to frequent external reviews from auditors, bankers and insurers including Lloyd's of London and AIG. Mr Manchanda pointed to the conclusions of PWC when acting not as auditors but as reviewers for West LB "*that the company displays a good overall level of control underpinned by robust work practices and systems*". Mr Manchanda emphasised the competence and integrity shown throughout his career until he arrived at RBG. He also drew attention to a letter from the Institute of Chartered Accounts of Scotland confirming that Mr Manchanda remains a member in good standing, has no disciplinary record and has not been the subject of complaint over his role in RBG. Mr Manchanda produced impressive references as to his character and competence from the ASEAN-UK Business Forum, from a Director of KPMG, and from a partner in Moore Stephens. Mr Manchanda also has an impressive record of service to charities. One charitable trust responsible for schools in Zambia describes him as "*a pillar of strength and inspiration*". Mr Manchanda has sold his home to meet the substantial and irrecoverable legal costs of a Tribunal hearing.
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21. Mr Manchanda also relies upon a witness statement disclosed by the FSA given by Mr Christian Lejeune. This statement, and a letter from Mr Lejeune on which Mr Manchanda also relies, are not an explicit exoneration but they do suggest that this witness did not see Mr Manchanda within any ring of guilt at RBG.

Submissions of FSA

22. The FSA's starting point is that it is for Mr Manchanda to show that he is fit and proper and to satisfy the Tribunal both that he did not know about the fraud and that, if he did not, that this absence of knowledge was not culpable in competence. The FSA's case is set out in its helpful skeleton argument. In his closing submissions Mr Eadie emphasised the following factors which he suggested pointed to the fact that Mr Manchanda knew or should have known about the frauds. Mr Manchanda left to join Mr Rastogi, an admitted fraudster, and was in day to day contact with him about the minutia of running a company for a long period. He and Mr Rastogi were responsible for getting RBG off the ground. As a Financial Director Mr Manchanda had or should have had control over the financial systems of the company. The position of a Finance Director, as an insider, is fundamentally different from that of an auditor or outside adviser. That role is also very different from that of a trader, even a senior one. Mr Manchanda was personally responsible for the negotiation and signature of the West LB arrangement. While Mr Manchanda had not been present at RBG throughout the frauds, dishonesty affected over half the relevant sales while he still held office. The fraud was not an isolated one. It was endemic, widespread and continued for a number of years. The customers generated suspiciously few payment or trading disputes. The nature of the fraud involved a succession of circular financial transactions, a matter for which someone in Mr Manchanda's role would naturally have responsibility. The credit committee of RBG consisted of those involved in the fraud and Mr Manchanda was able to tell the Tribunal very little about the nature of the systems in place. (We say at once that it would have been difficult for Mr Manchanda to address such detail some years later particularly when the FSA did not itself seek to analyse those systems and procedures in detail.) It was also perhaps suspicious that Mr Manchanda had underplayed the extent of his continuing relationship with Mr Rastogi. A substantial number of emails had recently become available showing an almost daily exchange between Mr Rastogi and Mr Manchanda about the affairs of the Applicant's insurance company. Mr Manchanda assisted Mr Rastogi's wife financially when the freezing orders were first obtained. The US witnesses could be expected to tell the truth because of the situation they were now in. The Tribunal was invited to conclude that if Mr Manchanda did not know about the fraud he should have done.

The Applicant's case

23. In addition to their written submissions Mr Malek QC and Mr Odgers made oral closing submissions which included the following. It is for the Applicant to show the FSA that he is fit and proper but FSA cannot rely upon suspicion and must produce evidence if they are going to make a decision that someone is or may be guilty of fraud or of failing to detect it. The fraud was established in early 2002, civil action has been taken and criminal proceedings are pending. No action has been taken against Mr Manchanda, none is in the offing and not a single document has been produced to show that he is or may be at fault. The FSA has good links with those, particularly the liquidators, who are able to produce all relevant documents but nothing has been found. Mr Manchanda answered all questions convincingly. It is inappropriate for the FSA to make criticisms of systems and controls without putting to Mr Manchanda even one document which suggests that he was fraudulent or incompetent. If anyone had reached a conclusion that Mr Manchanda was incompetent then material would have been available. The underwriters and other professionals were all hard-nosed people in the first rank. They identified nothing incompetent and indeed Mr Gardner had a high regard for Mr Manchanda. While Mr Manchanda was at RBG there were on average only four suspect trades each week. By 1999 Mr Manchanda was no longer one of two Directors but part of a group of Executive Directors and he was by then being marginalised. A man in Manchanda's position had no reason to get involved in fraud or to risk his career. It would have been mad for him to hire professionals like PWC (who ultimately detected the fraud) if he proposed to involve himself in dishonest conduct. No one has suggested that Mr Manchanda had anything to do with setting up the fraudulent customers. Mr Manchanda was not a trader and could not be expected to pick up four bad trades a week for a few months in 1999. It is clear that Mr Manchanda began to have disagreements about the governance of RBG despite maintaining good relations with Mr Rastogi. The statements from Mr Narendra Rastogi and Mr Anand are vague but also unreliable, made as they were with people with everything to gain from spreading blame as widely as possible. Even if one were to accept the truth of some of the content of these statements the position of Mr Anand as an accountant is distinguishable from that of Mr Manchanda and even he was ignorant of the fraud for some time. It is striking that the FSA rely upon a large number of emails between Mr Rastogi and Mr Manchanda which they have identified to show continuing contact in the period 2000 and 2001 yet not one of these shows or suggests improper conduct or guilty knowledge of any kind. Mr Manchanda's glowing testimonials speak not only of his integrity but to his competence. The Applicant's competence was illustrated by many of the points which show he was not fraudulent. No one else outside those involved detected this external fraud. It is unsurprising that Mr Manchanda did not do so either. It is important to bear in mind that ADI and RBG were substantial and well regarded operations with well qualified staff and access to the best advisers.

