



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Professional Regulation**

Tribunal Reference: **PR/2015/0027**

Appellant: **Mrs Oprul Rumayo, Pineapple Properties Limited**

Respondent: **Leeds City Council**

Judge: **J R Findlay**

**DECISION NOTICE**

**The 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 Leeds City Council (“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 —

(e) quash the final notice;

(f) confirm the final notice;

(g) vary the final notice.

**The Final Notice**

10) The Final Notice dated 12 October 2015 addressed to Ms Oprul Rumayo, Pineapple Properties, 15 Queen Square, Leeds, LS2 8AJ stated as follows:

1. Leeds City Council (“the council”) having considered the requirements of the Enterprise and Regulatory Reform Act 2013 and the appropriate article of the above mentioned Order made there under, and further to the service of an intention to impose a monetary penalty notice on you dated 23 July 2015 considers that you have breached the requirements of this Order and so imposes a monetary penalty upon you of £2500.

2. The reasons for imposing the monetary penalty are as follows:

On 23 July you engaged in lettings agency work but failed to become a member of a redress scheme provided by the Secretary of State or, as designated, a Government administered redress scheme, as required under Article 3 and you engaged in property management work but failed to become a member of a redress scheme approved by the Secretary of State or, as designated, a Government administered redress scheme, as required under Article 5 of the Redress Schemes for lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.

3. You must pay the invoiced amount within two months of the date of this notice. Details of the ways to pay are included on the enclosed invoice. If you fail to pay the invoice within the timescale specified, the council will take proceedings in the County Court to recover the money from you.

4. You have the right to appeal against this notice within 28 days beginning with the day after the date on which the notice of decision was sent. Details of the appeal process are set out overleaf.

### **The Appeal**

- 11) Mrs Rumayo, on behalf of Pineapple Properties Limited, appealed to the Tribunal. The Tribunal conducted an oral hearing at Leeds on 22 August 2016. The respondent was represented by Ms Katherine Feltham, Principal Legal Officer. Mrs Rumayo was not represented and confirmed she wished to proceed with the hearing without representation. Miss Anoop Sharda, Case Officer, and Mr David Thorpe, Deputy Service Manager (overseeing the property redress scheme) were in attendance.
- 12) The respondent issued a notice of intention to impose a monetary penalty on 23 July 2015. Checks carried out by the respondent on 23 July 2015 revealed that Pineapple Properties Limited had not joined any of the three Government approved redress schemes. The appellant made no representations during the 28 day representation period. An invoice for £5,000 was raised on 10 September 2015. This was not issued.
- 13) Pineapple Properties Limited joined an approved scheme on 13 September 2015. On 12 October 2015 a notice of decision to impose a monetary penalty of £2,500 was issued and an invoice was issued. The invoice for £5,000 was wrongly issued and the error was explained to Mrs Rumayo. The invoice for £5,000 has been cancelled.
- 14) Mrs Rumayo submits that she is the sole Director of Pineapple Properties Limited and operates the business on a day to day business. She submitted that she did not think it was necessary for Pineapple Properties Limited to join a redress scheme on the grounds that she was not undertaking lettings agency work. Pineapple Properties Limited leases four properties from different landlords and these are sublet to tenants. Mrs Rumayo submitted that Pineapple Properties Limited was acting for the landlords and standing in the shoes of the landlords and should not therefore be subject to the redress scheme.
- 15) Mrs Rumayo submits that it was not her responsibility or the responsibility of Pineapple Properties Limited to find out the requirements of the redress scheme and that the respondent had failed in its duty to keep her informed on behalf of the company.
- 16) Mrs Rumayo submits that Pineapple Properties Limited made very modest profits and that if the company had to pay £2,500 it would go out of business. Mrs Rumayo lodged a number of bank statements which she did not wish the Tribunal to retain. The Tribunal granted a recess enable the Tribunal and the respondent to consider the bank statements.

### **Findings of Fact and Reasons**

- 17) The Tribunal finds that at all material dates Pineapple Properties Limited was undertaking lettings agency work as defined in the Enterprise and Regulatory Reform Act 2013. Mrs Rumayo as Director acts on instructions from landlords who want to

find tenants in the private rented sector and from tenants who want to find properties in the private rented sector. Mrs Rumayo, on behalf of Pineapple Properties Limited, negotiates, finalises and arranges for the execution of leases with the landlords and sub-leases with tenants. Mrs Rumayo arranges the sub-leases, finds tenants, takes payments from the tenants, pays the outgoings and remits the rent due from Pineapple Properties Limited to the landlords. She has different agreements and terms with different landlords for the amounts or rents paid. For some she pays a fixed sum irrespective of the rent paid and for others a percentage of the rent received by Pineapple Properties Limited. She does not provide for landlords and tenants to have direct contact or provide a way for landlords or tenants to communicate directly with each other. She obtains tenants by issuing flyers, by word of mouth and by some limited advertising. Mrs Rumayo arranges the refurbishment of properties between lettings and the ongoing maintenance of the properties. The Tribunal finds that Pineapple Properties Limited does not come within any of the exclusions from the requirement to belong to a redress scheme.

