



**First-tier Tribunal
(General Regulatory Chamber)**

Appeal Reference: PR/2015/0025

PROFESSIONAL REGULATION

Decided without a hearing at Field House
on 19 April 2016

Before

**JUDGE PETER LANE
PRESIDENT**

Between

AG CAMDEN LTD

Appellant

and

LONDON BOROUGH OF CAMDEN

Respondent

DECISION AND REASONS

Legislation

1. Section 83(1) of the Enterprise and Regulatory Reform Act 2013 provides that :-

“(1) The Secretary of State may by order require persons who engage in lettings agency work to be members of a redress scheme for dealing with complaints in connection with that work which is either –

- (a) a redress scheme approved by the Secretary of State, or
- (b) a government administered redress scheme.”

2. Section 83(2) provides that:-

“(2) A “redress scheme” is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person.”

3. Subject to specified exceptions in subsections (8) and (9) of section 83, lettings agency work is defined as follows:-

“(7) In this section, “lettings agency work” means things done by any person in the course of a business in response to instructions received from-

- (a) a person seeking to find another person wishing to rent a dwelling-house in England under a domestic tenancy and, having found such a person, to grant such a tenancy (“a prospective landlord”);
- (b) a person seeking to find a dwelling-house in England to rent under a domestic tenancy and, having found such a dwelling-house, to obtain such a tenancy of it (“a prospective tenant”).”

4. Section 84(1) enables the Secretary of State by order to impose a requirement to belong to a redress scheme on those engaging in property management work. Subject to certain exceptions, “property management work”-

“means things done by any person (“A”) in the course of a business in response to instructions received from another person (“C”) where-

- (a) C wishes A to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on C’s behalf, and
- (b) the premises consist of or include a dwelling-house let under a relevant tenancy” (section 84(6)).

5. Pursuant to the 2013 Act, the Secretary of State has made the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) England Order 2014 (SI 2014/2359). The Order came into force on 1 October 2014. Article 3 provides:-

“Requirement to belong to a redress scheme: lettings agency work

3. – (1) A person who engages in lettings agency work must be a member of a redress scheme for dealing with complaints in connection with that work.

(2) The redress scheme must be one that is –

- (a) approved by the Secretary of State; or
- (b) designated by the Secretary of State as a government administered redress scheme.

(3) For the purposes of this article a “complaint” is a complaint made by a person who is or has been a prospective landlord or a prospective tenant.”

6. Article 5 imposes a corresponding requirement on a person who engages in property management work.

7. Article 7 of the Order provides that it shall be the duty of every enforcement authority to enforce the Order. It is common ground that, for the purposes of the present appeal, the relevant enforcement authority is the London Borough of Camden (“the Council”).

8. Article 8 provides that where an enforcement authority is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme, the authority made by notice require the person to pay the authority a monetary penalty of such amount as the authority may determine. Article 8(2) states that the amount of the penalty must not exceed £5,000. The procedure for the imposition of such penalty is set out in the Schedule to the Order. This requires a “notice of intent” to be sent to the person concerned, stating the reasons for imposing the penalty, its amount and information as to the right to make representations and objections. After the end of that period, the enforcement authority must decide whether to impose the monetary penalty, with or without modification. If it decides to do so, the authority must serve a final notice imposing the penalty, which must include specified information, including about rights of appeal (article 3).

9. Article 9 of the Order provides as follows:-

“Appeals

9. – (1) A person who is served with a notice imposing a monetary penalty under paragraph 3 of the Schedule (a “final notice”) may appeal to the First-tier Tribunal against that notice.

(2) The grounds for appeal are that –

(a) the decision to impose a monetary penalty was based on an error of fact;

(b) the decision was wrong in law;

(c) the amount of the monetary penalty is unreasonable;

(d) the decision was unreasonable for any other reason.

(3) Where a person has appealed to the First-tier Tribunal under paragraph (1), the final notice is suspended until the appeal is finally determined or withdrawn.

(4) The Tribunal may –

(a) quash the final notice;

(b) confirm the final notice;

(c) vary the final notice.

