

Court of the Seneschal

**The 13th. and 14th. of January, 2004 before C.J. La Trobe-Bateman,
Deputy Seneschal of Sark**

Present:

**J.P. Hamon, M.B.E. Greffier.
A.W.J. Adams, Prevot**

In the matter of an appeal, under Section 19 of the **Regulation of Fiduciaries,
Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey)
Law, 2000**

between:-

Castle Company Management LLC (“the Company”)

Appellant

and

Guernsey Financial Services Commission (“the Commission”)

Respondent

Appearing for the Appellant - Mr. M. Doyle, Director

Appearing for the Respondent – Crown Advocate R. McMahon

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Introduction and chronology. * Page numbers in brackets refer to Respondent’s bundle

Castle Company Management LLC , a U.S.(Wyoming) company incorporated in 1996, but which has it’s main place of business in Sark, applied to the Guernsey Financial Services Commission for a full Fiduciary licence on 28th. March 2001 (p 10-19), prior to the introduction of the *Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000* into Sark law in April.

The Company provided the Commission with documents and information through the Summer and a site visit to the Sark office by officers of the Commission was arranged for 14th. November 2001. In a letter dated 17th. December 2001 (p 43-46), the Commission listed concerns arising out of this visit, to which the Company replied on 28th. January 2002 (p 48-52). A meeting took place between the parties on 27th. February 2002 at which a 2nd. site visit was proposed. This took place on 27th. March 2002, although Mr. M. Doyle was not present. Further correspondence ensued during June and July, including an Annual Return (p 72-77) showing a considerable reduction of directorship held by CCM.

The Commission invited the Company to appear before an Assessment Committee (later known as the Enlarged Assessment Committee) by letter of 17th. June 2002 (p 61-67), which meeting took place in Guernsey on 15th. August 2002 (transcript p 86-119)

By letter of 9th. October 2002,(p 120-121) the Enlarged Assessment Committee informed CCM that it was not prepared to grant a full fiduciary licence, but informed the Company that the option was open to take it's case before an independent Shadow Tribunal (the "Tribunal"), provided application was made before 7th. November 2002. Further correspondence followed, resulting in the Company asking to make it's case to the Tribunal by letter of 31st. December 2002 (p 139) and 9th. March 2003 (p 141)

The Tribunal hearing was convened in Guernsey on 24th., 25th. and 26th. June 2003 and again on 16th. July 2003 and published it's opinion on 22nd. July 2003 (p 145-181). This was (p 179) "*that the application for a full fiduciary licence by the Company can not be granted, and that it should be refused*".

On the 6th. August 2003 the Commission wrote to the Company (p 187),with the following decision:

"The Commissioners agree with the opinion of the Tribunal and, for the reasons set out in the Opinion of the Tribunal, hereby refuse CCM's application for a licence under the Fiduciaries Law"

This letter also drew attention to the Company's right of appeal by Section 19(5)(a) of the Law.

The Company filed Notice of Appeal to the Court of the Seneschal on 29th. August 2003 and a Directions hearing was heard in the above Court, before the Seneschal, on 14th. November 2003. A timetable for the exchange of documents was agreed and a date set for the present hearing. Costs were reserved.

The Appeal Hearing

The Appellant, with the agreement of the Respondent, submitted that the general grounds of the appeal should be construed in the same way as other appeal provisions similar to those specified in the Fiducaries Law, and, therefore, 5 potential outcomes should be admitted, as per "*Walters v States Housing Authority (1997)*":-

- 1) The Commission' s actions/decisions were "ultra vires" – appeal allowed.
- 2) The Commission's actions/decision amounted to "Wednesbury" unreasonable- appeal allowed.
- 3) The Commission's actions/decisions were unreasonable, other than "Wednesbury" or "ultra vires" – appeal allowed.
- 4) The Court comes to a differing view to the Commissions, but that decision was not unreasonable – appeal dismissed.

- 5) The Court agrees with the Commission's decision – appeal dismissed.

The Court accepts this and will, therefore, bear the above in mind when deliberating.

The Appellant's notice of appeal lists 4 main headings in its case against the Commission's decision:-

- 1) Consultation with Sark's General Purposes and Finance Committee.
- 2) Improperly gathered information.
- 3) Legitimate expectation.
- 4) Respondent not reaching its own decision.

Consultation

Section 5 of the Fiduciaries Law deals with licence applications and subsection (9) requires the Commission to "*consultthe General Purposes and Advisory Committee of the Chief Pleas of Sark*". (subsequently re named "General Purposes and Finance Committee")

The Appellant maintains that letter of 7th. June 2001 from the Commission to Sark's General Purposes and Finance Committee (p 32 –33), subsequent fax of 19th. June (p 34 – 35) and the G.P. and F's reply of 6th. July 2001 (p 36) did not constitute "consultation", but was more in the nature of "notification", citing "*Rollo vs Minister of Town & Country Planning (1948)*" in support.

The Respondent argued that the letter of 7th. June 2001 to the Sark G.P and F. Committee stated clearly the Commission's obligation to consult, provided a list of applicants (including CCM) and concluded by positively inviting comments: "*Pursuant to section 5(9) of the Law, the Commission would welcome any views which the G.P. and F. Committee may have on these applications*".

