Solicitors Regulation Authority

AFG Law Limited
20 Mawdsley Street, Bolton , BL1 1LE
Recognised body
598043

Agreement Date: 7 November 2022

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 7 November 2022

Published date: 16 November 2022

Firm details

Firm or organisation at date of publication

Name: AFG Law Limited

Address(es): 20 Mawdsley Street, Bolton BL1 1LE

Firm ID: 598043

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome

1.1 AFG Law Limited (the firm), a recognised body, agrees to the following outcome to the investigation of its conduct by the Solicitors Regulation Authority (SRA):

a. it is fined £2,000
b. to the publication of this agreement
c. it will pay the costs of the investigation of £1,350.

2. Summary of Facts

2.1 In or about February 2018, the firm was instructed by a developer/construction company (Company M) to act on its behalf in drawing up a development agreement with Company W, a land owner.

2.2 This was the first occasion on which the firm had acted for Company M. It had previously acted for Company W in 2017 on an unrelated matter.

2.3 The nature of the parties' venture was such that Company M (as developer) and Company W (as landowner) were likely to have opposing interests and competing priorities.

2.4 A meeting was held on 9 April 2018 between the firm, Company M and Company W to discuss the proposed development agreement. The firm's attendance note of that meeting recorded: 'It was acknowledged and agreed that either party could seek independent legal advice as [the firm] have acted and do act for both parties. However reference was made to clause 29 of the Agreement - 'the Good Faith clause'. All matters between the parties are amicable - both parties want the same thing - to develop out the site - and as such both parties are happy to enter into the DA [development agreement] without seeking ILA'.

2.5 The attendance note also recorded that: 'It was acknowledged that [the firm] could potentially have a conflict of interest'.

2.6 The firm says that it verbally confirmed to Company W that it was not acting for it in connection with the development agreement and that it could seek independent legal advice. However, it did not follow this up in writing.

2.7 The firm also did not make clear to Company W that, because it was instructed by Company M in the matter, its responsibility was solely to represent and to protect Company M's interests, not those of Company W.

2.8 The development agreement, as prepared by the firm, was completed on 11 May 2018.

2.9 In November 2018, the firm accepted instructions from Company W and its directors in connection with securing a loan facility which related to the development. The firm was not acting for Company M at this point.

2.10 In July 2019, the firm acted again for Company W and its directors in connection with refinancing of the development project. Again, the firm was not acting for Company M in relation to any matters linked to the development project at this point.

2.11 In the course of these financing matters, the firm received confidential information relating to Company W and its directors, including commercially sensitive and financial information.

2.12 Between approximately January 2019 and mid-2020 the firm acted for Company W in connection with the sales of the developed plots.

2.13 In early 2020, a dispute arose between Company W and Company M relating to the development.

2.14 The firm accepted instructions to act on behalf of Company M in connection with the dispute. Despite having previously acted for Company W in relation to matters material to and connected with the subject matter of the dispute, the firm did not ensure that there was no real risk of disclosure of Company W's confidential information or obtain its informed consent to act for Company M. The firm states that although confidential information relating to Company W was held by it, the relevant fee earner with conduct of the dispute did not have sight of it, could not have used any such information in any way, and did not do so.

2.15 The firm ceased to act for Company M in relation to the dispute in the early part of 2021.

3. Admissions

3.1 The firm makes the following admissions which the SRA accepts:

a. That when acting in respect of the development agreement between Company M and Company W in 2018, it took unfair advantage of Company W because it did not make it sufficiently clear, that:
    i. Company W was not its client on that occasion,
    ii. the firm was not acting for Company W or representing its interests, and
    iii. Company W should obtain independent legal advice. In doing so, it failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011.
b. That it represented Company M in connection with a dispute which arose between Company M and Company W in early 2020, without taking effective measures to ensure there was no real risk of disclosure of the confidential information provided to the firm by Company W. In doing so, it breached paragraph 6.5 of the SRA Code of Conduct for Firms (2019).

4. Why a fine is an appropriate outcome

4.1 The SRA's Enforcement Strategy sets out its approach to the use of its enforcement powers where there has been a failure to meet its standards or requirements.