5 There was no reason for Mr Manchanda to be more than usually alert. The FSA had made an issue at the hearing which was not part of it's original case on the accounting treatment of a US\$ 4 million transfer in the financial year 1996/7. The payment was a cash injection to cover a shortfall caused by hedging on the LME on behalf of customers who subsequently reimbursed RBG. That issue was based on a misunderstanding between a loss and a shortage of cash.

FSA's Decision Notices

- 10 24. Both Decision Notices conclude that, at the time they were taken, there were
15 "*serious concerns relating to Mr Manchanda*" which "*remain unresolved at the present time*" leading the FSA to conclude that it cannot be satisfied that Mr Manchanda is a fit and proper person. The Notices rely upon the decision
20 of Mr Justice Hart and conclude that this indicates that the fraud had been continuing while Mr Manchanda was an Executive Director and Chief Operating Officer of RBG (which had only six Directors at the relevant time, one of whom was based in India), and the fraud was masterminded from RBG's offices in London, where Mr Manchanda was based. The fraud
25 continued while Mr Manchanda was a non-Executive Director. The Notices conclude that although Mr Manchanda was not mentioned in the judgment of Mr Justice Hart his position as an Executive Director and Chief Operating Officer would have allowed him full access to RBG's records. They say that according to RBG's liquidators RBG staff have indicated that Mr Manchanda was seen to work closely with Mr Rastogi and Mr Jain in the London office and in these circumstances and having regard to Mr Manchanda's
30 qualifications and experience, and the scale and duration of the fraud the FSA have serious concerns that Mr Manchanda would or should through the exercise of due skill, care and diligence, have been aware of – or at least suspected – the existence of fraudulent activities and taken appropriate action. As no such action was taken, this indicates a serious failure in his fiduciary duties to RBG, and raises serious doubts about his honesty and integrity and/or his skills, competence and capability to perform the controlled function to which the application relates. The Decision Notices also rely upon the fact
35 that a letter from the SFO stated that Mr Manchanda was to be interviewed and that this was likely to take place some time in June 2005.
- 40 25. Mr Manchanda's lawyers have made various criticisms both of the process adopted by the FSA and of the Decision Notices themselves. These are of no direct concern to the Tribunal. The function of the Tribunal is not to act as an appeal court evaluating the decision of the RDC but to rehear the case on the evidence now available.

Decision of the tribunal

- 45 26. Has Mr Manchanda satisfied the Tribunal that he is a fit and proper person? As his qualifications and previous experience are beyond reproach the only

question is whether the extent of his knowledge, if any, of the frauds at RBG and his professional performance over them prevent him from being fit and proper. The FSA does not have to prove that Mr Manchanda knew or was involved in the frauds. He has to satisfy us that he did not know of the frauds and that this absence of knowledge was not due to his lack of professional competence.

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27. If Mr Manchanda were on criminal trial or facing civil proceedings for fraud the process would be a lengthy and rigorous one involving far more documents and many more witnesses than have been put before us in a three day hearing. It would be disproportionate for either Mr Manchanda or the FSA to have to incur the time or expense of such a wide ranging inquiry. We have considered the matter on the available material at what is necessarily a broader level. Our findings on the question of Mr Manchanda's fitness therefore have no bearing on any court decision dealing with other aspects of the matter. That said it is our view that Mr Manchanda is fit and proper because we do not consider, on the material we have seen, that he had any knowledge of these frauds or that his professional conduct is open to serious criticism.

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28. Our reasons for forming the view that Mr Manchanda did not know of these frauds are :-

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(a) No contemporaneous document has been shown to us to indicate or even suggest that Mr Manchanda knew of the frauds. No witness has given evidence suggesting that he knew or might have known of the frauds. Two admitted criminals Mr Narendra Rastogi and Mr Anand have suggested Mr Manchanda knew of the fraud but have done so in general terms when making allegations against at least one other innocent individual and in a context which suggests that their accounts are unlikely to be reliable. It is to us striking that there should be such little evidence against Mr Manchanda when conscientious enquiries have been conducted by competent regulatory agencies and liquidators over more than four years. It is equally striking that no complaints of professional misconduct have been made, no civil proceedings have been brought, and while individuals are to stand trial next year, Mr Manchanda has never even been interviewed by the SFO let alone arrested or charged.