- 18) The Tribunal finds that Mrs Rumayo was the responsible person in relation to Pineapple Properties Limited as the sole Director and that she is responsible for the actions and omissions of the company. The Tribunal finds that Mrs Rumayo as Director of Pineapple Properties Limited should have been aware of the relevant legislation governing the activities of letting agents. The Tribunal finds that Pineapple Properties Limited was in breach of its statutory responsibilities.
- 19) The Tribunal finds that there were mitigating circumstances, that it was appropriate to reduce the amount of the penalty and that the respondent was correct to issue a notice in the sum of £2,500. The Tribunal finds it unfortunate that the respondent issued the erroneous invoice for £5,000, however, this does not provide any further mitigation and does not release Pineapple Properties Limited from the statutory responsibilities.
- 20) It is unquestionably the case that Pineapple Properties Limited was in breach of the legislation. Nowhere in the legislation or in the Government guidance is it stated that a Council is required or expected to take active steps to notify letting agents of the impending or actual coming into force of the relevant legislation. The Tribunal finds that the respondent was entitled to expect professional letting agents such as Pineapple Properties Limited to be aware of legal requirements directly impacting upon their businesses. The changes were advertised in a Government website. They were also made known in websites to which Mrs Rumayo, on behalf of Pineapple Properties Limited, could be expected to have access and to be expected to consult.
- 21) There is no issue as to the final notice containing any error of law or fact. The Tribunal finds that the penalty of £2,500 was in all the circumstances reasonable.
- 22) In relation to the submission that Pineapple Properties Limited makes very modest profits and that if the company had to pay £2,500 it would go out of business, having considered the bank statements and heard oral evidence from Mrs Rumayo the Tribunal is not persuaded that the financial health and circumstances of Pineapple Properties Limited is as submitted by Mrs Rumayo or that Pineapple Properties Limited will go out of business in meeting the penalty.
- 23) In reaching the decision the Tribunal has taken into account the following:

- (a) The Tribunal does not consider that Mrs Rumayo had been open and forthright in relation to the company finances and towards the Tribunal in general. For example, she stated that she was not the Secretary of the company but the bank statements (NatWest account number 46979697) were addressed to The Secretary, Pineapple Properties Ltd.
- (b) Mrs Rumayo stated in evidence that she was not a shareholder of the company but the bank statements showed regular payments of dividends into the account. When questioned about this Mrs Rumayo stated that she did receive dividends as a way of increasing her income.
- (c) The bank statements show monthly payments of a Director's salary of £883. The bank statements show monthly entries from two accounts numbered 33785880 and 46979700. When questioned about these other accounts Mrs Rumayo stated that they were her personal accounts and that in order to keep the company account in credit she paid her own money into the account run by Pineapple Properties Limited on occasions. Mrs Rumayo stated in evidence that that the salary and dividends as shown in the bank statements were her only income. She stated she had no other savings or income. There were no payments of money from the bank account numbered 46979697 by Pineapple Properties Limited to the accounts numbered 33785880 and 46979700. The dividends and Director's salary were not paid direct to either of these two accounts. If Mrs Rumayo had no other income the Tribunal considered it highly unlikely that she would have been able to pay money to Pineapple Properties Limited as claimed and in the sums shown on the bank statements if the Director's salary and dividends were her only income. The evidence in this regard from Mrs Rumayo was simply not credible.
- (d) Mrs Rumayo stated that the bank account with NatWest numbered 46979697 was the only account operated by Pineapple Properties Limited. Mrs Rumayo was unable to offer any reasonable explanation for the payments from the two accounts numbered 33785880 and 46979700. The Tribunal concluded that Pineapple Properties Limited had sources of income other than those declared by Mrs Rumayo.
- 24) The Tribunal found that it was reasonable to impose a penalty in the sum of £2,500. On the basis that it is unlikely that the company finances are as stated by Mrs Rumayo the Tribunal was not persuaded that the penalty will cause the appellant to go out of business.
- 25) Accordingly the appeal must fail.

**Judge J R Findlay**  
**Dated: 22 August 2016**  
**Signed: 12 September 2016**