



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

Appeal Reference:PR.2016.0019/0020

**Heard at Wilberforce Court, Hull
On 1 February 2017**

Before

JUDGE JACQUELINE FINDLAY

Between

GHULAM TAHIR AND TAHERA TAHIR

Appellant

and

LEEDS CITY COUNCIL

Respondent

DECISION AND REASONS

Decision

- 1) The appeal is dismissed.

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.

Background

- 2) This statement of reasons is in relation to two appeals with the above references.
- 3) The Respondent issued a Notice of Intention to Impose a Monetary Penalty on 10 May 2016 to Mr Ghulam Tahir and Mrs Tahera Tahir. The Respondent issued a notice of the Decision to Impose a Monetary Penalty on 8 July 2016 to Mr Tahir and Mrs Tahir and issued an invoice in the sum of £2500.00.
- 4) At the date of the decision and the date of the hearing Mr and Mrs Tahir were running a letting agency known as 1-2-1 Let Properties. Mr and Mrs Tahir at all material dates

lived at 2 Laurel Bank Court, Leeds, LS6 3DX. 1-2-1 Let Properties was operated from 17 Hyde Park Road which is a DIY shop selling good and, in particular, plumbing materials.

- 5) Although there are two appeals the issues in both appeals are the same. Mr and Mrs Tahir are joint owners of the business and both represented the business at the hearing. There appeals are against the one decision to impose one Monetary Penalty of £2500.00.
- 6) I conducted an oral hearing attended by Mr and Mrs Tahir on behalf of 1-2-1 Let Properties and Ms Maxine Best for the Respondent. Mr Dixon, Investigating Officer, and Mr Thorpe, Service Manager, attended but gave no evidence. Mr and Mrs Tahir confirmed they had received the Respondent's Response and the bundle of documents and were happy to proceed without representation. I find no injustice in so doing.

The Issues

- 7) Mr and Mrs Tahir appeal on the following grounds:
 - a. Mr Tahir has suffered serious health problems and the family has suffered bereavements and ill health. As a consequence of these problems the matter of joining the Property Redress Scheme was overlooked. This was a mistake and not deliberate.
 - b. Mr and Mrs Tahir did not receive a reminder for any renewal payment.
 - c. The income from 1-2-1 Let Properties is very modest (roughly £93.75) and this does not even cover the administration costs.
 - d. Although there were properties on the 1-2-1 Let Properties Website these may not have been available for rent as may have been rented out by the owner landlord. Accordingly the website is not an accurate representation of the business of 1-2-1 Let Properties.
 - e. Mr and Mrs Tahir ensured that 1-2-1 Let Properties became a member of the Property Redress Scheme as soon as they were aware of the situation.
 - f. 1-2-1 Let Properties is in the process of ceasing trading. Mr and Mrs Tahir are not continuing with the letting agency. The website is due for renewal in October 2016 and will end in October 2016.
 - g. The business Bank accounts show that 1-2-1 Let Properties makes a modest income and as a consequence of Mr Tahir's ill health the couple have got into financial difficulties and have a number of debts. They cannot afford to pay the Monetary Penalty.
 - h. 1-2-1 Let Properties joined the Redress Scheme in September 2014. At the time of renewal Mr Tahir was seriously ill and going to have a heart operation. Mrs Tahir was struggling to deal with her fears, hiding her concerns from Mr Tahir, the family, friends and work, dealing with the finances, juggling money to make ends meet and trying to keep the lettings agency going, doing housework, cooking, cleaning, looking

after the children, attending Doctor's appointment and Hospital appointments and keeping track of bills.

- i. Mr and Mrs Tahir apologise for overlooking this matter. They believe the decision is extremely unfair and does not take account of all the circumstances.
- 8) The Respondent submits that 1-2-1 Let Properties was trading as a letting agency and was not registered with a Redress Scheme as required. The Monetary Penalty was correctly imposed and the reduced Penalty takes into account that 1-2-1 Let Properties joined a Property Redress Scheme on 3 June 2016.

