



Appeal number: PR/2018/0007

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(PROFESSIONAL REGULATION)**

MASA LETTINGS AND ESTATES

Appellant

- and -

CITY OF BRADFORD MDC

Respondent

TRIBUNAL: JUDGE ALISON McKENNA

Sitting in Chambers on 6 June 2018

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Decision

1. The Appeal is dismissed.
2. The Final Notice dated 25 January 2018 is confirmed.

Reasons

Background

3. The Respondent (“the Council”) is the enforcement authority which served a Final Notice on the Appellant (“Masa”) on 25 January 2018. The Notice imposed a financial penalty of £5,000 for breach of the duty to belong to a redress scheme.
4. By its Notice of Appeal dated 5 February 2018, Masa disputes that it is in business as a commercial lettings agency to which the relevant legal duty applies. Mr Abdul Saeed, on behalf of Masa, states that he is a private landlord only, using the title of his lettings business which had ceased to trade as such in 2010. I therefore understand this to be an appeal based on an alleged error of fact.
5. The Respondent’s Response sets out Grounds of Opposition to the Notice of Appeal on the basis that Masa is described in Council Tax records and on Assured Short-hold Tenancy Agreements in the possession of the Council, as the letting agent for a number of properties. These are: 45 Fairbank BD18, 36 St Margaret’s Road BD7, 52 Norwood Terrace BD 18, and 628 Thornton Road BD8.
6. The Council also submits that Masa seems to have employees, as different names have appeared on these documents where a signature on behalf of Masa is required. The documents post-date 2010, when Mr Saeed says Masa ceased to trade. The Council has also sent the Tribunal a copy of a hand-written letter regarding 60 Loughrigg Road BD5 which was signed “on behalf of Masa Lettings” as recently as 7 February 2018.
7. The Council has provided the Tribunal with copies of the relevant documentation. The bundle was sent by the Respondent to the Appellant and the Tribunal in the same e-mail dated 9 March 2018. Mr Saeed provided a Reply, considered further below.
8. The evidence shows that the Council served a Notice of its intention to impose a financial penalty on Masa on 6 December 2017 and in the absence of a response, imposed the penalty on 25 January 2018. The Council also attempted to serve a bankruptcy petition on Mr Saeed on 15 February 2018. This was at the address given to the Tribunal by Mr Saeed on his

Notice of Appeal dated 5 February 2018. The process server was told that Mr Saeed did not live there and that he had not been seen for three months.

9. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended

The Legal Framework

10. Section 83 of The Enterprise and Regulatory Reform Act 2013 and paragraph 3 of The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 together require a “*person who engages in lettings agency work*” to belong to a relevant Redress Scheme. This legal duty came into force in October 2014. (S. 83 (7) of the Consumer Rights Act 2015 also requires the agent to publish details of the relevant Redress Scheme). Paragraph 4 of the 2014 Order provides certain exclusions to the definition of “lettings agency work”, but these are principally concerned with employer/employee arrangements.
11. Where the relevant enforcement authority is satisfied on the balance of probabilities that a person engaged in letting agency work has breached their duties paragraph 3 of the 2014 Order, it may impose a financial penalty under paragraph 8 of the 2014 Order. It does so by serving a Notice of Intent and then a Final Notice on the letting agent concerned.
12. Paragraph 9 of the 2014 Order provides that a letting agent upon whom a financial penalty is imposed may appeal to this Tribunal. The permitted grounds of appeal are (a) that the decision to impose the financial penalty was based on an error of fact; (b) the decision was wrong in law; (c) the amount of the financial penalty is unreasonable; or (d) the decision was unreasonable for any other reason. The Tribunal may quash, confirm or vary the Final Notice which imposes the financial penalty.
13. “*Letting Agency Work*” is defined by s. 83 (7) of the 2013 Act as follows:
 - “(7) ...*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”).”*

14. I note that the burden of proof lies on the Appellant in seeking to overturn the Council's decision and that any dispute of fact must be determined on the balance of probabilities.

