



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

Appeal Reference: PR/2018/0021

**Heard at City Exchange, Leeds
On 19 October 2018**

Before

JUDGE JACQUELINE FINDLAY

Between

JEFFREY SAVAGE

Appellant

and

LEEDS CITY COUNCIL

Respondent

Appearances:

The Appellant, Mr J Savage

For the Respondent, Mr J Comer, Principle Legal for the Respondent

In attendance:

Mr A Dixon, Senior Housing Officer for the Respondent

Observers:

Ms A Smith

Mr S Stewart

DECISION AND REASONS

A The legislation

The relevant legislation appears at pages 86 to 123 of the bundle. It is unnecessary for me to reproduce it in this decision.

B The Hearing

2. I have considered the Respondent's Response and schedule of documents numbered 1 to 123. I have conducted an oral hearing. I have heard an oral submission from Mr Comer, on behalf of the Respondent, and oral evidence from Mr Savage. Mr Savage confirmed that he had received the Response and bundle of documents and had been given the opportunity to read the papers and prepare his case. Mr Savage did not bring his papers to the hearing and was provided with a full set of papers for his use during the hearing and given a ten minutes recess to ensure he was familiar with all the papers.
3. Mr Savage confirmed he was happy to proceed without a representative. I considered it was fair and just to proceed with Mr Savage unrepresented taking into account that he was clearly intelligent and mentally lucid, had prepared his case and on the basis of the overriding objective in rule 2 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) 2009.

C. The Appellant's Case

4. The Appellant lodged an appeal citing the following grounds:
 - a) He employed a member of staff to manage his office who purported to have 12 years of relevant experience within the industry. Her job description included managing all the paperwork. Over Christmas 2016 Mr Savage was admitted to Intensive Care following heart failure. Due to problems with contra-indications with his medication he suffered a flare up of gout and was unable to travel.
 - b) Over the weekend of 9/10 September 2017, the member of staff removed all the paper and electronic files, the computer and printer and set up in business on her own behalf.
 - c) The member of staff failed to lodge the required statutory notice required by Companies House to strike Bond Sales and Lettings Ltd off the register. She closed the accounts, changed the passwords and reported the company mobile telephone as stolen. Mr Savage reported this to the Police.
 - d) He registered Bond Estate Agents Ltd with Companies House but after receiving financial advice he decided that as he only managed 17 properties a limited company was not needed so he continues to trade as a sole trader Bond Estate Agents.
 - e) He failed to register with The Property Redress Scheme. This was an oversight and as soon he realised he made the necessary application.
 - f) Leeds City Council have taken proceedings against him both as a sole trader, Bond Estate Agents, and as the Director of the Bond Sales and Lettings Ltd.
 - g) The proposed penalty is far greater than it ought to be given the circumstances.
5. Mr Savage submitted, at the hearing, the following grounds:

- h) He has been trading as a sole trader since the end of February 2018 as Bond Estate Agents. At the time of the hearing he has only about 5 properties on his books. His net income from the company added to his state pension amounted to about £1000 a month at the date of the hearing.
- i) He admitted that on 16 February 2019 Bond Estate Agents Ltd was engaged in lettings agency work and was not a member of a redress scheme.
- j) Bond Sales and Lettings Ltd was dissolved on 22 August 2017.

D. The Respondent's case

- 6. The Respondent submits that Mr Savage, as the sole Director of Bond Estate Agents Ltd, engaged in lettings agency work but was not a member of a redress scheme approved by the Secretary of State or, as designated, a Government administered redress scheme, as required under Article 3 and/or 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.
- 7. The Respondent submits that the financial penalty was reduced by 50% to take account of the fact that Mr Savage joined an approved property redress scheme on 7 March 2018.
- 8. The Respondent invites me to consider increasing the financial penalty for the following grounds:
 - a) Mr Savage knew of the expiry of the previous redress scheme and actively chose not to renew membership.
 - b) Bond Sales and Lettings Ltd was dissolved and yet Mr Savage continued to trade with full knowledge of the company's breach of mandatory regulations. In these circumstances Mr Savage has a high degree of culpability.
 - c) Although Mr Savage had issues with an employee in September 2017 this did not prevent him from having continued control over property lettings and management activities.
 - d) At that time Mr Savage had already taken steps to change his business trading arrangements.
 - e) The breach came to light following a defect complaint. By not being a member of an approved redress scheme Mr Savage had directly denied that complainant their right to independent dispute resolution provided for by legislation.
 - f) A lack of business oversight does not absolve Mr Savage from his legal responsibilities. A lack of business oversight should not warrant a reduction in the penalty. This would effectively allow someone to admit they were not adhering to regulations they knew were mandatory but could still ask for a discount in the penalty.

