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GRAHAM NASSAU GORDON SENIOR-MILNE
39 CASTLE STREET
NORHAM
NORTHUMBERLANDTD15 2LQ

*Judge Grenfell
Telecon
bob brown
16/7/09*

Our ref: CO/5225/2009

Your ref: In Person

02 July 2009

Dear Sir / Madam,

Re The Queen on the application of GRAHAM NASSAU GORDON SENIOR-MILNE versus PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN

I enclose a copy of the Judge's notification of decision refusing permission for you to apply for Judicial Review.

Where the Judge has refused permission, a request may be made for the decision to be reconsidered at an oral hearing by completing and returning form 86B (enclosed), setting out your grounds for renewing the application, within 7 days of receipt of this notice.

Please note that if no renewal is received within the 7 day time-limit, the file in this matter will be closed and all copy documents will be destroyed unless we receive a specific request within the same time limit, stating that you require them to be returned.

Yours faithfully

R Bran

For Court Manager



INVESTOR IN PEOPLE



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The Administrative Court Office will not accept service via email. When using the above email address it should be noted that mail sent after 4.30 p.m. may not be opened until 9.00 a.m. on the following working day. Court users should not send confidential or restricted information over the public Internet.



In the High Court of Justice
 Queen's Bench Division
 Administrative Court
 Leeds District Registry

CO Ref: CO/5225/09

In the matter of an application for Judicial Review

The Queen on the application of

GRAHAM NASSAU GORDON SENIOR-MILNE

versus PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN

Application for permission to apply for Judicial Review
 NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant

Order by His Honour Judge Kaye QC (sitting as a Judge of the High Court)

Permission is hereby ~~granted~~ / refused.* (*delete as appropriate)

Observations:

1. The application is refused for the reasons set out in the Annex hereto.
4. The Applicant is ordered to pay the costs of the Defendant assessed in the sum of £3,140

Case NOT suitable for hearing by a Deputy High Court Judge**

Criminal case NOT suitable for hearing by a Single Judge**

Case is considered to be totally without merit**

Hearing to be expedited**

Directions as to expedition or other matters:

**Tick if applicable

See Annex hereto

Directions as to venue, if applicable:

dated 1st July 2009 Signed

Where permission to apply has been granted, claimants and their legal advisers are reminded of their obligation to reconsider the merits of their application in the light of the defendant's evidence.

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors: IN PERSON
 Ref No. In Person

, for the Claimant

, Where the Judge has refused permission a claimant or his solicitor may request the decision to be reconsidered at a hearing by completing and returning form 86B within 7 days of the service upon him of this notice.

- (2) If permission has been granted the claimant or his solicitor must within 7 days of the service upon him of this notice, lodge a further fee of £180.00, or a certified Application for Fee Remission if appropriate, to continue the proceedings. Failure to pay the fee or lodge a certificate within the specified period may result in the claim being struck out.

Note to Defendants and Interested Parties

(1) Where permission has been granted, a defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve –

- (a) detailed grounds for contesting the claim or supporting it on additional grounds; and
- (b) any written evidence,

within 35 days after service of the order giving permission.

1. The Claimant, a former trustee of an endowment policy with Scottish Widows ("SW"), complains of a failure of the Parliamentary and Health Service Ombudsman ("PO") to act fairly under the Parliamentary Commissioner Act 1967 ("PCA 1967") in failing to deal with two complaints made by the claimant:
 - a. A complaint made in October 2006 that the Financial Services Authority ("FSA") had failed properly to supervise the demutualisation process of SW in 2000 in particular in that it had approved a policyholders' circular (19/11/1999) in which SW had failed to make it sufficiently clear that the company then had outstanding contingent liabilities of some £1.5b in respect of Guaranteed Annuity Rates ("GAR") policies and which complaint the PO indicated on 6 February 2008 that the complaint was dismissed on grounds of lack of jurisdiction;
 - b. A complaint made on 16 February 2009 that members of the PO's office had "deliberately lied" to prevent proper consideration of the above complaint.
2. The (first) complaint was dismissed on 6 Feb 08 according to the claimant on the grounds that it did not fall within the list of authorities contained in Schedule 2 to the PCA 1967. The Treasury was listed, but not the FSA. That authority (then in fact known as the Securities and Investments Board or SIB) was only within the purview of the PO's jurisdiction in the period 1 Jan 99 to 30 Nov 01 when it exercised functions on behalf of the Treasury; furthermore the functions so delegated on behalf of the Treasury were limited to "prudential regulation functions" not to "conduct of business regulation functions". The latter remained with the FSA (or more accurately SIB). Supervision of the demutualisation of SW was a "conduct of business regulation function" and not a "prudential regulation function" and accordingly the matter did not fall within the jurisdiction of the PO. The substance of these grounds was fully set out in a letter to the claimant's MP dated 6 Feb 08 which was copied to the claimant under cover of a letter of the same date.
3. There then followed a long series of correspondence or e-mails backwards and forwards between the claimant and the PO's office. On 23 Jan 09 the PO's office e-mailed the claimant to the effect that if any further communication did not cast doubt on the decision reached a substantive response would not be sent.
4. This prompted the second complaint which was responded to on 17 Feb 08 by an acknowledgment slip.
5. Although the claimant asserts that the PO is guilty of "continuing breach" and deliberate concealment (below), time runs for the purposes of Judicial Review ("JR") from the time when the grounds to make the claim first arose (CPR 54.5). The grounds to make the (first) above-mentioned complaint thus arose under CPR 54.5 in February 2008. The grounds to make the (second) complaint arose in February 2009 even if they are to be regarded other than merely as a substantial repetition of the first complaint.
6. The present claim for Judicial Review was launched on 29 May 2009. Both complaints fall outside the 3 month time limit of CPR 54.5.
7. The claim was accordingly made neither promptly nor within the time limits set by CPR 54.5.
8. The claimant asserts that the reason for the delay was that the PO "deliberately concealed" from him that she had jurisdiction both in the decision letter (6 Feb 08) and subsequently. He

says he discovered in January 2009 that long term business (which therefore included the relevant SW policies) was within the "prudential regulation function" all along and according the PO did have jurisdiction.

9. The claimant however knew from the outset what stance the PO was taking, namely lack of jurisdiction. The fact that they might have been wrong in this stance does not make the matter one of deliberate concealment, quite the contrary. Moreover the claimant knew that his letter of 16 Feb 09 to the PO was also likely to be met by a mere acknowledgment.
10. I do not consider moreover that the merits or substance of the application has such a realistic prospect of success as to persuade me to grant an extension of time for making the claim.
11. Indeed for the reasons advanced by the PO in her Summary of Grounds accompanying the Acknowledgment of Service I consider that the claimant has no realistic prospect of success in relation either to the first complaint or the second.
12. Accordingly for these reasons I refuse permission and award costs assessed at £3,140 to the Defendant.
13. Should the application be renewed, I direct that the FSA and HM Treasury are to be notified and served with the papers and given an opportunity of making representations.