

***CLAIMS MANAGEMENT SERVICES – Provision of regulated Claims Management Services – Regulator’s decision to remove authorisation from Appellant – Appellant conducting “Credit Card Killer” activities – Application to suspend dismissed – Compensation Act 2006 section 4(2)***

**CLAIMS MANAGEMENT SERVICES TRIBUNAL**

**MOMENTUM NETWORK LIMITED**

**Appellant**

**- and -**

**THE MINISTRY OF JUSTICE  
(CLAIMS MANAGEMENT REGULATOR)**

**Respondents**

**Tribunal: SIR STEPHEN OLIVER QC  
COLIN SENIOR**

**Sitting in public in London on 7 August 2009**

**Oliver Mishcon, counsel, instructed by Mayflower Solicitors, for the Appellant**

**Neil Sheldon, counsel, instructed by the Treasury Solicitor, for the Respondents**

**© CROWN COPYRIGHT 2009**

## DECISION

5

1. This is an application by Momentum Network Ltd (“Momentum”) to have the effect of the cancellation of its authorisation to carry out claims management services suspended. The decision to cancel Momentum’s authorisation was notified on 8 July 2009 by the Claims Management Regulator Monitoring and Compliance Unit of the  
10 Ministry of Justice (“the Regulator”).

2. Cancellation took effect from 9 July. Rule 17(2) of the Claims Management Services Tribunal Rules 2007 (SI 2007 No. 90) provides a right to appeal to this Tribunal against an “effective decision” of the Regulator and enables the Tribunal to  
15 suspend the effect of that decision.

3. The Regulator’s decision was based on its view that Momentum were in breach of specific rules contained in the Conduct of Authorised Persons Rules 2007. Specifically, the Decision Letter of 8 July relies on breaches of rule 17 (namely a  
20 failure to provide information about businesses referring clients to Momentum) and of rule 5 (non-compliance with all rules and regulations relating to its business). The Decision Letter also specifies misleading advertising on the part of Momentum (in breach of rules 2 and 5).

4. The case for Momentum, presented by Mr Oliver Mishcon, is that it has not engaged in regulated activities to which the Decision Letter purports to relate, the matters are therefore outside the scope of the Regulator’s authority. The Regulator’s action in cancelling the authorisation has caused reputational damage to Momentum’s business partners and agents and to the confidence of clients and prospective clients.  
25 Moreover, it is said, the Regulator has acted irresponsibly and caused huge damage to Momentum’s business, in particular by formally notifying Momentum’s website hosting provider to disable Momentum’s website.  
30

5. Mr Basil Rankine explained in a Witness Statement that Momentum had engaged in a claims management activity from November 2008 until January 2009 by advertising and servicing clients “with a view to cancelling or getting written-off their unenforceable consumer credit agreements”. From February 2009 onwards Momentum had “converted all of its clients to a new debt purchase product”: this  
35 “involved buying the client’s debt, including any associated benefits”. This new activity, Momentum claims, is wholly outside the definition of “claims management service” in section 4(2)(b) and (c) of the Compensation Act 2006.  
40

6. Section 4 of the Compensation Act 2006 provides, so far as is relevant to this application:  
45

“(1) A person may not provide regulated claims management services unless –

- (a) he is an authorised person,  
...

5 (2) In this Part –

- (a) “authorised person” means a person authorised by the Regulator ...,
- 10 (b) “claims Management Services” means advice or other services in relation to the making of a claim,
- (c) “claim” means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made –
  - 15 (i) by way of legal proceedings,
  - (ii) in accordance with the scheme of regulation (whether voluntary or compulsory), or
  - 20 (iii) in pursuance of a voluntary undertaking.”

6. The Regulator’s case is that Momentum has at all material times been carrying on a “claims management service”. The Regulator therefore had the authority to  
25 remove Momentum’s authorisation and to take preventative action to stop Momentum from conducting its claims management business.

7. Mr Sheldon, for the Regulator, drew our attention to documents that show Momentum inviting members of the public (the consumers) who hold consumer credit  
30 debt, such as credit card debt, to “assign/sell” that debt to Momentum. In return for a payment to Momentum (typically £450 plus 10% of the outstanding debt) Momentum offers the consumer “total protection” against being pursued by the lender for repayment and against having his debt “recorded on the credit file”. The consumer who assigns/sells his debt to Momentum frees himself of all and any obligation to the  
35 lender.

8. The Regulator points out that the mechanism by which Momentum seeks to persuade the lenders concerned to write-off their debts does not appear clearly from Momentum’s published materials. (Momentum has in correspondence expressly  
40 refused to divulge the “legal points” it proposes to take against lenders which are said to represent part of its “confidential intellectual business strategy”.) The basic premise appears to be that Momentum, through Mr and Mrs Rankine – its directors, considers many consumer credit agreements to be unenforceable at law, such that if the lenders were to pursue repayment of the debts through the Courts they would lose.  
45 Momentum seeks to establish this by asserting that the consumer’s liability to the lender ceases at the moment when the consumer executes the documents purporting to

assign/sell the debt to Momentum. The Regulator has expressed the view that this is wrong in law.