Findings of Fact and Reasons

- 9) 1-2-1 Let Properties DIY General Stores joined the Property Redress Scheme on 30 September 2014. That membership expired on 30 September 2015. 1-2-1 Let Properties joined the Redress Scheme on 3 June 2016.
- 10) Mr Tahir began to feel unwell in January and February 2015 and had a heart attack in February 2015. Mr Tahir was admitted to hospital and had a coronary angioplasty in December 2015. Since 2016 Mr Tahir has been working as a self-employed gas engineer.
- 11) Mrs Tahir at the date of the decision and the date of the Tribunal was working part-time as a Revenue Officer for HMRC.
- 12) When the business of 1-2-1 Let Properties commenced Mr and Mrs Tahir had 15 houses to let. The business grew as friends came to them and asked that they advertise their properties and find tenants.
- 13) Mr and Mrs Tahir have at least two properties which they jointly own and Mr Tahir has a property that he owns jointly with another person. In addition to the website the business advertises properties to let on Gumtree.
- 14) Mr and Mrs Tahir operate five bank accounts. They operate a Business Extra account with Lloyds Bank for the business with account number 54759568. Mr and Mrs Tahir operated a second account number 56334160 to hold deposits paid by tenants. They have three personal accounts.
- 15) Mr and Mrs Tahir have a mortgage with Birmingham Midshires, mortgage account number 20021046573 and a mortgage with the Yorkshire Bank account number 32096303. They may have other loans which may or may not be secured on their properties.
- 16) Mrs Tahir has her income from HMRC paid in to her personal account. The Business Extra account with Lloyds Bank was used to receive money from the tenants of their own properties, from tenants of the lettings agency, to make payments to landlords and also for Mr Tahir's heating business. Payments from Cascade Ho G Ltd are paid into this account and payments from this account were paid for materials connected with the heating business. Mr Tahir had an agreement in relation to 3 properties to

undertake maintenance work for which he received a monthly retainer. These payments were paid into the Business Extra account.

- 17) I find that the Notice of Intention to Impose a Monetary Penalty was correctly sent to Mr and Mrs Tahir on behalf of the business.
- 18) I find that the Notice of Decision to Impose a Monetary Penalty and the invoice was correctly sent to Mr and Mrs Tahir.
- 19) I find that the Notice of Intention to Impose a Monetary Penalty and the Notice of Decision to Impose a Monetary Penalty contained the necessary information to comply with the Regulations.
- 20) I find that 1-2-1 Let Properties was a business and was engaged in lettings agency work and that the work undertaken did not come within any of the exclusions.
- 21) I find that 1-2-1 Let Properties was not registered with a Redress Scheme as required and it was appropriate to impose a Monetary Penalty.
- 22) I find that it was reasonable that the Monetary Penalty was reduced to £2500.00 taking into account that the business was registered with the Redress Scheme on 3 June 2016.
- 23) I find that the imposition of the Monetary Penalty of £2500.00 was not unreasonable in all the circumstances and was not disproportionate and would not lead to 1-2-1 Let Properties going out of business.
- 24) No profit and loss accounts have been lodge. Mr and Mrs Tahir stated this was because no accounts had been prepared for the financial years 2014/15 and 2015/16. I do not find this plausible. The copies of the bank statements which appear at pages 85 to 109 show payments to Rizvi and Co, the appointed Accountants, totalling £1250 between June 2016 and October 2016. Mr Tahir stated that the accountant had been too busy to complete the accounts and that the money paid to him was for the preparation of two years of accounts. It is unlikely that payment would be made in anticipation of accounts being prepared.
- 25) The letter from Mr Rizvi dated 30 January 2017, and lodged today, states that the income of the business “is reduced to Losses for the tax years 2014/15 and 2015/16”. If the accounts have not yet been prepared Mr Rizvi cannot know the financial situation of 1-2-1 Let Properties and no weight can be attached to his assertions. If the accounts have been prepared then it is reasonable to draw an adverse inference from the fact the accounts have not been submitted.
- 26) Mrs Tahir stated also that Mr Rizvi was responsible for completing Mr and Mrs Tahir’s self assessment tax returns and notwithstanding that time for completing the assessments without penalty has passed for the year ending April 2016 this had not yet been done as Mr Rizvi was too busy. This evidence was simply not credible taking into account the payment of £1250 to Rizvi and Co and taking into account that Mrs Tahir is a Revenue Officer.