Submissions and Evidence

15. I have considered the witness statement of Claire Riley, Environmental Health Officer for the Respondent, dated 23 February 2018. She explains that the background to the Council's involvement concerns complaints of disrepair at properties where the tenant has documents showing Masa as the letting agent. In particular, she states that:

- (i) the tenancy agreement for 45 Fairbank is dated February 2014 and describes Masa as the letting agent. Land Registry entries show a Mr Abdul Mahboob as the legal owner of this property. She exhibits correspondence about the disrepair in which Mr Saeed describes himself as the landlord;
- (ii) the tenancy agreement for 36 St Margaret's Road dated May 2015 describes Masa as the letting agent. The Land Registry entry for that property shows Rashid Anwar and Nasreen Sadique Anwar to be the legal owners;
- (iii) the tenancy agreement for 52 Norwood Terrace shows Masa to be the letting agent. This is dated February 2012. Mr Saeed is listed as the legal owner on the Land Registry entry;
- (iv) the tenancy agreement at 628 Thornton Road dated January 2017 describes Masa as the agent/landlord. Mr Saeed is listed as the legal owner.

16. The Appellant has not provided a witness statement himself, but submitted a Reply dated 19 March 2018, in which he states that he helps friends and relatives manage properties for no fee. He exhibited a letter from a Mr Rashid Mahmood, regarding a property at 85 Heath Terrace and addressed to the Respondent, which states that his relationship with Mr Saeed is not a commercial arrangement. I have seen a photograph of this property with a "for sale" sign outside and the words "Masa Properties" on it. Mr Saeed says that this sign has now been removed.

17. Mr Saeed also states in his Reply that the property at 36 St Margaret Rd has been managed by a Mr Anwar since 2015 and that "*this is one of the last property I dealt with*". Finally, he submits that 45 Fairbank is a "*private family holding*", in relation to which he has assisted his younger brother Mr Mehbob.

Conclusion

18. Mr Saeed has assumed in his Reply that the provision of letting agency services for no fee means that he falls outside the legal definition of “lettings agency work”. I have considered carefully whether that is correct. I have concluded that, although the statutory definition does not specifically refer to payment, its reference to work done “*in the course of a business*” does indeed imply a requirement for a commercial relationship.
19. I note that there is no direct evidence before me to support Mr Saeed’s assertion that no money has changed hands for his work in respect of the properties listed at paragraph 15 above. The Council has apparently drawn an inference from the documentation that commercial relationships exist, but it has not provided any direct evidence.
20. I am not satisfied that a commercial relationship exists in relation to the two properties where Mr Saeed is himself the legal owner. I think it is reasonable to assume that he would not charge himself for work in connection with his own properties.
21. I am also prepared to accept, on the balance of probabilities, that there is no commercial relationship between Mr Saeed and his own brother. I may be wrong about that, but if so it would not affect the outcome of this appeal for the reasons that follow.
22. The evidence relied on by Masa in relation to 85 Heath Terrace does not help me one way or another, because it involves Mr Saeed acting as a sales agent rather than a lettings agent. The fact that a board with Masa’s name on it went up outside that property in 2018 does, however, suggest that Masa did not stop trading in 2010 as suggested in the Notice of Appeal.
23. I also note that Mr Saeed’s own Reply refers to him dealing with 36 St Margaret’s Road until 2015. This statement contradicts his earlier statement that he ceased trading in 2010. Mr Saeed’s comments about this property do not deny the existence of a commercial relationship, but assert that it ended in 2015, which is the year of the tenancy agreement showing Masa to be the lettings agent.
24. On the basis of this evidence, I am satisfied on the balance of probabilities that a commercial letting agent relationship existed in May 2015 in respect of this one property. As the legal requirement to belong to a redress scheme was already in force by that date, I find that the relationship was regulated by the statutory regime with which we are concerned.
25. It is implicitly accepted in the Notice of Appeal that Masa was not a member of a Redress Scheme. I conclude on the basis of the evidence before me and on the balance of probabilities that Masa did not join a Redress Scheme in October 2014 when the obligation to do so arose, or subsequently. I am satisfied that it was reasonable for the Council to impose a financial penalty on Masa in these circumstances.

26. I have considered whether the amount of the financial penalty was unreasonable. I note that the amount of a penalty is within the discretion of the Council and that £5,000 is the maximum penalty it can impose under the legislation. Masa has presented no mitigating circumstances and has not accepted its default. I am concerned that Mr Saeed may not have been entirely straightforward with the Council or the Tribunal in his statements about 36 St Margaret's Road.
27. In all the circumstances, I am satisfied that the amount of financial penalty imposed by the Council was reasonable in the circumstances.
28. Accordingly, the appeal is now dismissed and the Final Notice is confirmed.

(Signed)

Alison McKenna
Chamber President

Dated: 6 June 2018

Promulgation Date : 11 June 2018

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