Final Notice

10. In the present case, the final notice, dated 9 November 2015, addressed to the appellant, recorded that a customer of the appellant had complained to the Council in September 2015 that the appellant was not a member of a redress scheme. Although the appellant was displaying a “sticker” in the name of the Property Ombudsman in the window of its premises at 46 Camden High Street, the Property Ombudsman confirmed that the appellant was not a member of its scheme. A check undertaken by

the Council revealed that the appellant was not a member of any other approved scheme.

11. The final notice observed that the appellant, despite being sent a notice of intent, remained unregistered with a redress scheme, as at 9 September 2015. A penalty of £5,000 was imposed. Ms McKeown's statement of 18 January 2016 reveals that, as at 3 December 2015, the appellant was still not a member.

The parties' respective cases

12. The appellant's case (as recorded in the grounds of appeal) is that it is a "franchise of Allen Goldstein Ltd and according to our legal franchise agreement, it is Allen Goldstein Ltd's duty to include all branches, our franchise included when registering with the Property Ombudsman scheme or renewing a membership". The appellant states that since it was told that Allen Goldstein Ltd was registered with the Property Ombudsman scheme, the appellant, as a franchisee, "had grounds to believe we were following the legal requirement of being a member of the scheme and as such we displayed the Property Ombudsman's logo in our windows". The appellant submits that, on the basis of this belief, the decision to impose a monetary penalty was unreasonable.

13. The same points are made by the appellant in its letter 5 October 2015 to the respondent, save that the appellant contends in that letter that the monetary penalty was "based on an error of fact".

14. In its response, the respondent points to its letter of 9 November 2015, addressed to the appellant, explaining that the appellant was a separate legal entity and, as such, had to register with an approved redress scheme. Mr Bilal Shiasta, a director of Allen Goldstein Ltd, had confirmed that the appellant was a separate legal entity from his own company and that the appellant was, accordingly, not covered by any redress scheme to which Allen Goldstein Ltd belonged.

Discussion

15. The parties were content for the appeal to be determined without a hearing. In all the circumstances, I was satisfied that I could properly determine the issues without a hearing (Rule 32(1) of the Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009).

16. As a body corporate, the appellant is a "person" for the purposes of the 2013 Act and the associated Order (Interpretation Act 1978, Schedule 1) I am satisfied on the basis of the evidence before me (comprising a tribunal bundle running to 89 pages) that the appellant was not a member of an approved redress scheme, at any material time. The evidence from the Property Ombudsman clearly shows that the Ombudsman does not regard the appellant as such a member. The fact that the

appellant may have a franchise agreement with Allen Goldstein Ltd does not mean that the appellant was, in law, a member of an approved redress scheme. I accept the evidence of Mr Hunt (bundle page 78) that when he spoke to Mr Shaista of the appellant, "Mr Shaista agreed that other than as a franchise using the name for trade the two companies were entirely separate".

17. The appellant has not seen fit to disclose the terms of the franchise agreement. It has, accordingly, failed to show on balance that there is anything in that agreement, which might have led its directors reasonably to suppose that Allen Goldstein Ltd had registered the appellant as a member of the Property Ombudsman scheme.

18. Even after it had been clearly pointed out to the appellant that the Property Ombudsman did not regard the appellant as having membership of its scheme, the appellant still failed to register, as the law requires. By that point, even if (which I do not find) the appellant had previously had reasonable cause to believe that its franchise agreement with Allen Goldstein Ltd required the latter to register the appellant, it would have been clear this had not happened. Whether or not the appellant had a means of redress against Allen Goldstein Ltd for breach of contract, the appellant was required to comply with the law by registering. It failed to do so.

19. Government guidance (albeit non-statutory) indicates that the maximum penalty of £5,000 should be imposed, unless there are any mitigating features. In the present case, I find as a fact that no mitigating features have been established by the appellant. I note, in particular, that there is no assertion that having to pay the penalty would be likely to cause the appellant to go out of business. Indeed, no financial information regarding the appellant has been adduced.

20. Even without the government guidance, it is, I consider, plain that the appellant's breach was a serious and continuing one. In all the circumstances, the imposition of the £5,000 penalty was neither based on a mistake of fact nor was it unreasonable.

Decision

21. The appeal is dismissed.

Signed

Judge Peter Lane
Date: 20 April 2016