



[2023] UKFTT 523 (GRC)

Case Reference: PEN/2023/0050

**First-tier Tribunal
General Regulatory Chamber
Pensions Regulation**

Heard by: Judge in Chambers on the papers

Decision given on: 20th June 2023

Before

HHJ DAVID DIXON

Between

SAKI SOFT LTD

Appellant

and

THE PENSIONS REGULATOR

Respondent

Decision: The reference is dismissed and the matter is remitted to the Regulator. The Penalty Notice is confirmed, without any further directions.

REASONS

1. By this reference Saki Soft Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 7th December 2022. An Escalating Penalty Notice was issued on 9th January 2023.
2. The FPN was issued under s. 40 of the Pensions Act 2008. It required the Employer to pay a penalty of £400 for failing to comply with the requirements of a compliance notice (CN) issued on 10th October 2022. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer file a redeclaration of compliance by 21st November 2022.
3. The Employer referred the matter to the Tribunal on 24th February 2023.
4. 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 Tribunal considered all the evidence and submissions made by both parties.

The Appeal

5. Under s. 44 of the 2008 Act, a person who has been issued with a FPN may make a reference to the Tribunal provided an application for review has first been made to the Regulator. The role of the Tribunal is to make its own decision on the appropriate action for the Regulator to take, taking into account the evidence before it. The Tribunal may confirm, vary or revoke a FPN and when it reaches a decision must remit the matter to the Regulator with such directions (if any) required to give effect to its decision.
6. The Employer’s Notice of Appeal, dated 24th February 2023, indicates that a named individual, a director of the company, is not part of the Pension Scheme requirements, and that this was indicated some time before to the Pension provider. The Appellant seeks reversal of the FPN and other notices as they were wrongly applied in the circumstances.
7. The Regulator’s Response indicates that the Appellant failed to provide certification of compliance, as is required; a compliance notice followed, which was sent to the registered office address of the company. The FPN was sent to the same address. The EPN the same. The Regulator provides materials indicated that well before the CN regular reminders were sent to the Appellant, which were not heeded.
8. The Regulator indicates a Review was completed as a result of the Appellant’s request. Having considered the circumstances advanced the FPN was confirmed.
9. The Tribunal considered a bundle of 46 pages.

Submissions

10. The Appellant seeks to have the notices overturned on the basis a named individual was not a party to the scheme and therefore the Notices were wrongly proffered.

11. The Regulator responds that there is no excuse for non-compliance, let alone a reasonable one. It is the Employer's responsibility to meet the legal requirements, and here the Appellant has not provided evidence to reverse the imposition of the Notices.
12. The Regulator maintains that the Notices was correctly posted and following the presumptions is deemed to have been received, unless contrary material is shown to rebut the presumptions. The Regulator avers no such material is shown and as such the Notices was correctly served.

Conclusion

13. I find that the Appellant has failed to provide any proper basis for not complying with the CN. The responsibility for completing the declaration rests with the employer and here it could have and should have dealt with matters. It seems as if the Appellant believes that as he was not in the scheme the requirement to notify compliance did not exist. I'm afraid that view is simply incorrect. The properly issues notices all required a simple declaration of compliance that would have involved the Appellant indicating he wasn't in the scheme and that all others matters were correct. The Appellant failed to do so and was therefore in breach. The Notices, and all of them, that followed were all therefore entirely appropriate.
14. Having failed to comply, the standard penalty was imposed. The penalty is designed to remind companies of the importance of compliance and I do not see that the penalty in this case is inappropriate or disproportionate to the breach. Having failed to meet that the EPN was imposed, correctly.
15. In all the circumstances I am driven to the view the appeal has no merit and I remit the matter to the Regulator, upholding all of the Notices issued.
16. No further directions are required

Signed: HHJ David Dixon

DATE: 20th June 2023