

IN THE COURT OF FACULTIES

IN THE MATTER OF ISAAC SAMUEL MARRACHE, A NOTARY PUBLIC

DECISION

1. Isaac Samuel Marrache (“the notary”) was appointed a Notary Public in Gibraltar on 3 January 1986. He is a currently a non-practising notary, his last annual Public Notary Certificate having expired on 31 December 2012.

2. On 2 July 2014 in the Supreme Court of Gibraltar the notary was convicted, with others (who were for the most part his brothers), of conspiracy between 1 July 2004 and 9 February 2010 to defraud clients of Marrache & Co (“the firm”) and/ or trusts connected to such clients by a variety of dishonest actions, including transfer of monies out of clients’ accounts of the firm, dishonest other payments, and creation of documents concealing the misapplication of client monies and showing false and misleading balances in client accounts (“Count 1”). He was acquitted on a second count of conspiracy to defraud.

3. The firm, of which the notary was the senior partner, was based in Gibraltar, specialising in the provision of legal and corporate services to corporate and private clients. The notary was based at the London office of the firm. On 17 March 2010 the Supreme Court of Gibraltar ordered the winding-up of the firm, and the notary and two of his brothers were adjudicated bankrupt on 26 November 2010.

4. The role of the notary in relation to Count 1 is set out in detail at paras 234 to 299 of the judgment of Sir Geoffrey Grigson. He was the senior partner of the firm, and his attempt in evidence to deny knowledge of his brothers’ activities was rejected. In para 290 the judge concluded, applying the high criminal standard of proof:

“I am satisfied that ISM [the notary] performed the overt acts alleged in Count 1 and did so dishonestly”.

He was sentenced to 7 years’ imprisonment. Appeals against the convictions and sentences were refused by the Court of Appeal of Gibraltar on 13 November 2014, and permission to appeal was refused by the Privy Council on 11 November 2015.

5. By letter of 22 December 2015 the Registrar of the Supreme Court of Gibraltar informed the Faculty Office that, by reason of section 7(2) of the Commissioners for Oaths and Public Notaries Act 1953, there was nothing preventing the notary from applying to be re-registered as a Public Notary in Gibraltar unless he were removed from the Roll of Notaries admitted to practice in Gibraltar (“the Roll”).

6. By letter of 25 January 2016 from the Faculty Office the notary was informed that the Master of the Faculties was minded to remove him from the Roll. The notary was given 56 days to lodge any written representations as to why such course should not be taken, and that failure to reply would be taken as acceptance that removal from the Roll was an appropriate sanction. By letter in reply of 9 February

2016, Massias & Partners, lawyers instructed on the notary's behalf, asked that a decision be deferred because of the possibility that the notary might refer the Privy Council's decision to "the European Court". By letter of 23 February 2016 the notary was informed, through his lawyers, that he was being given an extension of a further 28 days to respond to the Faculty Office's letter of 25 January 2016, and that thereafter the Master would proceed to consider the matter formally. No further response has been received.

7. In *Re Champion, a notary public* [1906] P. 86, 93 my predecessor as Master of the Faculties, Sir Lewis Dibdin, who was considering a striking off application, held that he had an inherent power to deal with the roll of notaries public of which he was the custodian, and that for a proper cause, "a cause likely to interfere with the proper discharge of the functions of a notary public", it was competent for him to remove the name of a public notary from the roll. At 94, he described trustworthiness as being "the basis of the position of a notary public".

8. As on the facts of *Re Champion*, the conduct evidenced by the criminal conviction of which the notary has been found guilty was not conduct in the course of the notary's practice as a notary, and thus not conduct in breach of the notarial oath contained in section 7 of the Public Notaries Act 1843. Nevertheless the criminal finding of dishonesty and fraud which has been made against the notary strikes at the heart of the trustworthiness which is fundamental to the role of a notary. Whilst there is no present indication that the notary intends to apply for a new Public Notary Certificate, the position to which the Registrar of the Supreme Court of Gibraltar has drawn attention, cannot and should not be left unchecked.

9. Accordingly I order that the name of Isaac Samuel Marrache be struck off the roll of notaries public.

4 August 2016

CHARLES GEORGE QC
Master of the Faculties