4.2 When considering the appropriate sanctions and controls in this matter, the SRA has taken into account the admissions made by the firm and the following mitigation which it has put forward:

a. The directors of Company W were told verbally that the firm was only acting for Company M in relation to the preparation of the

development agreement and that it was not also acting for Company W (which was advised verbally to seek its own independent legal advice).

b. A different fee earner and department at the firm acted for Company M in connection with the dispute to those who had acted for the parties previously, and the firm state that no confidential information relating to Company W passed to the team dealing with the dispute.
c. The firm has subsequently introduced more advanced processes within its case management system to ensure the safeguarding of confidential client information in the future.

4.3 The SRA considers that a fine is the appropriate outcome because:

a. The conduct had the potential to cause significant harm in that there existed the potential for confidential information which the firm possessed about Company W to be used against it. The firm also put itself in a position where its respective duties of confidentiality (to Company W) and of disclosure (to Company M) were potentially in conflict.
b. The firm had disregarded the risk of harm in that it realised there was a risk in it acting for Company M in circumstances where it had previously acted for Company W and it knew Company W was unrepresented. Notwithstanding that clear risk, at the time it was drawing up the development agreement the firm failed to take sufficient steps to mitigate that risk.

4.4 Given the seriousness of the breaches, a fine is appropriate to maintain professional standards and uphold public confidence in the solicitors' profession and in legal services provided by authorised persons. Any lesser sanction would not provide a credible deterrent to the firm and the wider profession. Achieving credible deterrence plays a key role in maintaining professional standards and upholding public confidence. A financial penalty therefore meets the requirements of rule 4.1 of the SRA Regulatory and Disciplinary Procedure Rules.

5. Amount of the fine

5.1 The amount of the fine has been calculated in line with the SRA's published guidance on its approach to setting an appropriate financial penalty (the Guidance).

5.2 Having regard to the Guidance, the SRA and the firm agree that the nature of the misconduct was low or medium because:

a. The firm has cooperated with the SRA investigation
b. The conduct was not intentional, and
c. The conduct did not form part of a pattern of misconduct.

5.3 The Guidance gives this type of misconduct a score of one (1).

5.4 The SRA considers that the impact of the misconduct was medium, because it had, or had the potential to cause, moderate impact, for the following reasons:

a. The lack of clear written advice by the firm confirming that it was not acting for Company W in the development agreement, may have contributed to the decision by Company W not to seek independent legal advice.
b. The firm states that no breach of confidentiality occurred because no confidential information relating to Company W passed to those acting for Company M in the dispute, and there is no evidence to contradict this assertion. However, the risk of disclosure of the confidential information remained.

The Guidance gives this level of impact a score of four (4).

5.5 The nature and impact scores add up to five. The Guidance indicates a broad penalty bracket of £1,001 to £5,000 is appropriate.

5.6 In deciding the level of fine within this bracket the SRA has considered the mitigation at paragraph 4.2 above which the firm has put forward.

5.7 The SRA considers that the limited actual impact of the misconduct means that a fine at the lower end of the bracket is indicated. On this basis, the SRA considers a basic penalty of £2,000, towards the bottom of the bracket, to be appropriate.

5.8 The firm does not appear to have made any financial gain or received any other benefit as a result of its conduct. Therefore, no adjustment is necessary to remove this and the amount of the fine is £2,000.

6. Publication

6.1 The SRA considers it appropriate that this agreement is published in the interests of transparency in the regulatory and disciplinary process. AFG Law Limited agrees to the publication of this agreement.

7. Acting in a way which is inconsistent with this agreement

7.1 The firm agrees that it will not deny the admissions made in this agreement or act in any way which is inconsistent with it.

7.2 If the firm denies the admissions or acts in a way which is inconsistent with this agreement, the conduct which is subject to this agreement may be considered further by the SRA. That may result in a disciplinary outcome or a referral to the Solicitors Disciplinary Tribunal on the original facts and allegations.

7.3 Acting in a way which is inconsistent with this agreement may also constitute a separate breach of principles 2 and 5 of the SRA Principles and paragraph 3.2 of the SRA Code of Conduct for Firms.

8. Costs

8.1 The firm agrees to pay the costs of the SRA's investigation in the sum of £1,350. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

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