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(b) We believe the evidence of Mr Manchanda who was rigorously but properly cross examined about the frauds. Mr Manchanda came across as a frank and straightforward witness. He answered the questions directly. He was anxious to ensure that he had grasped a point and answered it fully. On occasions Mr Manchanda chose to speak the truth rather than to volunteer what would have been a plausible and exculpatory alternative. It seemed obvious to us that Mr Manchanda's strengths and main activities lay with organisation and

controls rather than the detailed evaluation of the integrity and credit standing of counter parties.

5 (c) The circumstantial evidence properly deployed by the FSA
seems to us, after examination, to point either to Mr Manchanda's
innocence or to be equivocal. Mr Manchanda's background,
qualifications and experience were impeccable. He had the motivation
to join ADI/RBG in order to further his career and to return to the UK.
10 He had no reason to embark on criminal activity and, given the
standing at the time of ADI/RBG and the circumstances in which he
was introduced to it, no expectation of dishonest involvement. The
steps Mr Manchanda took to set up RBG in London, notably his choice
of professional advisers would be odd ones for a fraudster to take.
15 Those advisers and others of sophistication themselves noticed no
frauds or anything suspicious. Others appear to have been brought in
by Mr Rastogi to replace Mr Manchanda in that part of the role closest
to what were later exposed as frauds, including individuals now
alleged to have been involved. Mr Manchanda became concerned
about aspects of his job and left when the frauds were not at an
20 advanced stage. The nature of the frauds involving as it did dishonest
customers reporting when necessary to Mr Rastogi's home and not the
office was one which it would have been difficult for Mr Manchanda
to detect. Mr Manchanda did not emphasise his continued contact with
Mr Rastogi after his departure from RBG but he did not conceal it
25 either. That contact was not suspicious for so long as the frauds had
not come to light. The action of Mr Manchanda in assisting Mrs
Rastogi when freezing orders were obtained but the full facts were still
obscure is consistent with common humanity rather than dishonesty.
The frauds were indeed pervasive and long lasting. Mr Manchanda
30 was however only present for part of the relevant period. Mr
Manchanda was not alone in being an innocent employee. While it is
true that traders would be more remote from finance than Mr
Manchanda he in turn would be more remote from the customer
counter parties.

35 (d) The frauds were undetected by a sophisticated and watchful set
of bankers, insurance experts and other professionals. There is a
difference between their position and that of Mr Manchanda as an
insider but their lack of suspicion is significant.

40 29. We consider that Mr Manchanda's competence is not open to serious criticism
because:-

45 (a) of the considerations we have identified when dealing with the
frauds.

(b) RGB's systems and controls were accepted as appropriate by auditors acting in two separate capacities, by insurers and by bankers who gave these matters consideration continuously throughout the period.

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(c) There is no evidence of particular examples of negligence or incompetence from any witness or in any of the relevant documents. Furthermore it is not a criticism of FSA's conduct of this case for us to point out that there is no expert evidence of Mr Manchanda's want of care. Moreover the lay members of the Tribunal who have particular experience in these areas consider that Mr Manchanda's ignorance of the frauds was understandable in the circumstances.

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30. As we have pointed out the function of this Tribunal is not to conduct appeals from the FSA's but to carry out a rehearing. The Tribunal has the benefit of a substantial amount of material which was not available to the RDC and the RTC as well as the opportunity to hear witness evidence. There are limits to the degree of investigation which the FSA can carry out when an application raises a concern. We were told that the FSA deals with 160,000 applications a year. Applicants understandably require the process to be conducted at a reasonable cost and over a relatively short period. It is perfectly understandable that the FSA may make a decision on the available material which is appropriate and correct at the time but which, following more detailed evidence and subsequent developments, results in a different decision from this Tribunal. That is no criticism of the FSA or of its performance of its important duty to protect the public.

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31. One of the evils of serious financial fraud is that it casts suspicion on innocent people whose careers may be blighted for years before their names are cleared. When the RDC and the RTC dealt with this application investigations of this fraud were less advanced and indeed Mr Manchanda was facing imminent interview by the SFO. If we had been in the position of the RDC we would in all probability have reached the same conclusion albeit differently expressed. The FSA has a difficult task in balancing fairness to an applicant against its duty to protect the public. It is not necessary for our Decision for us to determine how far the FSA must be able to prove the existence of particular a fact before having regard to a suspicion. But where it is for an applicant to show his fitness and there are wider considerations to evaluate, the burden on the FSA must be less than it would be where, for example, it is considering imposing a penalty for wrongdoing.

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Conclusion

5 32. It follows that Mr Manchanda has satisfied us that he is a fit and proper person
for the purposes of his original applications. The Tribunal will therefore make
an order directing the withdrawal of the Decision Notices.

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JUDGE DAVID MACKIE CBE, QC

CHAIRMAN

15 FIN 2005/0014
FIN 2005/0015