- 27) Mr and Mrs Tahir lodged photographs of the shop at 17 Hyde Park Road in support of their submission that they were “ceasing trading as a letting agent”. Notwithstanding the appearance of the building in the photographs Mrs Tahir stated that the upper floors were rented out and rent received by Mrs and Mrs Tahir and that the shop was open some of the time and trading as a DIY shop specialising, in particular, in supplying heating and plumbing supplies. Mrs Tahir could not say that trading had ceased. It is more likely that not that 1-2-1 Let Properties is continuing to do business as a letting agency.
- 28) Mrs Tahir provided the majority of the evidence and spoke for Mr Tahir. She did not give her evidence in an open or straightforward way. She was evasive and I did not find her credible or persuasive. Her evidence about the financial health of 1-2-1 Let Properties was not credible and I cannot accept that the business is as modest as claimed or in financial difficulties as claimed.
- 29) Mrs Tahir, speaking for herself and Mr Tahir, was unable to give accurate and detailed information about the entries in the Lloyd Business Extra account. At the very least the financial arrangements of 1-2-1 Let Properties as described are disorganised and chaotic. Her evidence relating to the finances was neither credible nor believable.
- 30) In particular, it appears the Business Extra account was used for lettings agency work and Mr Tahir’s hearing engineering business (pages 87, 89, 91, 95, 97, 99, 103 and 107). Mrs Tahir was unable to explain how for accounting purposes the transactions for the two businesses could be identified and reconciled. Mrs Tahir told me that income for the properties owned by Mr and Mr Tahir jointly or by Mr Tahir and another was also paid into this account (the entry on page 95 of £420 for example). Mrs Tahir was unable to explain how for accounting purposes these transactions could be identified and reconciled. At the very least it would appear that Mr and Mrs Tahir treated their private income and the income of 1-2-1 Let Properties as one and the same.
- 31) Mrs Tahir told me that she and Mr Tahir had at least three mortgages including one on their home. She was unable to explain exactly how these mortgages were paid and with what money.
- 32) Mrs Tahir told me that their total income from all sources (Mr Tahir’s earnings, the DIY shop, Mrs Tahir’s earnings and from 1-2-1 Let Properties amounted to £20,000 a year. She later revised this to £15,000/£16,000. Taking into account that funds were paid out of the Business Extra Account (page 91) to Mr and Mrs Tahir amounting to £1200 between 3 and 7 October 2016 this was not credible.
- 33) Mrs Tahir was unable or unwilling to provide me with unequivocal details of the properties owned by them jointly and rented out and by Mr Tahir alone. She could offer no reasonable explanation as to why if their financial circumstances were as claimed they had not tried to sell any of these properties.
- 34) It is improbable that the financial circumstances of 1-2-1 Let Properties are as claimed by Mr and Mrs Tahir. Accordingly I am not persuaded that the 1-2-1 Let Properties will go out of business as a consequence of the imposition of the Monetary Penalty.

- 35) I find that at all material dates 1-2-1 Let Properties was undertaking lettings agency work as defined in the Enterprise and Regulatory Reform Act 2013. Mr and Mrs Tahir are the appropriate and responsible persons to act and correspond on behalf of 1-2-1 Let Properties. I find that Mr and Mrs Tahir are the responsible persons and responsible for the actions and omissions of 1-2-1 Let Properties. I find that notwithstanding Mr Tahir's health problems Mr and Mrs Tahir should have been aware of the relevant legislation governing the activities of letting agents. I find that 1-2-1 Let Properties was in breach of its statutory responsibility.
- 36) It is unquestionably the case that 1-2-1 Let Properties was in breach of the legislation. The obligation was on Mr and Mrs Tahir to ensure that they complied with the legislation and it is not a reasonable excuse to say that they did not receive a reminder to renew their membership of the Redress Scheme. I find that the Respondent was entitled to expect professional letting agents such as 1-2-1 Let Properties to be aware of the legal requirements directly impacting upon their business.
- 37) Mr Tahir's health problems although regrettable did not release Mr and Mrs Tahir from their responsibilities to comply with the legislation. During his serious health problems the agency letting business continued and accordingly the obligation to comply with the legislation continued. Mr Tahir's health problems cannot release him from these obligations.
- 38) Accordingly the appeal is dismissed.

Signed J R Findlay

Judge of the First-tier Tribunal

Date: 1 February 2017

Signed: 24 February 2017