G.P.and F. Committees reply of 6th. July 2001 is couched in general terms and makes no comment on individual applicants. Nevertheless, it is clear from the opening passage that the matter was properly considered: "*The G.P. and F. Committee met yesterday and, inter alia, reviewed the list of applicants given in your letter of 7th. June and subsequent fax.*" This letter begs no answer and the Commission presumably felt that nothing further was required of them.

I conclude that consultation did take place, sufficient to satisfy the requirements of the Law. Further consultation might have been politic when problems with the Respondent's application came to light, but it is difficult to imagine how the G.P.& F. could have provided real help to the Commission in making its decision.

Improperly gathered information.

The claim by the Appellant that the Commission's officers are in a similar position as D.T.I. inspectors in *Fayed v United Kingdom* is contested by the Respondent, in that the gathering of information by these officers is part and parcel of their normal job i.e. the processing of fiduciary licence applications and renewals. D.T.I. inspectors, on the other hand, are brought in to report on particular circumstances. The Fiducaries Law, Section 24, - not called upon in this case- enables the Commission to appoint Inspectors.

The Appellant further claims that the Commission's letter of 4th. October 2001, (p 37-38) requesting an on-site visit, failed to comply with Section 5 (5) and 23 (17) of the Law.

The Respondent's reply is that this letter was a request only and that formal notice would followed only if CCM had not co-operated.

To my mind, this letter, despite it's informal tone, is quite clear: that the aim is to gather information on CCM's business and procedures which will be used when considering the licence application. The opening paragraph states "*As part of the licensing procedure under the new Law, the Commission is making a number of on-site visits.....*" And further down "*Visits such as this are forming an essential part of the licensing procedure....*" I am, therefore, unable to accept that the Commission "lured" CCM into providing information which may have been detrimental to its licence application.

Legitimate expectation.

It has taken in excess of 2 ½ years from licence application to the present appeal - 2 years since doubts were raised by the Commission concerning CCM, and the Appellant maintains that this length of time gave rise to the expectation that a fiduciary licence would be granted.

However, a study of the chronology does not indicate any excessive delays in taking action or replying to correspondence – except between October 2002 and June 2003 when the Tribunal met, and this was partly due to CCM's indecision as to whether to take their case before the Tribunal and partly due to the time taken to set up the Tribunal.

Furthermore, nowhere in the correspondence and transcripts presented to the Court is there any suggestion that, if CCM were to take certain action, then a licence might be granted by the Commission. CCM must have become aware fairly early in the licensing process that the concerns being brought to light by the Commission's officers were more likely to result in the application being turned down than granted, unless drastic measures were taken to allay these concerns. That CCM, and Mr Doyle in particular, were unable to persuade the Commission that things had improved must have been evident to all after the August 2002 meeting and the application was in deep waters.

I conclude from all this, that there can have been no reason for CCM to have had any expectation that their application would be successful.

Respondent not reaching its own decision.

The Appellant submits that the Respondent should not have adopted the Tribunal's Opinion as its own, as that body has no statutory standing – it should make its own decision. This argument was not developed to any degree at the hearing and the Court leans to the view that the Tribunal's deliberations and opinion, which are very comprehensive, have correctly been taken into account by the Commission in coming to a decision. Nor can there be any problem with the Commission adopting the Tribunal's opinion as its own, if it corresponds to their own view, is well phrased and comprehensive. We note that the Opinion contains some mild criticism of the Commission, which has, presumably, been absorbed by them with the rest of the document.

In addition to the above submissions, the Appellant - both before the Tribunal and in the Court - accused the Commission of being biased against CCM as being a Sark based company and against Mr. Doyle (CCM's principle director) personally. It is clear from the correspondence that considerable antipathy developed between the parties, but I do not consider that this has influenced the Commission's decision; nor did the Tribunal find any foundation to the accusations (p. 148 (10) under General conclusions)

Judgement.

At its simplest level, this appeal hinges on whether the Commission acted within and in accordance with the Law in refusing to grant a full Fiduciary licence to CCM, and that the decision was a reasonable one, arrived at after full deliberation.

The Court concludes that the Commission has interpreted and operated the Law correctly; has given the Appellant every opportunity to answer their concerns and that the decision not to grant a full Fiduciary licence to the Appellant was "reasonable" by all definitions of the word.

Consequently, the appeal is dismissed.

Costs

I award Court costs (including costs from the Directions Hearing 14th. November, 2004) against the Appellant to the sum of £1280.00 and I award recoverable costs and

fees to the Respondent in accordance with “*The Royal Court (Costs and Fees) Rules, 2000*”, citing “*The Real Property (Succession) (Sark) Law, 1999*” Section 17 (1) and Section 18 (1) “proceedings” as my authority for so doing.

In addition, the Court grants both parties liberty to apply.

C.J. La Trobe-Bateman, Dep. Seneschal

J.P. Hamon, M.B.E.. Greffier

10th. February 2004