- g) The legislation is so framed as to provide a punitive deterrence to poor agent and property management practices and legislation and statutory Guidance suggests the £5000 penalty to be the norm unless the circumstances are exceptional.
- h) The Respondent takes the view that the key dates are July and August 2017 when Mr Savage should have renewed property redress membership and chose to make changes to his business activities, and February 2018 when the breach of property redress regulations came to light.
- i) The Respondent understand that Mr Savage has had to manage other matters but the matters as stated by Mr Savage did not coincide with the required renewal of redress membership. The grounds submitted by Mr Savage did not prevent him from continuing his lettings and property management activities and when it comes to income management Mr Savage must take responsibility for his oversight.

E. Findings of Fact and Reasons

- 9. Mr Savage is the sole Director of Bond Sales and Lettings Ltd which was incorporated on 1 March 2016 (page 43) with a registered address of 17 Brighton Road, Darlington, Durham, DL1 4AR. It was dissolved on 22 August 2017 (page 49). Mr Savage is the appropriate person to represent Bond Sales and Lettings Ltd.
- 10. Mr Savage is the sole Director of Bond Estate Agents Ltd which was incorporated on 17 June 2016 with a registered address of 2 Robin Lane, Pudsey, West Yorkshire, LS28 7BN. Mr Savage is the appropriate person to represent Bond Estate Agents Ltd. Bond Estate Agents Ltd continues to trade undertaking lettings agent and property management work.
- 11. Mr Savage in oral evidence was not entirely clear which company he was using to trade at any particular time. He gave oral evidence that he was operating as a sole trader for a period from August 2017 after Bond Sales and Lettings Ltd was dissolved. I find this unlikely. I find that the company Bond Estate Agents Ltd a private limited company, was the trading vehicle from 22 August 2017.
- 12. I find that it was Mr Savage's intention to dissolve Bond Sales and Lettings Ltd from May 2017 and I accept that he believed the necessary paperwork had been filed at Companies House to do this in July 2017. He received notice of intention to strike off Bond Sales and Lettings Ltd from the register and dissolve the company on 23 May 2017 (page 47).
- 13. Mr Savage believed that his employee had attended to the paperwork and all was in order. He believed that the necessary paperwork had been filed with Companies House.
- 14. Mr Savage has been and continues to be the sole Director of Bond Estate Agents Ltd since its incorporation on 17 June 2016. The company since incorporation has engaged in letting agency work and property management work.
- 15. On 16 February 2018 Bond Estate Agents Ltd was engaging in lettings agency work and property management work. Bond Estate Agents was not a member of a redress scheme as required.

16. Bond Sales and Lettings Ltd did not engage in agency lettings work and property management work from 22 August 2017 when the company was dissolved.
17. A Notice of Intention to Impose a Monetary Penalty dated 27 February 2018 was correctly served on Mr Savage as the sole Director of Bond Estate Agents Ltd, 2 Robin Lane Pudsey, LS28 7BN (pages 56 to 59).
18. A Notice of Decision to Impose a Monetary Penalty dated 6 April 2018 was correctly served on Mr Savage, as sole Director of Bond Estate Agents Ltd, 2 Robin Lane, Pudsey, LS28 7BN (page 80 to 85).
19. All the other Notices were invalid as either were served on Mr Savage as the sole Director of the dissolved company Bond Sales and Lettings Ltd, served on the wrong person, namely the Company Secretary or because the address used 17 Brighton Road, Darlington, DL1 4AR was not the registered address of the operating company Bond Estate Agents Ltd.
20. All the Notices of Intention to Impose a Monetary Penalty and Notices of Decision to Impose a Monetary Penalty appearing at pages 9 to 18 and 60 to 79 are invalid.
21. The Notices at pages 56 to 59 and 80 to 85 contained all the information as required by statute.
22. Mr Savage suffered serious health problems which affected his ability to drive and attend the office of Bond Estate Agents Ltd from December 2016. He placed reliance on an employee with whom he spoke every day. He was deceived by this employee. He was assured by the employee that all the necessary paperwork had been complied with including the joining of a redress scheme. The employee was in regular contact with the company's accountant. Taking into account the employee's experience, the involvement of the accountant who was in contact with the employee regularly and taking into account his health problems it was reasonable for Mr Savage to place reliance on the employee's assurances that all was in order.
23. Mr Savage has shown remorse and he accepts the consequences of his actions in not ensuring that Bond Estate Agents complied with its statutory obligations.
24. I found Mr Savage to be a credible and persuasive witness who struck me as doing his best to give an accurate account of what had happened. I accept his evidence about the perilous financial position of the company and his plans to make improvements and ensure compliance in future. I accept that he took immediate steps to join a redress scheme as soon as the position was known to him.
25. I find that a Monetary Penalty of £2500 is disproportionate to the turnover of the company and likely to put the company out of business. I accept the financial circumstances of the company as described by Mr Savage.
26. I find that a further reduction of £500 is appropriate.

27. I do not consider it just and fair to increase the Monetary Penalty as requested by the Respondent for the reasons as stated above.

F. The Decision

28. This appeal is allowed. I find that a Monetary Penalty of £2000 is appropriate in all the circumstances.

Signed J R Findlay
Judge of the First-tier Tribunal
Date: 19 October 2018
Signed: 21 November 2018
Promulgation date: 23 November 2018