5 9. The documentary evidence shows that Momentum seeks to attract clients by means of its own websites using the name “Credit Card Killer”, and by way of referrals from other associated businesses. Following the decision under appeal, the Regulator informed the companies that provided web-hosting services to Momentum that Momentum’s authorisation had been cancelled. This resulted in the disabling of some of the websites. The Regulator states that one of the websites is once again  
10 operational.

15 10. Further features of Momentum’s activities pointed out to us were these. First, Mr Rankine (at a meeting with the Regulator on 20 April 2009) had stated that in the two months or so that the business had been in operation a total of £3m debt had been assigned to Momentum. If this be true, the Regulator say, it follows that consumers will have paid to Momentum, over the course of that period, in excess of £300,000. Second, our attention was drawn to a footnote to a message of May 2009 sent out by Momentum stating that “Credit Card Killer” was regulated by the Ministry of Justice in respect of regulated claims management activities.

20

#### **Has the Regulator any authority over Momentum?**

25 11. This issue will be at the front of Momentum’s appeal on the main issue of whether the Regulator’s removal of authorisation has any effect in law. We do not at this stage need to express a view on this. But, to satisfy us that we have jurisdiction to deal with Momentum’s application, we need to be assured that there is at least a prima facie case for the Regulator’s view that Momentum has been providing claims management services within section 4 of the Compensation Act. We think there is such a case. The expression “claims management services” is defined in section  
30 4(2)(b) as “advice or other services in relation to the making of a claim”. “Claim”, in subsection (2)(c), covers “relief in respect of ... an obligation, whether the claim is made or could be made”.

35 12. The consumers who are or become clients of Momentum have obligations to their lenders. Momentum’s intention is to remove completely their liabilities to their lenders. Momentum, through its Credit Card Killer operation, provides the facilities designed to achieve this in return for fees payable upfront by the consumer. The question whether Momentum’s services achieve their object is beside the point. There must be at least a prima facie case for the Regulator’s contention that  
40 Momentum provides claims management services to clients through this operation.

#### **Should we suspend the cancellation of Momentum’s authorisation?**

45 13. We have to balance the potential damage to the public against the effects that the cancellation could have on Momentum or its directors.

14. The Regulator contends that the potential damage to the public interest that would result from suspending cancellation of Momentum's authorisation pending the resolution of the appeal is very considerable. Suspension, the Regulator contends, is likely to lead to the restoration of all Momentum's websites which will in turn lead to members of the public availing themselves of its services. Then, it is said for the Regulator, if the substantive issues raised by the appeal are determined in the Regulator's favour, and, in particular, if it is held that Momentum's claims concerning the effect of the purported assignment of debt are, as the Regulator considers to be the case, misleading, the outcome of restoring Momentum's authorisation pending the appeal will be that a potentially large number of people will have handed over substantial fees on a false premise.

15. The Regulator points out the information provided by Momentum, as noted above, that in the two months to late April 2009 a total of £3m of debt have been assigned to Momentum. If this be true, says the Regulator, it follows that members of the public will have paid to Momentum £300,000 over that period. Indeed, the Regulator points out, a release of 27 July 2009 of Momentum asserts that it has now "purchased" more than £10m of consumer debt.

16. We infer that in addition to the financial damage that members of the public may sustain if the cancellation is suspended, the individual clients concerned, many of whom may already be coping with significant debt, face the prospect of being pursued for payment by lenders concerned; and this may well result in legal costs, bankruptcy orders and damage to their credit ratings. For those reasons we think that the Credit Card Killer activity has the potential to cause serious harm to a large number of consumers.

17. We recognise that the cancellation of authorisation would effectively sterilise Momentum's business so far as it relates to the Credit Card Killer activity. Does that consequence outweigh the need to protect consumers who might consider buying and using the Credit Card Killer "facility" offered by Momentum? We think not.

18. Momentum has provided us with no evidence that the effects of cancellation on it or its directors will be severe. Mr Rankine has asserted that the application is having "a catastrophic effect" on Momentum's business but his witness statement does not expand on this. Nor does any documentation demonstrate that, apart from a standstill on the Credit Card Killer activity, hardship is being suffered by Momentum's directors or staff. In this connection we note that Momentum has recently issued a number of releases in which it states that it is trading and continuing "business as usual". Consequently it must still be earning substantial fees.

19. We think that the balance of considerations favours maintaining the cancellation pending the outcome of the substantive appeal. The damage that may be caused by cancelling the suspension pending the outcome of the appeal is, we think, far greater than the damage that might be caused by allowing it to remain in force.

20. For those reasons we dismiss Momentum's application.

5

**SIR STEPHEN OLIVER QC  
CHAMBER PRESIDENT**

10

**RELEASED:**

15

CMS/2009/0003